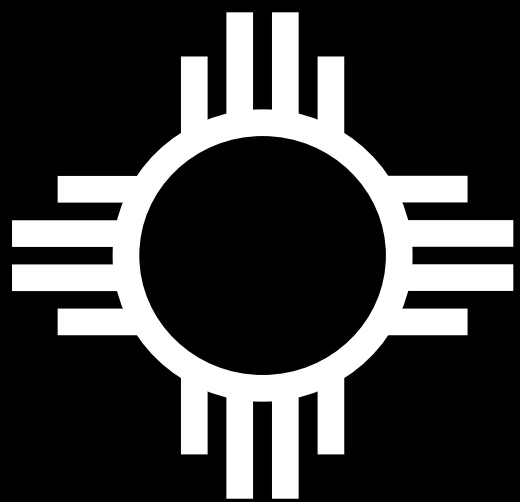


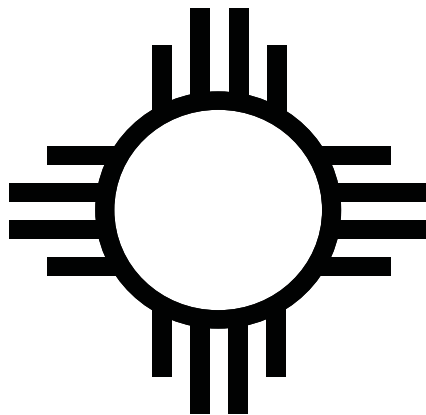
**NEW
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REGISTER**



Volume XXIII
Issue Number 3
February 15, 2012

New Mexico Register

**Volume XXIII, Issue Number 3
February 15, 2012**



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
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2012

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New Mexico Register

Volume XXIII, Number 3

February 15, 2012

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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 HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing on March 16, 2012, at 10:00 am, to receive testimony on a proposed change to the NMCAP benefit amount based on the most current cost neutrality calculation as established by the Food and Nutrition Services, United States Department of Agriculture. This amount is subject to review and adjustment in January of each year.

Additionally, language is being modified to clarify requirements for household composition and a provision added for overpayment and recoupment of benefits.

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

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

Sidonie Squier, Secretary
Human Services Department
P.O. Box 2348, Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to: vida.tapia-sanchez@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on Monday, March 19, 2012, at 9:00 a.m. in the South Park Conference Room, Ste. 500-590, 2055 S. Pacheco, Santa Fe, NM.

The subject of the hearing is Electronic Health Records Incentive Program. The Human Services Department, Medical Assistance

Division (MAD), is proposing changes to 8.300.22 NMAC, *Electronic Health Records Incentive Program* (Medicaid EHR).

The Department proposes to remove Paragraph (6) of Subsection B of 8.300.22.11 NMAC, *eligible recipient volume*. This will now allow an out-of-state Medicaid recipient to be counted in the recipient volume requirement. The original rule was based on the premise that it would be difficult to include out-of-state Medicaid recipients in the EHR incentive payment calculations. However, states have resolved verification issues. With this change, more New Mexico Medicaid providers will qualify for federal EHR incentive payments.

Interested persons may submit written comments no later than 5:00 p.m., March 19, 2012, to Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register and their proposed rules are available for review on our Website at www.hsd.state.nm.us/mad/registers/2012 or by sending a self-addressed stamped envelope to Medical Assistance Division, Benefits Services Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**Case No. 10-00198-UT
PETITION TO COMMENCE
RULEMAKING PROCEEDING
FOR INSTITUTIONAL OPERATOR
SERVICE PROVIDERS INMATE
CALLING SOLUTIONS, LLC, AND
PUBLIC COMMUNICATIONS
SERVICES, INC., Petitioners.**

NOTICE OF PROPOSED RULEMAKING FOR THE PURPOSE OF ESTABLISHING A RULE FOR INSTITUTIONAL OPERATOR SERVICE PROVIDERS

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") is commencing a rulemaking proceeding for the purpose of creating a rule under 17.11.xx NMAC governing the provision of telecommunications services by institutional operator service providers ("IOSPs"). This matter comes before the Commission pursuant to Decretal Paragraph C of its own *Final Order Partially Approving Certification of Stipulation*, issued in three dockets on June 24, 2010, and the *Joint Petition to Commence Rulemaking*, filed in this docket by Public Communication Services, Inc. ("PCS") and Inmate Calling Solutions, LLC d/b/a ICSolutions ("ICS") on July 1, 2010. Whereupon, having reviewed the record and being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

1. On July 6, 2010, the Commission's Telecommunications Bureau Staff ("Staff"), PCS, and ICS filed amended stipulations in three cases. The parties agreed to, among other things, initiate a rulemaking

for the purpose of developing rules and regulations specifically applicable to all IOSPs that would address, but not be limited to the aforementioned rate cap schedule, phase-in language for existing contracts, consumer protection issues, complaint procedures, rate/fee transparency provisions, service quality, letters to facilities and variance/exception processes.

Amended Joint Stipulation between ICS and Staff, paragraph 24, 07-

00316-UT and 07-00442-UT, filed July 6, 2010 and Amended Joint Stipulation between PCS and Staff, paragraph 29, 07-00316-UT, 07-00364-UT, and 07-00442-UT, filed July 6, 2010. The Commission set a deadline for initiating the rulemaking process and directed the parties to include other stakeholders in it. Final Order Partially Approving Certification of Stipulation, paragraph C, 07-00316-UT, 07-00364-UT, and 07-00442-UT, filed June 24, 2010.

2. PCS and ICS filed their Joint Petition to Commence Rulemaking in this docket on July 1, 2010, and on August 9, 2010 the parties, plus Staff, filed their Amended Joint Petition to Commence Rulemaking. The Amended Joint Petition had a draft notice of proposed rulemaking attached to it.

3. On December 23, 2010, the Commission filed its Order to File Consensus Draft Rule. Decretal Paragraph B of the order directed PCS and ICS to file a Notice of Proposed Rulemaking in Case No. 10-00198-UT which "attaches a complete consensus, draft Rule Concerning Institutional Operator Service Providers no later than February 15, 2011." PCS and ICS complied with this directive in a February 15, 2011 filing, representing that "[t]he attached form of rule was the result of extensive efforts and multiple working sessions among PCS, ICS, global Tel* Link Corporation, Securus Technologies, Inc., and T-Netix Telecommunications Services, Inc., and Staff..." Notice of Compliance with Order to File Consensus Draft Rule, p. 1. A copy of the draft rule is attached hereto as Exhibit 1.

4. The Commission has jurisdiction over telecommunications companies and specifically IOSPs in the State of New Mexico pursuant to the New Mexico Constitution, Article XI, Section 2; NMSA 1978, Sections 63-9A-1 et seq. (New Mexico Telecommunications Act); NMSA 1978, Sections 63-7-1 et seq.; and NMSA 1978, Section 8-8-4 et seq. (the Public Regulation Commission Act). The Commission has authority to enact rules regulating IOSPs pursuant to the same.

5. Pursuant to the Final Order Partially Approving Certification of Stipulation, the purpose of this notice is to seek comments for the purpose of developing a rule specifically applicable to all IOSPs that would address: establishing rate caps; adoption of existing contracts IOSPs have with institutional facilities; creating consumer protection criteria; identifying and prescribing complaint procedures; developing any other required transparency provisions; addressing service quality issues; establishing notices and information at facilities; and establishing variance/waiver processes at the Commission.

6. The Commission also

seeks comments on which initial rate caps should be included in the rule. Specifically, the Commission seeks comments on whether the rate caps established in docket number 07-00316-UT should be the initial rate caps under the rule.

7. All IOSPs presently doing business within New Mexico and any IOSPs that might want to do business in New Mexico in the future are encouraged to participate in the rulemaking proceeding. Other entities or individuals are also encouraged to participate.

8. This Notice of Proposed Rulemaking constitutes due and lawful notice to all potentially interested parties.

9. All interested persons should be afforded the opportunity to receive notice of, to comment on, provide substantive language for the attached form of proposed rule, including developing alternatives for any specific category/provision as well as the issues and topics set out in this Order, together with any other issues of relevance to this proceeding.

10. Commission Rule 1.2.3.7(B) NMAC ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to ensure compliance with Rule 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds that date shall be the earlier of thirty (30) days following the **May 2, 2012, Public Hearing**, that is, **June 1, 2012**, or the date a Final Order is issued in this case. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rule amendments or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

11. Remarks made during the drafting of the proposed rule and any items of information that have been submitted heretofore are not evidence and are not part of the record in 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, pursuant to Rule 17.1.120.9 NMAC.

IT IS THEREFORE ORDERED: A. A rulemaking

proceeding should be, and hereby is, instituted in this proceeding.

B. The Commission seeks comment from all interested persons concerning the topics included in the proposed form of rule, attached as Exhibit 1 to this Order.

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

D. All participants in Case Nos. 07-00316-UT, 07-00364-UT, and 07-00442-UT and all names who appear on the official service lists of those proceedings as well as all IOSPs in New Mexico shall be included on the official Certificate of Service for this rulemaking.

E. The Commission specifically invites the NM Attorney General, NM Association of Counties, NM Municipal League, NM Sheriffs' and Police Association, NM Department of Corrections, NM Criminal Justice Association, NM Sentencing Commission, the State Bar of New Mexico, New Mexico Legal Aid, and the American Civil Liberties Union ("ACLU") of New Mexico to participate.

F. Any person wishing to provide comment for incorporation into the rule shall do so by submitting written comments no later than March 12, 2012. Any person wishing to respond to comments may do so by submitting written responses no later than March 26, 2012. Comments to the proposed rule shall state and discuss the particular reason for the language and shall include all specific language necessary or appropriate to incorporate into the rule. Specific language to the proposed rule shall be provided in a format consistent with that of the New Mexico Administrative Code.

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 following address:

Mr. Nick Guillen
NMPRC Records Management
Bureau
1120 Paseo de Peralta
P.O. Box 1269
Santa Fe, NM 87504

H. A public hearing on the proposed rule language shall be presided over by the Commission Chairman or his designee, and shall begin at 1:00 p.m. on May 2, 2012 at the following location:

4th Floor Hearing Room
PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone: (1-800-827-4500)

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 Ms. Cecilia Rios 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 a completed form of 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 IOSPs operating within the State of New Mexico or in good standing and eligible to operate within the State of New Mexico. 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 without exhibit 1* shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the NEW MEXICO REGISTER. 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 of Proposed Rulemaking* shall be posted on the Commission's official Web site.

M. Copies of any forthcoming final order adopting a new rule shall be mailed, along with copies of the particular rule to all affected telecommunications companies, all commenters 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 19th day of January, 2012.

NEW MEXICO PUBLIC REGULATION COMMISSION
PATRICK H. LYONS, CHAIRMAN
THERESA BECENTI-AGUILAR, VICE CHAIR
JASON A. MARKS, COMMISSIONER
DOUGLAS J. HOWE, COMMISSIONER
BEN L. HALL, COMMISSIONER

NEW MEXICO DEPARTMENT OF TRANSPORTATION

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comments on Rule Number 18.27.2 NMAC, Division 100 – General Provisions Standard Specifications for Highway and Bridge Construction. The purpose of the proposed rule is to replace the current rule established January 31, 2008.

The hearing is scheduled on Tuesday, March 20, 2012, from 1:30 p.m. to 4:00 p.m. at the New Mexico Department of Transportation, General Office, Training Rooms 1 and 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. A copy of the proposed rule can be obtained by visiting <http://www.dot.state.nm.us/Construction.html> or by contacting David E. Trujillo P.E., telephone (505) 660-3751, e-mail david.trujillo2@state.nm.us, or Armando M. Armendariz P.E., telephone (505) 490-2740, e-mail armando.armendariz@state.nm.us to request a copy of the proposed rule or provide written correspondence to:

New Mexico Department of
Transportation
C/O State Construction Bureau,
Attention: Division 100
P.O. Box 1149, SB 4
Santa Fe, New Mexico 87504-
1149

The hearing will be held before David E. Trujillo P.E., NMDOT State Construction Engineer. Interested persons may also present their views by written statements submitted on or before Friday, April 20, 2012, to:

New Mexico Department of
Transportation
C/O State Construction Bureau,
Attention: Division 100
P.O. Box 1149, SB 4
Santa Fe, New Mexico 87504-
1149

Telephone (505) 490-2740.
E-mail armando.armendariz@state.nm.us

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in

an accessible form may contact David E. Trujillo P.E., or Armando M. Armendariz P.E., at (505) 660-3751 or (505) 490-2740 respectively, at least ten (10) days before the hearing.

End of Notices and Proposed Rules Section

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Adopted Rules

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 15, 2012. It will be replaced with 2.2.2 NMAC, *Requirements for Contracting and Conducting Audit of Agencies*, which will become effective February 15, 2012.

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, 2-15-12]

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, 2-15-12]

2.2.2.3 STATUTORY 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, 2-15-12]

2.2.2.4 DURATION:
Permanent
[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 2-15-12]

2.2.2.5 EFFECTIVE DATE:
February 15, 2012, unless a later date is cited at the end of a section.
[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 2-15-12]

2.2.2.6 OBJECTIVE: The objective is to establish policies, procedures, rules and requirements for contracting and conducting audits, special audits, attestation engagements and performance audits of governmental agencies of the state of New Mexico and to establish procedures for the notification process regarding late reports.
[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 2-15-12]

2.2.2.7 DEFINITIONS:

A. "Agency" means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation, or other special districts; and school districts; any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority and every office or officer of any entity listed in Paragraphs (1) through (3) of Subsection A 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. "SAS" means the AICPA's statement on auditing standards.

FF. "SHARE" means statewide human resources accounting and management reporting system.

GG. "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. However, not in every case does "state auditor" have this meaning.

HH. "STO" means state treasurer's office.

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

JJ. "UFRS" means uniform financial reporting standards.

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

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 2-15-12]

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 a state-chartered charter school subject to oversight by the public education department or an agency subject to oversight by the higher education department 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 IPAs who have previously audited agencies under this rule, they must have previously complied 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 (5) 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:

(1) Upon receipt of written notification to proceed from the office, the agency shall identify all elements or services to be solicited pursuant to Subsection A of Section 2.2.2.10 NMAC, 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 and allowed by the current government auditing standards);

(d) other nonaudit services (if applicable and allowed by current

government auditing standards); 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 multiple 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 file it with the state agency or local public body as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which 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 multiple 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 multiple 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 completed IPA recommendation form for audits and the completed and signed audit contract to the state auditor by the deadline indicated in Subparagraph (c) below. In the event that the due date falls on a weekend or holiday the due date will be the next business 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 shall complete the IPA recommendation form for audits (the form) provided at www.osanm.org.

Agencies shall print the form on agency letterhead.

(b) Agencies shall complete the applicable audit contact form provided at www.osanm.org, obtain the IPA's signature on the contract, and submit the completed and signed audit contract to the office with the completed IPA recommendation form.

(c) The agency shall deliver the fully completed and signed IPA recommendation form for audits and the completed audit contract to the state auditor by the following deadline, depending on the type of agency: (i) regional education cooperatives, independent housing authorities, hospitals and special hospital districts - **April 15**; (ii) school districts, counties, and higher education - **May 1**; (iii) local workforce investment boards - **May 15**; (iv) local public bodies that **do not** qualify for the tiered system - **May 15**; (v) councils of governments, district courts, district attorneys, and state agencies - **June 1**; (vi) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC should follow the procedures at Subsection D of Section 2.2.2.16 NMAC, and submit the required recommendation form for tiered system local public bodies and the completed signed agreed upon procedures contract to the state auditor - **July 1**; and (vii) component units on the primary government's due date.

(d) Chartered schools that are chartered by the public education department (PED) and agencies that are subject to oversight by the 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).

(e) IPA recommendation forms for audits and the related audit contracts that are submitted to the office with errors or omissions will be rejected by the office. The office will return the rejected contract and IPA recommendation form for audits to the agency with a checklist indicating the reason(s) for the rejection. The office will first process the correct IPA recommendation forms and related contracts that were submitted timely. The office will then process any IPA recommendation forms and audit contracts that were submitted late or were rejected by the office and not resubmitted correctly by the deadline.

(f) In the event the agency's recommendation and related contract are 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 and related contract. During this process, whenever a recommendation and related contract are not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor may set the meeting in a timely manner with consideration given to the agency's circumstances.

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

(8) 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."

(9) The agency shall retain all procurement documentation, including completed evaluation forms, for **five** years and in accordance with applicable public records laws.

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) twelve 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 the 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 (including services related to fraud) 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;

(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 procedures report, described in Subsection G of 2.2.2.16, was received from the office;

(l) failed to submit a completed signed contingency subcontractor form if required; or

(m) 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 agency must use the appropriate audit contract form provided by the state auditor on the website at www.osanm.org. The state auditor may provide audit contract forms to the agency via U.S. mail if specifically requested by the agency. **Only** contract forms provided by the **state auditor** will be accepted and shall:

(1) be completed and returned with the number of required copies (two copies for state agencies) and the completed IPA recommendation form for audits by the deadline indicated above at Subparagraph (c) of Paragraph (6) of Subsection B of 2.2.2.8 NMAC;

(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, include 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. **S u b c o n t r a c t o r** requirements:

(1) Audit firms that have only one individual qualified to supervise a GAGAS audit and issue the related audit report pursuant to Section 61-28B-17(B) NMSA 1978, and GAGAS Paragraph 3.46

must submit a completed contingency subcontractor form with the firm profile. The form shall indicate which IPA on the state auditor's current list of approved IPAs will complete the IPA's audits in the event the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at www.osanm.org. The office will not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on an audit, then the IPA must obtain the **prior written approval** of the state auditor to subcontract a portion of the audit work. 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 E 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. When component unit audits are part of a primary government's audit contract, requests for progress payment approvals should be submitted by the primary government for both the primary government and the component unit. In this situation, the office will not process separate progress payment approvals submitted by the component unit.

(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 to the agency the adjusting journal entries and the supporting documentation that 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.** 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 by the deadline indicated in the request.

(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 does 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 and require that the IPA to give precedence to outstanding multiple year proposals; 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, which 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; and

(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 119 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." In addition, SAS 115 requires the auditor to communicate significant deficiencies and material weaknesses in writing, to both management and those charged with governance. The written communication should address significant deficiencies and material weaknesses related to both current year findings and prior-year findings that were not corrected. Paragraph (8) of Subsection I of 2.2.2.10 NMAC 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 an electronic 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 responsible officials' views responding to the audit findings, pursuant to GAGAS 5.32 to 5.38. 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, agreed upon procedures services, or nonaudit services may be submitted to the office regarding executed contracts. Amendments shall be approved in writing by the state auditor. Any amendments to contracts should be made on the contract amendment form available at www.osanm.org. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. 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. Notwithstanding the delivery dates of the contract, audit report regulatory 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 increases 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. 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.

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, 2-15-12]

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) workforce investment boards: **December 1;**

(e) local public bodies: December 1 (see also Subsection H of 2.2.2.16 NMAC):

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

(g) 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; see Paragraph (1) of Subsection A at 2.2.2.12 NMAC for additional details regarding due dates for state agencies;

(h) 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

(i) 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. This requirement is not negotiable. If appropriate, the finding should also be reported as an instance of deficiency, significant deficiency, or material weakness in the operation of internal control in the agency's internal controls over financial reporting pursuant to SAS 115 Exhibit B.

(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 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). **An electronic copy of the signed and dated engagement letter should also be submitted if it was not previously submitted pursuant to Paragraph (6) of Subsection L of 2.2.2.8 NMAC.** 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 an electronic 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 regulatory 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, when the IPA expects to submit the report and a concurring signature by the agency.** If the IPA is going to miss the expected report submission date, then the IPA should send a revised notification letter. In the event the contract was signed after the report due date, the notification letter must still be submitted to the office explaining the reason the audit report will be submitted after the report due date. A copy of the letter must be sent to the legislative finance committee and the applicable oversight agency: public education department, DFA's financial control division, DFA's local government division, or the higher education department. 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 of component units if

applicable) 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 or person responsible for the IPA's quality control system 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. Once the review of the report is completed pursuant to 2.2.2.13 NMAC, and any significant deficiencies have been corrected by the IPA, the office will indicate to the IPA that the report is ready to print. After the office review of the final version of the audit report pursuant to 2.2.2.13 NMAC, the office will authorize the IPA to submit the following items to the office within two business days; (a) the required number of hardcopies specified in the audit contract; and (b) an electronic version of the audit report, in PDF format. 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 a 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 office. 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, 2-15-12]

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 an exemption must include a detailed explanation, conclusion and supporting documentation justifying the request for blended component unit presentation. 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 state agency, department or board, or public institution of higher education or public post-secondary educational institution, county, municipality or public school district, 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 audit firm that audits the primary government** (except for public housing authority component units that are statutorily exempt from this requirement). Requests for exemption from this requirement must be submitted **in writing by the agency** to the state auditor. 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 audited at the more detailed fund level included in the scope of the audit and opined on as illustrated in Example A-14 (AAG-SLV): (i) component unit 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 disclosures 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 at the individual fund level, if applicable, and opine on it in the auditor’s opinion following Example A-14 (AAG-SLV 14.79): (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 shall apply procedures and report in the auditor’s report on the following RSI (if applicable) pursuant to SAS AU 558 (recently updated for SAS 120): (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) infrastructure modified approach schedules derived from asset management systems (GASBS 34 Paragraphs 132 and 133).

(f) The audit engagement and audit contract compensation include a SAS 119 opinion on the remaining supplemental information schedules presented in the audit report. (i) Some examples of remaining SI schedules are: the schedule of pledged collateral required by Paragraph (5) 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 shall subject the information on the remaining SI schedules to procedures required by SAS AU 551 (recently updated for SAS 119). (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 shall report on the remaining supplementary information (SI) in an explanatory paragraph following the opinion paragraph in the auditor’s report on the financial statements pursuant to SAS AU 551.09 and .11 (recently updated for SAS 119). See also the independent auditors report example on the office website at www.osanm.org.

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, the 2007 revision, 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-133, 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, other applicable pronouncements, and GASB illustrations trends for financial statements. In addition to the revenue classifications required by NCGAS 1.110, the office requires that the statement of revenues, expenditures, and changes in fund balances – governmental funds include intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

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), Regulations Governing the Per Diem and Mileage Act 2.42.2 NMAC, Emergency Amendment to Section 11, Mileage dated June 19, 2009, for state agencies <http://nmdfa.state.nm.us/uploads/FileLinks/293b21bdbc044c04bd0dbc6de01def7e/Emergency%20Amendment%20to%20Section11%20Mileage.pdf> and for mileage and per diem information for local public bodies see the "Per Diem and Mileage Act Rule Change of June 19, 2009," available at <http://nmdfa.state.nm.us/uploads/FileLinks/b673a3e5b3ed4bfc973799a98e2c3e1e/Per%20Diem%20and%20Mileage%20Act%20Rule%20Change%20of%20June%2019,%202009.pdf>;

(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) For 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**; PERA membership is mandatory under the PERA Act, unless membership is specifically excluded pursuant to Section 10-11-3(B) 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) For agencies receiving general fund appropriations, Laws of 2011 Regular Session, Chapter 179, Section 3, Subsection M states, "Except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9(1) NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2011 may be expended for payment of agency-issued credit card invoices;"

(18) For Retiree Health Care Authority Act (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, 2011, the contribution rates did increase; see the applicable statute for more information; and

(19) Governmental Conduct Act (10-16-1 to 10-16-18 NMSA 1978).

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.

(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 definitions of a significant deficiency and a material weakness. Auditors should also follow the 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 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 audit findings must have a reference number such as 2010-1, 2011-3, and 2012-1 and a short title that summarizes the finding. Depending on what type of finding the auditor has determined the finding to be, the finding reference number should be followed by one of the following descriptions: material weakness; significant deficiency; or other. "Other" refers to findings described in item (8) below. 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 business days. 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 business 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, or the scope of work on any professional services contract relates to fraud, and the contract was not approved by the state auditor, this shall 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 12-5 and 12-6." (See the independent auditor's 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 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 or webcam exit conference will not meet this requirement unless a telephonic or webcam exit conference is approved in writing by the state auditor **prior** to the exit conference. 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) business days 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) Agency personnel shall not release information to the public relating to the audit until the audit report is released and has become a 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) Example 31 in the Seventh Edition of the attorney general's *Open Meetings Act Compliance Guide* states that "where the agency being audited is governed by a public body subject to the Open Meetings Act and where release of the report occurs at an exit conference at which a quorum of the members of the body is present, such exit conference need not be open to the public in order to preserve the confidentiality of the information protected by Section 12-6-5."

(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, unless waived, 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.

(4) At all times during the audit and after the audit report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the

release of any information relating to the audit. Applicable standards include but are not limited to the AICPA Code of Ethics Rule 301 and related interpretations and guidance and GAGAS 5.18 to 5.20 and GAGAS 5.39 to 5.

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. If warranted, the state auditor may cause an audit of the financial affairs and transactions of the agency in whole or in part pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.15 NMAC. If the state auditor does not designate an agency for audit, an agency shall follow the provisions of Subsection E of 2.2.2.15 NMAC when entering into a professional services contract for a special audit, performance audit or attestation engagement regarding the financial affairs and transactions of an agency and relating to financial fraud, waste and abuse.

(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 FIN 11.4).

(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 non-interest bearing checking, interest bearing 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) 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 or a trial balance report from SHARE; **therefore, IPAs and state agencies should not request bank confirmations from the office of the state treasurer (state agencies only)**.

(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* 250,000
 funds 200,000
 (iii) Uninsured public
 (iv) Pledged collateral
 held by agency's
 agent in the agency's
 name (50,000)
 (v) Pledged collateral
 held by the pledging bank's
 trust department in the
 agency's name (75,000)
 (vi) Pledged collateral
 held by the pledging financial institution
 (12,500)
 (vii) Pledged collateral
 held by the pledging bank's trust
 department or agent
 but not in the agency's name (12,500)
 (viii) Uninsured and
 uncollateralized (\$50,000)

Custodial credit risk is defined as the risk that the government's deposits may not be returned to it in the event of a bank failure. 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
 (150,000)

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/FactSheet.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 pursuant to 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. Agencies should not request the pledged collateral information from the state treasurer. 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) 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(1)F 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) of Subsection O of Section 2.2.2.10 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 the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level of budgetary control. The legal level of budgetary control for local governments is at the fund level. The legal level of budgetary control is at the function level for school districts. The legal level of budgetary control for state agencies is explained at Paragraph (11) of Subsection A of 2.2.2.12 NMAC. For

additional information regarding the legal level of budgetary control, the IPA should contact the applicable oversight agency, DFA, HED, or PED.

(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 the general fund and major special revenue 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) Budget related findings:

(a) 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.

(b) 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.

(2) Special, deficiency, specific, 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 7.37). (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 7.36). (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 7.36). (iii) At the time of the lease purchase, record the liability for the current and long-term portions of the minimum lease payments due, with the related debit to net assets-invested in capital assets net of related debt, with some exception, per GASBS 34 Paragraph 33.

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 119 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 applicable AICPA report example available in the AICPA Audit and Accounting Guide, *Government Auditing Standards and Circular A-133 Audits*, Chapter 4. **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). See the report examples on the office website at www.osanm.org.

(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 independent auditor's 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 (7) of Subsection L of 2.2.2.8 NMAC above, regarding this issue.

(3) **The report on compliance with requirements that could have a direct and material effect on each major program and on internal control over compliance in accordance with OMB Circular A-133** - Report examples are available in Appendix A of Chapter 13 in the current version of the AICPA Audit and Accounting Guide, *Government Auditing Standards and Circular A-133 Audits*.

(4) One report cover: The state auditor requires the following reports to be **included under one report cover**: the independent auditor's report including the SAS 119 report on supplemental information: 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 (required

by GAGAS 5.07 and SAS 115); and the report on compliance with requirements that could have a direct and material effect on 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 119 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. The IPA should submit a written request for an **exemption** from the "one report cover," and receive prior written approval 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) EDP service centers that process transactions and related data for others;

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

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

(4) public housing authority fee accountants; and

(5) 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 the capitalization threshold when originally purchased 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, "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 to dispose of the asset. 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 policy 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. Schedule of changes in assets and liabilities for the agency funds: 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. The schedule should appear toward the end of the table of contents and requires a SAS 119 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 57, *OPEB Measurements by Agent Employers and Agent Multiple-Employer Plans 57*: The portion of GASBS 57 that applied to employers went into effect upon issuance, December 2009. Now the portion of GASB 57 that applies to "the plan" is going into

effect in FY12. This statement amends the GASBS 43 requirement that a defined benefit OPEB plan obtain an actuarial valuation. The amendment permits this requirement to be satisfied for an agent multiple-employer OPEB plan by reporting an aggregation of results of actuarial valuations of the individual-employer OPEB plans or measurements resulting from use of the alternative measurement method for individual-employer OPEB plans that are eligible. For example, the New Mexico retiree healthcare authority (RHCA) administers a cost-sharing multiple employer defined benefit postemployment healthcare plan. Therefore, RHCA's audit could be affected by the implementation of this portion of GASBS 57 in FY12.

DD. GASBS 64, *Derivative Instruments: Application of Hedge Accounting Termination Provisions*: Under GASBS 53, when a government amended a swap agreement or entered into a new swap agreement as a result of the default or termination event described in a previous swap agreement, the government had to stop hedge accounting upon the termination of the hedging derivative instrument. In this situation GASBS 53 resulted in the immediate recognition of the deferred outflows of resources or deferred inflows of resources as a component of investment income. GASBS 64 amends GASBS 53 by providing criteria for determining when the effective hedging relationship continues and hedge accounting should continue to be applied. GASBS 64 is effective for financial statements for periods beginning after June 15, 2011 (FY12). Earlier application is encouraged.

EE. SAS 118, *Other Information in Documents Containing Audited Financial Statements*: SAS 118 does away with the distinctions between other information (OI) that is included in an auditor-submitted document versus other information that is included in a client-prepared document. This statement also establishes various auditor responsibilities regarding other information that is included in documents containing audited financial statements. The statement is effective for audits of financial statements for periods beginning on or after December 15, 2010 (FY12), with early application permitted. For implementation guidance see the AICPA Audit and Accounting Guide for *State and Local Governments*, March 2011, Appendix D Paragraphs D-19 to D-21.

FF. SAS 119, *Supplemental Information (SI) in Relation to the Financial Statements as a Whole*: With regard to other information (SI) contained in a document with audited financial statements, this statement establishes the requirements for: (1) determining whether the SI is fairly stated in relation to the financial statements

as a whole; (2) management representations regarding SI; (3) procedures to be performed on the SI using the same materiality level as that used in the audit; and (4) auditor reporting on the SI. This statement is effective for audits of financial statements for periods beginning on or after December 15, 2010 (FY12), with early application permitted. For implementation guidance see: the AICPA Audit and Accounting Guide *State and Local Governments*, March 2011, Appendix D Paragraphs D-09 to D-18; and the independent auditors report example on the office website at www.osanm.org.

GG. **SAS 120, Required Supplemental Information (RSI)**: This statement: (1) defines required supplementary information (RSI); (2) establishes auditor reporting responsibilities regarding RSI; (3) establishes required audit procedures including obtaining management representations regarding the RSI; (4) requires communication with the governing board regarding management limitation of scope; (5) establishes the auditor's reporting responsibility related to the RSI. The statement is effect for audits of financial statements for the periods beginning on or after December 15, 2 010 (FY12), with early application permitted. For implementation guidance see: the AICPA *Audit and Accounting Guide State and Local Governments*, March 2011, Appendix D Paragraphs D-01 to D-08; and the Independent Auditors Report example on the Office website at www.osanm.org. [2.2.2.10 NMAC - N, 2.2.2.10 NMAC, 2-15-12]

2.2.2.11 T H E 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.) in management's discussion & analysis 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) are provided in SAS No.

120, *Statement on Auditing Standards No. 120, Required Supplementary Information*. The auditor should apply the limited procedures described at SAS AU 558.05 (a) through (c) on the agency's performance data included in management's discussion & analysis.

D. The IPA should include an explanatory paragraph in the auditor's report on the financial statements to refer to the required supplementary information as required by SAS AU 558.07.to 558.09. [2.2.2.11 NMAC - Rp, 2.2.2.11 NMAC, 2-15-12]

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 (NMSA) 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 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 regarding the expected audit deadline for the agency. The sixty days to the audit deadline will be based on the date of the financial control division's notification to the state auditor, which will be based on input from the agency to the financial control division and the agency's schedule of deliverables and milestones; however, the deadline cannot extend beyond December 15. This requirement does not prevent the auditor from performing interim audit work prior to receipt of the DFA notice of agency preparedness. Once the agency and auditor have certified to the financial control division 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 require 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: (i) invested in capital assets, net of related debt; (ii) restricted; and (iii) 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." 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 reported in accordance with GASBS 54. This statement is effective for financial statements for periods beginning after June 15, 2010 (FY11), and earlier application is encouraged.

(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 procedure requirements and they are available on the financial control division's website at <http://www.nmdfa.state.nm.us> under manuals, white papers and year-end closing instructions.

(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 12). 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, 2011 Chapter 179, Section 3, item O, "For the purpose of administering the General Appropriation Act of 2011 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. Per Section 9 of the General Appropriation Act of 2011, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other. Therefore, the legal level of budgetary control would be the appropriation program level (A-Code, P-Code, R-Code, and Z-Code). The A-Code pertains to capital outlay appropriations (general obligation/severance tax or state general fund). The P-Code pertains to operating funds. The R-Code pertains to American Recovery & Reinvestment Act (ARRA) funds. The Z-Code pertains to special appropriations. Total expenditures for the program need to be compared to the program's approved final budget for compliance. 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 link. (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 multiple 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 state treasurer (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 STO 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 FCD shall compile the CAFR. The draft should exclude the opinion and findings. 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 the 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-FCD oversight letter, go to the financial control division website at www.dfafcd.state.nm.us, under the memorandums and notices link.

B. PERTAINING TO AUDITS OF 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, a component unit of the state of New Mexico, and a housing authority created by an intergovernmental agreement between a city and county that is authorized to exercise all powers under the Municipal Housing Law Section 3-45-1 *et seq.* NMSA 1978.

(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 Section 12-6-3(E) NMSA 1978, "at the public housing authority's discretion, may 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 statute 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 U.S. department of housing and urban development website 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 119 opinion on the financial data schedule (FDS). 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 119 opinion on the FDS; and (iv) explain in the notes any material differences between the FDS and financial statements.

(b) **The audit must include this separate attestation engagement; the preparation and submission cost for this HUD requirement must be included in the audit contract.** 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 6.17 of *the AICPA Audit Guide, Government Auditing Standards* and *Circular A-133 Audits* for more information regarding this issue.

C. PERTAINING TO AUDITS OF SCHOOL DISTRICTS:

(1) The auditor selection process: In the event that a state-chartered charter school subject to oversight by the public education department (PED) is not subject to the requirement to use the same auditor as PED, that charter school shall submit its IPA recommendation to PED for approval, prior to submitting the IPA 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. This process must be completed in time to meet the deadline for submission of the IPA recommendation and the audit contract to the office. The IPA recommendation and completed contract are due to the state auditor on or before May 1. In the event the due date falls on a weekend or a holiday the due date will be the next business 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 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. The schedule should appear toward the end of the table of contents and requires a SAS 119 opinion in the independent auditor's report.

(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 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) Certain GASBS 14 criteria must be applied to determine whether a charter school is a component unit of the chartering entity (the district or PED). GASBS 14 was recently amended by GASBS 61. The financial reporting entity: Omnibus -- an amendment of GASB Statement No. 14 and No. 34. The district, the PED, the charter school and the IPA must evaluate whether the amended GASBS 14 criteria requires a charter school to be presented as a component unit of its chartering entity. If a charter school is determined to be a component unit, then the charter school must be included in the financial statements of its sponsoring school district 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 statements for charter schools that are determined to be component units pursuant to the amended GASBS 14 criteria 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). (iii) 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 AUDITS OF COUNTIES:

(1) 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 30th receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Section 7-38-81(C) NMSA 1978, property taxes that have been delinquent for more than ten years, together with any penalties and interest, are presumed to have been paid. The second schedule titled “county treasurer’s property tax schedule” must show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. Property taxes levied in January 2011 are budgeted for the fiscal year July 1, 2011 through June 30, 2012. 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.

(2) 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, 2012	
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, 2012	(4,330,993)
Property taxes receivable, end of year	\$ 773,821
Property taxes receivable by years:	
2003-2011	226,344
2012	547,477
Total taxes receivable	\$ <u>773,821</u>

(3) 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 May 1. In the event the due date falls on a weekend or holiday the due date will be the next workday.

(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 119 opinion does not meet this requirement. See Section 14.53 of the *AICPA Audit and Accounting Guide, State and Local Governments* (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 must compare the financial statement budget comparison to the related September 15th budget submission to HED. The only differences that should exist between the

HED budget submission and the financial statement budget comparisons are (1) adjustments made by the institution after September 15th and (2) audit adjustments. If the HED budget submission does not tie to the financial statement comparison, taking into account only those differences, then the auditor should write a related finding. The auditor’s opinion on the budgetary comparisons should follow Example A-14 in AAG-SLV 14.79 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 - instruction and 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: 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
(c) Restricted - instruction and general (Schedule 3)
Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
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*, Section 4.32, 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).

(8) Submit draft copy of financial statements to financial control division: Section 11 of Article XII of the New Mexico state constitution established the following educational institutions: (a) the university of New Mexico; (b) NM state university; (c) NM highlands university; (d) western NM university; (e) eastern NM university; (f) NM institute of mining and technology; (g) NM military institute; (h) NM school for the visually handicapped; (i) NM school for the deaf; and (j) northern NM college. These educational institutions should provide the department of finance and administration financial control division with a draft copy of their financial statements, excluding opinions and findings, pursuant to Paragraph (16) of Subsection A of 2.2.2.12 NMAC, and the letter dated October 3, 2008, described therein, from the state controller and the

state auditor.

[2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 2-15-12]

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. The IPA's audit documentation must be assembled in one complete file or one complete set of files in one location, whether the documentation is hardcopy or electronic, pursuant to SAS AU Section 339.27. The documentation must be either all hardcopy or all electronic. Reviews of audit documentation maintained by the audit firm may include the review of:

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

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

(3) working papers to determine compliance with governmental auditing, accounting and financial reporting standards issued by GASB, 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 or the related audit documentation, 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, or 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 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 restricted to a limited

number, and if the auditor is in the middle of any multiple year proposals, those audits will take precedent over audits that are not;

(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, 2-15-12]

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 "Auditors performing work under GAGAS, including planning, directing, performing field work, or reporting on an audit or attestation engagement under GAGAS, should maintain their professional competence through continuing professional education (CPE). Therefore, each auditor performing work under GAGAS should complete, every 2 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, directly, 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 2-year period) that enhances the auditor's professional proficiency to perform

audits or attestation engagements. Auditors required to take the total 80 hours of CPE should complete at least 20 hours of CPE in each year of the 2-year period.” 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 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 is a firm that

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 performing New Mexico 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 current GAGAS requirements.

(8) The New Mexico public accountancy board’s substantial equivalency provision has been replaced with mobility pursuant to Section 61-28B-13 NMSA 1978. 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, 2-15-12]

2.2.2.15 SPECIAL AUDITS, PERFORMANCE AUDITS AND ATTESTATION ENGAGEMENT:

A. Special audit, performance audits or attestation engagement: 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. Accordingly, the state auditor may initiate a special audit, performance audit or attestation engagement regarding the financial affairs and transactions of an agency or local public body based on information or a report received from an agency, IPA or member of the public. The state auditor may perform the special audit, performance audit or attestation engagement. Additionally, in accordance with the procedures set forth in Subsection B of this section, the state auditor may designate an agency for special audit, performance audit or attestation engagement regarding that agency’s financial affairs and transactions, to be conducted by an IPA approved by the state auditor. The state auditor, personnel of the state auditor’s office designated by the state auditor or independent auditors approved by the state auditor shall have available to them all documents necessary to perform a thorough special audit, performance audit or attestation engagement regarding the financial affairs and transactions of an agency. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for an audit, special audit, performance audit or attestation engagement regarding the financial affairs and transactions of an agency, 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. All reasonable costs of special audits, performance audits and attestation engagements conducted pursuant to this section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978.

B. Designation of agency:

(1) The state auditor may designate an agency for special audit, performance audit or attestation engagement regarding that agency’s financial affairs and transactions, to be conducted by an IPA approved by the state auditor. The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the scope and any procedures required for the special audit, performance audit or attestation engagement. If the state auditor designates an agency for special audit, performance audit or attestation engagement to be conducted by an IPA, the agency shall comply with the following procedures to

obtain professional services from an IPA for the required special audit, performance audit or attestation engagement:

(a) 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 special audit, performance audit or attestation engagement as specified by the office;

(b) follow all applicable procurement requirements in accordance with the Procurement Code, Chapter 13 Article 1, when selecting an IPA to perform the special audit, performance audit or attestation engagement;

(c) evaluate all competitive sealed proposals or quotations received by using an evaluation process, preferably executed by a selection committee, as similarly described in Paragraph (5) of Subsection B of 2.2.2.8 NMAC; and

(d) after completing the evaluations for each IPA and making the IPA selection, each agency shall submit the following information to the state auditor by the due date specified by the state auditor in the notification letter: (i) a completed IPA recommendation form for special audits, performance audits, or attestations engagements (the form) provided at www.osanm.org that the agency shall print on agency letterhead; and (ii) a completed audit contract form including the contract fee, start and completion date, and the specific scope of services to be performed by the IPA, for special audit, performance audit, or attestation engagement, provided at www.osanm.org, with the IPA and agency signatures on the contract.

(2) IPA recommendation forms and contracts that are submitted to the office with errors or omissions will be rejected by the office. The office will return the rejected IPA recommendation form and contract to the agency with a checklist indicating the reason(s) for the rejection. Any contract amendments will be processed in accordance with Subsection M of 2.2.2.8 NMAC.

(3) 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 and related contract. During this process, whenever a recommendation and related contract are not approved, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review

of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor may set the meeting in a timely manner with consideration given to the agency's circumstances.

(4) Reports of any special audit, performance audit or attestation engagement made pursuant to this section will be reviewed by the office for compliance with the professional services contract. Upon completion of the report, the IPA shall deliver the organized and bound report to the state auditor with an electronic copy of the signed and dated engagement letter if not previously submitted. The IPA is required to respond to all review comments as directed by the office. After its review of the 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 report, in PDF format, must be delivered to the office within two business days. The office will not release the report until the electronic version of the report is received by the office. The office will provide the agency with a letter authorizing final payment to the IPA and the release of the report pursuant to Section 12-6-5 NMSA 1978. 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.

(5) Once the 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 or been waived by the agency, the 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 Meetings Act, if applicable. The presentation of the report should be documented in the minutes of the meeting.

(6) Agency and local public body personnel shall not release information to the public relating to the special audit, performance audit or attestation engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At all times during the engagement and after the engagement report becomes a public record; the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the engagement. Applicable standards include but are not limited to the AICPA Code of Ethics Rule 301 and related interpretations and guidance and GAGAS 5.18 to 5.20 and GAGAS 5.39 to 5.42.

(7) All reasonable costs of special audits, performance audits and attestation

engagements conducted pursuant to this section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. Progress payments up to 90% of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final payments from 91% to 100% may be made by the agency only after the state auditor has stated in a letter to the agency that the report has been released by the state auditor and the electronic copy of the signed engagement letter has been received by the state auditor. When component unit audits are part of a primary government's audit contract, requests for progress payment approvals should be submitted by the primary government for both the primary government and the component unit. In this situation, the office will not process separate progress payment approvals submitted by the component unit.

C. Financial fraud, waste or abuse in government reported by agencies, IPAs or members of the public:

(1) The state auditor may conduct fact-finding procedures in connection with reports of financial fraud, waste and abuse in government made by agencies, IPAs or members of the public.

(2) Pursuant to Section 12-6-6 NMSA 1978 and Subsection K of 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.

(3) 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.

D. 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, performance audit, or attestation engagement, 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 a special audit, performance audit, or attestation examination 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 a special audit, performance audit, attestation engagement 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, performance audit or attestation engagement 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.

E. Reports of special audits, performance audits or attestation engagements related to financial fraud, waste or abuse in government:

(1) This section applies to instances in which an agency and an IPA enter into a professional services contract for a special audit, performance audit or

attestation engagement relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the audit or engagement pursuant to Subsection B of 2.2.2.15 NMAC.

(2) An agency or an IPA shall not enter into a professional services contract for a special audit, performance audit or attestation engagement regarding the financial affairs and transactions of an agency and 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.

(3) A report of a special audit, performance audit or attestation engagement made pursuant to a contract approved under this section is 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 management representation letter. An electronic copy of the signed and dated engagement letter should also be submitted at this time if it was not previously submitted.

(4) 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.

(5) 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."

(6) Agency personnel and local public body personnel shall not release information to the public relating to the special audit, the performance audit or the attestation engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978.

(7) At all times during the engagement and after the report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the engagement. Applicable standards include but are not limited to the AICPA Code of Ethics Rule 301 and related interpretations and guidance and GAGAS 5.18 to 5.20 and GAGAS 5.39 to 5.42.

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC,

2-15-12]

2.2.2.16 A N N U A L FINANCIAL 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 Paragraphs (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. The certification shall be provided on the form made by the state auditor and available on the state auditor's website at www.osanm.org. The local public body shall certify, at a minimum:

(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, a 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) with a rating of at least "modified" or "pass with deficiencies."

(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 multiple 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 multiple 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 multiple 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) A local public body that **does not qualify** for the tiered system should submit the completed IPA recommendation form and completed audit contract to the office by **May 15** pursuant to Section 2.2.2.8(B) NMAC. A local public body that **does qualify** for the tiered system should complete the evaluations for each IPA that responds, make the IPA selection and then submit the completed IPA recommendation form for tiered system local public bodies and the completed and signed agreed upon procedures contract to the state auditor on or before **July 1**. The blank form and contract that the local public body shall use are available at www.osanm.org. In the event the due date falls on a weekend or holiday, the due date will be the next business day. Local public bodies with a fiscal year end other than June 30 must use a due date of one day after the end of the fiscal year.

(a) The local public body shall print the form on the local public body's letterhead.

(b) The local public body shall complete the agreed upon procedures contract form provided at www.osanm.org for the applicable tier. The local public body should obtain the IPA's signature on the contract, and submit the completed and signed agreed upon procedures contract to the state auditor with the completed IPA recommendation form for agreed upon procedures.

(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 with a rating of at least modified or pass with deficiencies; if applicable. 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 IPA's peer review will disqualify the IPA from performing New Mexico governmental agreed upon procedures engagements; and (v) an explanation regarding why the local public body selected an IPA that did not appear on the state auditor's list.

(d) The IPA recommendation form for agreed upon procedures and the related agreed upon procedures contract that are submitted to the office with errors or omissions will be rejected by the office. The office will return the rejected contract and IPA recommendation form to the local public body with a checklist indicating the reason(s) for the rejection. The office will process first the timely submitted correct IPA recommendation forms and related contracts. Then the office will process any IPA recommendation forms and related contracts that are submitted late or were rejected by the office and not resubmitted correctly by the deadline.

(e) The local public body shall retain all procurement documentation including completed evaluation forms, for five years and in accordance with applicable records laws.

E. The state auditor shall consider and approve or disapprove the IPA recommendation and related agreed upon procedures contract pursuant to Subsection C of 2.2.2.8 NMAC. In the event the local public body's recommendation and related contract are not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for disapproval, to the local public body, at which time the local public body shall promptly submit a different recommendation. This process will continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the local public body may submit a written request to the state auditor for reconsideration of the disapproval. The local public body shall submit its request no later than 15 days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor may set the meeting in a timely manner with consideration given to the agency's circumstances. Any contract

amendments will be processed in accordance with 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.

(3) Once the 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 or has been waived by the local public body, the agreed upon procedures report shall be presented by the IPA, to a quorum of the governing authority of the local public body at a meeting held in accordance with the Open Meetings Act, if applicable.

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 date, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end, the report due date is **December 1**. Local public bodies with a fiscal year end other than June 30 must submit the agreed upon procedures 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 management representation letter shall be submitted with the report. The signed dated electronic version of the engagement letter must also be submitted at this time if it was not previously submitted. 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 business day 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 regulatory due dates.

(2) As soon as the auditor becomes aware that circumstances exist that will make the local public body's agreed upon procedures 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 agreed upon procedures report. The notification must include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the local public body. If the IPA will not meet the expected report submission date, then the IPA should send a revised notification letter. In the event the contract was signed after the report due date, the notification letter must still be submitted to the office explaining the reason the agreed upon procedures report will be submitted after the report due date. A copy of the letter must be sent to the local government division (LGD) of DFA if LGD oversees the local public body.

(3) Local public body personnel shall not release information to the public relating to the agreed upon procedures engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At all times during the engagement and after the agreed upon procedures report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the agreed upon procedures engagement.

I. Findings: All agreed upon procedures engagements should report as findings any fraud, illegal acts, noncompliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings should include the content listed at Subparagraph (c) of Paragraph (3) in Subsection I of 2.2.2.10 NMAC.

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. Unfinished or excessively deficient reports will not be considered received. Such reports will be returned to the firm and a copy of the rejection letter will be sent to the local public body. If the office rejects and returns a substandard agreed upon procedures report to the firm, the report will be considered late if the revised report is not submitted by the due date, and the firm must include a finding for noncompliance with the due date. The office encourages early submission of reports to avoid findings for late reports. 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 local public body 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 agreed upon procedures reports, for some or all contracts; or

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

K. IPA independence: IPA's that perform agreed upon procedure engagements under the tiered system must maintain independence in mental attitude in all matters relating to the engagement.

(1) An IPA who performs the local public body's annual agreed upon procedures engagement shall not enter into any special audit or nonaudit service contract with that local public body without the prior written approval of the state auditor. To obtain this approval, the original professional services contract for nonaudit or special audit services must be submitted to the state auditor for review and approval after it has been signed by the local public body 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 shall 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 local public body 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 local public body.

(2) Except as provided in Subsection E of 2.2.2.15 NMAC, a local public body and an IPA who does not perform that local public body's annual financial audit shall submit a copy to the state auditor of each professional services contract entered into between the local public body and the IPA for a special audit, agreed upon procedure 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.

[2.2.2.16 NMAC - Rp, 2.2.2.16 NMAC, 2-15-12]

2.2.2.17 NOTIFICATIONS REGARDING FAILURE TO SUBMIT TIMELY REPORTS:

A. Effective July 1, 2012, pursuant to Section 12-6-3(G), NMSA 1978, the office will notify:

(1) the legislative finance committee and the public education department if a school or educational cooperative has not made satisfactory progress to comply with the Audit Act; and

(2) the legislative finance committee and the secretary of finance and administration if a state agency, state institution, municipality or county has not submitted an audit report (or agreed upon procedures report for applicable municipalities) and has not made satisfactory progress to comply with the Audit Act.

B. To fulfill the requirements of Section 12-6-3(G) NMSA 1978 the office issues the following lists:

(1) an annual list on **April 15th** of the school districts, charter schools and educational cooperatives that failed to submit the required audit report to the office within 90 days of the specified due date (November 15th), that the state auditor investigated and attempted to negotiate with, but did not make satisfactory progress toward compliance with the Audit Act; and

(2) an annual list on **April 15th** of the names of state agencies, state institutions, municipalities, and counties that failed to submit the required audit report to the office within 90 days of the specified due date, that the state auditor investigated and attempted to negotiate with, but did not make satisfactory progress toward compliance with the Audit Act.

C. To perform the investigation and attempted negotiation with state agencies, state institutions, municipalities, and counties required by Section 12-6-3(G) NMSA 1978, the office will send a letter to these entities and to school districts, educational cooperatives, and charter schools prior to their required reports being 90 days late. The letter will

require the entity to submit a quarterly progress report to the state auditor, with the first progress report being due thirty days from the date of the letter and the quarterly reports due January 1st, April 1st, July 1st, and October 1st. The progress report shall be signed by a member of the agency's governing authority, a designee of the governing authority or a member of the agency's top management. At a minimum, the progress report shall include:

(1) a detailed explanation of the agency's efforts to complete and submit its audit or agreed-upon procedures;

(2) an explanation of the current status of any ongoing audit or agreed-upon procedures work;

(3) a description of any obstacles encountered by the agency in completing its audit or agreed-upon procedures; and

(4) a projected completion date for the financial audit or agreed-upon procedures.

D. Pursuant to Sections 9-6-5.2(B)(2) and 9-6-5.2(C)(4) NMSA 1978, the office will also provide updated information to the legislative finance committee and the secretary of finance and administration on July 15th, October 15th, and January 15, indicating whether the state agency, state institution, county or municipality has submitted all past-due audit reports or otherwise made progress satisfactory to the state auditor, toward compliance with the Audit Act. School districts, regional educational cooperatives and charter schools will also be included in the updated information.

[2.2.2.17 NMAC - N, 2-15-12]

NEW MEXICO COLONIAS INFRASTRUCTURE BOARD

**TITLE 2 PUBLIC FINANCE
CHAPTER 91 GRANTS
PART 2 REVIEW AND
SELECTION OF COLONIAS
INFRASTRUCTURE PROJECTS**

2.91.2.1 ISSUING AGENCY: New Mexico Colonias Infrastructure Board. [2.91.2.1 NMAC - N, 2/15/12]

2.91.2.2 SCOPE: All persons or entities applying for financial assistance under the colonias infrastructure project fund administered by the New Mexico finance authority, NMSA 1978, 6-30-6 and NMSA 1978, 6-30-8. [2.91.2.2 NMAC - N, 2/15/12]

2.91.2.3 STATUTORY AUTHORITY: NMSA 1978, 6-30-6 and NMSA 1978, 6-30-8. [2.91.2.3 NMAC - N, 2/15/12]

2.91.2.4 D U R A T I O N :
Permanent.
[2.91.2.4 NMAC – N, 2/15/12]

2.91.2.5 EFFECTIVE DATE:
February 15, 2012, unless a later date is cited at the end of a section.
[2.91.2.5 NMAC – N, 2/15/12]

2.91.2.6 OBJECTIVE:
A. Section 6-30-5, NMSA 1978 provides that the New Mexico colonias infrastructure board is required to adopt rules governing the acceptance, evaluation and prioritization of applications by qualified entities for financial assistance from the colonias infrastructure project fund; authorizes the board to prioritize the qualified projects for financial assistance; and authorizes the board to recommend the prioritized qualified projects to the New Mexico finance authority for financial assistance.

B. Section 6-30-3, NMSA 1978, provides that a qualified project eligible for consideration for financial assistance by the board shall be a capital outlay project which may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies. The purpose of these rules is to set forth the intent of the board and to outline, in general terms, the criteria and procedures to be used in evaluating, prioritizing and funding qualified projects from the colonias infrastructure project fund.

C. Section 6-30-6, NMSA 1978, provides that the authority shall provide staff support for the colonias infrastructure board; administer the colonias infrastructure project fund; at the direction of the board, process, review and evaluate applications for financial assistance received from qualified entities; and at the direction of the board, administer qualified projects that receive financial assistance.

D. Section 6-30-8, NMSA 1978, provides that the authority may adopt separate procedures and rules to administer the colonias infrastructure project fund, originate grants or loans for qualified projects recommended by the board; recover from the colonias infrastructure project fund the costs of administering the fund and originating the grants and loans; and govern the process through which qualified entities may apply for financial assistance from the colonias infrastructure project fund.
[2.91.2.6 NMAC – N, 2/15/12]

2.91.2.7 DEFINITIONS:

A. “Act” means the Colonias Infrastructure Act, Sections 6-30-1 through 6-30-8, NMSA 1978, as the same

may be amended and supplemented.

B. “Agreement” means the document or documents signed by the board and a qualified entity which specify the terms and conditions of obtaining financial assistance from the colonias infrastructure project fund.

C. “Applicant” means a qualified entity which has filed a colonias infrastructure project proposal with the authority for initial review and referral to the board, or to the board’s project review committee.

D. “Authority” means the New Mexico finance authority.

E. “Authorized representative” means one or more individuals duly authorized to act on behalf of the qualified entity in connection with its financial application, colonias infrastructure project proposal or agreement.

F. “Board” means the New Mexico colonias infrastructure board created by the act.

G. “Bylaws” means the bylaws of the board adopted on October 7, 2011, as amended and supplemented from time to time.

H. “Colonia” means a rural community with a population of 25,000 persons or less located within 150 miles of the United States-Mexico border that (1) has been designated as a colonia by the municipality or county in which it is located because of a lack of potable water supply, a lack of adequate sewage systems, or a lack of decent, safe and sanitary housing; (2) has been in existence as a colonia prior to November 1990; and (3) has submitted appropriate documentation to the board to substantiate the conditions under (1) and (2) of this definition.

I. “Colonias infrastructure project account” means a fund designated by a qualified entity exclusively for receipt of financial assistance for a qualified project.

J. “Colonias infrastructure project fund” means the fund of that name created in the authority by Section 6-30-8, NMSA 1978.

K. “Colonias infrastructure project proposal” means a written project proposal submitted by a qualified entity for review by the project review committee and consideration by the board.

L. “Colonias infrastructure trust fund” means the fund of that name created in the state treasury by Section 6-30-7, NMSA 1978.

M. “Financial application” means a written document filed with the authority by an applicant for the purpose of evaluating the applicant’s qualifications and proposed project or projects for types of financial assistance which may be provided by the board under the act.

N. “Financial assistance”

means loans, grants and any other type of assistance authorized by the act, or a combination thereof, provided from the colonias infrastructure project fund to a qualified entity for the financing of a qualified project.

O. “Political subdivision of the state” means a municipality, a county, a water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, Chapter 3, Article 29 NMSA 1978, or any other entity recognized by statute as a political subdivision of the state.

P. “Project review committee” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review proposed colonias infrastructure projects to be recommended for funding from the colonias infrastructure project fund.

Q. “Qualified entity” means a county, municipality or other entity recognized as a political subdivision of the state.

R. “Qualified project” means a capital outlay project selected by the board for financial assistance that is primarily intended to develop colonias infrastructure, and may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

S. “State” means the state of New Mexico.

[2.91.2.7 NMAC – N, 2/15/12]

2.91.2.8 ELIGIBILITY: PRIORITIZATION OF COLONIAS INFRASTRUCTURE PROJECTS:

The board will develop and consider a variety of factors in reviewing and evaluating colonias infrastructure project proposals to determine which colonias infrastructure projects to recommend to the authority as qualified projects for financial assistance from the colonias infrastructure project fund. The board shall give priority to projects that have urgent needs that ensure adequate financial resources for infrastructure development for colonia recognized communities, that provide for the planning and development of infrastructure in an efficient and cost-effective manner, and that develop infrastructure projects to improve quality of life and encourage economic development. The board shall seek to identify opportunities to leverage federal and other funding. The board shall establish policies for prioritization of colonias infrastructure projects.

[2.91.2.8 NMAC – N, 2/15/12]

**2.91.2.9 C O L O N I A S
INFRASTRUCTURE PROJECT
PROPOSAL, REVIEW,
PRIORITIZATION AND APPROVAL
PROCESS:**

A. The board and the authority will administer an outreach program to notify qualified entities that colonias infrastructure project proposals are being accepted to identify colonias infrastructure projects for review by the project review committee and the board for prioritization and recommendation for funding to the authority as qualified projects.

B. The authority will provide forms and guidelines for colonias infrastructure project proposals and applications for financial assistance.

C. The authority staff will complete an initial evaluation of the application for financial assistance and colonias infrastructure project proposals promptly following receipt. Such evaluation will include, to the extent applicable, an evaluation of colonias infrastructure project feasibility, administrative capacity of the qualified entity, financial position, debt management and economic and demographic factors. The authority may rely upon the advice of an interdisciplinary team in evaluating colonias infrastructure project proposals and applications for financial assistance.

D. The authority staff will forward all completed colonias infrastructure project proposals and the initial evaluation of applications for financial assistance and colonias infrastructure project proposals to the project review committee. The project review committee will consider the proposed colonias infrastructure project and may confer with outside parties, including any local interdisciplinary teams familiar with the proposed colonias infrastructure project, as necessary to obtain more information on the feasibility, merit, and cost of the proposed colonias infrastructure project. The project review committee will make a recommendation to the board on each colonias infrastructure project proposal.

E. Upon the recommendation of the project review committee, the board will prioritize the proposed colonias infrastructure projects for recommendation to the authority for funding.

F. After completion of the review process by the project review committee and the board and receipt of a favorable recommendation on the colonias infrastructure project proposal, the prioritized colonias infrastructure projects will be recommended by the board to the authority for funding as qualified projects to the extent of the available moneys in the colonias infrastructure project fund.

G. At least annually, the

board will recommend to the authority a list of qualified projects recommended for funding. The authority will provide financial assistance for qualified projects as recommended by the board under policies jointly established by the board and authority. [2.91.2.9 NMAC – N, 2/15/12]

**2.91.2.10 C O L O N I A S
INFRASTRUCTURE QUALIFIED
PROJECTS AND ELIGIBLE COSTS:**

A. The board may authorize the authority to provide financial assistance from the colonias infrastructure project fund to qualified entities only for qualified colonias infrastructure projects as provided by Section 6-30-3 and Section 6-30-5, NMSA 1978.

B. Financial assistance from the colonias infrastructure project fund shall be made only for eligible items, which include:

(1) planning, designing, construction, improving or expanding a qualified project;

(2) developing engineering feasibility reports for qualified projects;

(3) inspecting construction of qualified projects;

(4) providing professional services;

(5) completing environmental assessments or archeological clearances and other surveys for qualified projects;

(6) acquiring land, water rights, easements or rights of way; and

(7) paying legal costs and fiscal agent fees associated with development of qualified projects, within limits set by the board.

C. A qualified entity which has had financial assistance approved by the board for financing a qualified project may apply to the board to redirect the financial assistance to a different colonias infrastructure project made necessary by unanticipated events. The decision to redirect the financial assistance to a different qualified project will be at the sole discretion of the board upon the advice of the authority staff. [2.91.2.10 NMAC – N, 2/15/12]

**2.91.2.11 Q U A L I F I E D
PROJECT FINANCING:**

The authority may recommend structured financial assistance packages that include loans, grants and any other type of assistance authorized by the authority and the board. The structure, terms and conditions of the financial assistance will be determined by the authority in accordance with the policies jointly established by the board and the authority. Any variance from the policies in connection with financial assistance for any qualified project shall be approved by the authority and the board. Financial assistance

for qualified projects may be pooled, at the sole discretion of the authority, under policies jointly established by the board and authority.

[2.91.2.11 NMAC – N, 2/15/12]

**2.91.2.12 F I N A N C I N G
APPROVAL REQUIREMENTS:**

Based on the priority and evaluation factors set forth in Sections 8, 9, and 10, the board may recommend to the authority approval of the qualified project for financial assistance.

[2.91.2.12 NMAC – N, 2/15/12]

**2.91.2.13 R E C O N S I D E R A T I O N
OF BOARD DECISIONS:**

Any applicant or qualified entity affected by a decision of the board may request reconsideration of the decision of the board by notifying the board in writing within 15 days following the meeting at which the decision was made. Notice of a decision made in an open meeting of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for reconsideration, including any factual or legal matter on which the applicant or qualified entity believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chairman of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant or qualified entity of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.

[2.91.2.13 NMAC – N, 2/15/12]

**2.91.2.14 F I N A N C I A L
ASSISTANCE AGREEMENT:**

A. The board, the authority and the qualified entity will enter into an agreement to establish the terms and conditions of financial assistance from the board. The agreement will include the terms of repayment and remedies available to the board and the authority in the event of a default. The board, or the authority, on behalf of the board, will monitor terms of the agreement and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection.

B. The interest rate on any financial assistance extended shall be determined by the authority based on the cost of funds and ability of a qualified entity to repay a loan, and in accordance with the

policies jointly established by the board and the authority. The interest rate shall not change during the term of the financial assistance unless refinanced or unless the financial assistance is structured as a variable rate obligation.

C. The agreement will contain provisions which require financial assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. In the event of default under a financial assistance agreement by a qualified entity, the board, or the authority, on behalf of the board, may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

[2.91.2.14 NMAC – N, 2/15/12]

2.91.2.15 ADMINISTRATIVE COSTS:

A. The authority may impose and collect reasonable fees and costs in connection with the filing of a colonias infrastructure project proposal or an application for financial assistance seeking approval of a colonias infrastructure project, and for financial assistance from the board and the authority. The authority also may impose and collect an administrative fee from each qualified entity that receives financial assistance from the colonias infrastructure project fund. If an administrative fee is assessed, the administrative fee will be a percentage of the principal amount of the financial assistance provided to a qualified entity. The administrative fee may be withheld from the principal amount of the financial assistance and will be retained in the colonias infrastructure project fund. Alternatively, the authority may levy an annual fee equal to a percentage of the outstanding principal amount of a loan. Specific percentages will be based on, among other things, the volume of financial assistance being provided to qualified entities, the administrative costs of the board and the authority, and the availability of other revenue sources to cover the board's and the authority's administrative costs. The filing and administrative fee or fees may be used for, among other purposes, reimbursing the board or the authority for all or part of the costs of issuing bonds and other administrative costs, including any audits of the colonias infrastructure project fund and the colonias infrastructure trust fund.

B. The authority may establish such other charges, premiums, fees and penalties deemed necessary for the administration of the colonias infrastructure project fund and the colonias infrastructure trust fund.

[2.91.2.15 NMAC – N, 2/15/12]

2.91.2.16 ADMINISTRATION

OF THE COLONIAS INFRASTRUCTURE TRUST FUND:

A. Pursuant to Section 6-30-7, NMSA 1978, the colonias infrastructure trust fund shall be administered by the state treasurer's office and shall be invested by the state investment officer in the same manner as land grant permanent funds are invested under state law. All investment earnings on the colonias infrastructure trust fund shall be credited to the colonias infrastructure trust fund. The colonias infrastructure trust fund shall not be expended for any purpose, but an annual distribution from the trust fund shall be made to the project fund pursuant to Section 6-30-7, NMSA 1978.

B. Annual distributions to the colonias infrastructure project fund from the colonias infrastructure trust fund shall be made as required by the authority.

[2.91.2.16 NMAC – N, 2/15/12]

2.91.2.17 ADMINISTRATION OF THE COLONIAS INFRASTRUCTURE PROJECT FUND:

A. The colonias infrastructure project fund shall be administered by the authority as a separate account, but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money from repayments of loans made by the board for qualified projects shall be deposited in the colonias infrastructure project fund. The colonias infrastructure project fund shall also consist of any other money appropriated, distributed or otherwise allocated to the colonias infrastructure project fund for the purpose of financing qualified projects under the act.

C. The authority shall adopt a uniform accounting system for the colonias infrastructure project fund and each account and subaccount established by the authority, based on generally accepted accounting principles.

D. The authority may establish procedures and adopt rules as required to administer the colonias infrastructure project fund and to recover from the colonias infrastructure project fund costs of administering the fund and originating grants and loans.

[2.91.2.17 NMAC – N, 2/15/12]

2.91.2.18 AMENDMENT OF RULES: This rule may be amended or repealed at any time by a majority vote of a quorum of the board.

[2.91.2.18 NMAC – N, 2/15/12]

HISTORY OF 2.91.2 NMAC:
[RESERVED]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

This is an amendment to 19.15.14 NMAC, Section 8, effective 2/15/2012.

19.15.14.8 PERMIT TO DRILL, DEEPEN OR PLUG BACK:

A. Permit required. An operator shall obtain [a permit] an approved application for permit to drill from the division prior to commencing drilling, deepening or re-entry operations, [~~or before~~] commencing an additional lateral, plugging a well back to a different pool, or completing or re-completing a well in an additional pool.

B. Mineral owner or lessee consent required. An operator shall not file an application for permit to drill nor commence drilling operations until the operator has either:

(1) received the consent of at least one lessee or owner of an unleased mineral interest at the proposed bottom hole location;

or

(2) obtained a compulsory pooling order from the division. In addition, an operator filing an application for permit to drill for a horizontal or directional well shall comply with Subsection A of 19.15.16.15 NMAC.

[19.15.14.8 NMAC - Rp, 19.15.3.102 NMAC, 12/1/08; A, 2/15/12]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

This is an amendment to 19.15.16 NMAC, Sections 7, 14, 15, and 18; the addition of new Section 15, and the renumbering of Sections 15, 16, 17, 18, and 19, effective 2/15/2012.

19.15.16.7 DEFINITIONS: These definitions apply specifically to 19.15.16 NMAC. For additional definitions that may apply see 19.15.2 NMAC.

A. "Azimuth" means the deviation in the horizontal plane of a well bore expressed in terms of compass degrees.

B. "Completed interval" means that portion of a well bore or lateral that is:

(1) cased, cemented and perforated;

(2) an open hole; or

(3) isolated by a packer or other non-permeable means and open to the formation.

[B:] C. “Deviated well” means a well bore that is intentionally deviated from vertical but not with an intentional azimuth.

[C:] D. “Directional well” means a well bore that is intentionally deviated from vertical with an intentional azimuth.

E. “Horizontal well” means a directional well bore with one or more laterals that extend a minimum of 100 feet horizontally in the target zone. A well with multiple laterals from a common well bore in the same or different target zones or formations shall be considered one well.

[D:] E. “Kick-off point” means the point at which a directional well is intentionally deviated from vertical.

[E:] G. “Lateral” means a portion of a directional well past the point where the well bore has been intentionally departed from the vertical.

H. “Non-standard project area” means a project area that is not a standard project area.

I. “Open hole” means that portion of a well bore or lateral that is:

(1) not cased, or

(2) cased, but the casing is not cemented in place, and is not otherwise isolated from the formation.

[F:] J. “Penetration point” means the [point where a directional well penetrates the top of the pool from which it is intended to produce] beginning of the completed interval of a horizontal or other directional well or lateral.

[G:] K. “Producing area” means the portion of a project area that lies within a window formed by plotting the measured distance from the project area’s [north, south, east and west] outer boundaries, inside of which a [vertical] well bore can be drilled and produced in conformity with the setback requirements from the outer boundary of a standard spacing unit for the applicable [pools] pool.

[H:] “Producing interval” means that portion of a directional well drilled inside a pool’s vertical limits between its penetration point and its terminus:

I. “Project area” means an area the operator designates on form C-102 that a spacing unit’s outer boundaries enclose, a combination of complete, contiguous spacing units or an approved secondary, tertiary or pressure maintenance project;]

L. “Project area” means an area the operator designates on form C-102, well location and acreage dedication plat that comprises:

(1) one or more complete, contiguous spacing units (in one section or in more than one section) that are developed by the horizontal well; or

(2) an entire voluntary or statutory unit for an approved enhanced recovery or

pressure maintenance project, an approved state exploratory unit, or a participating area in a federal unit.

M. “Standard project area” means a project area that:

(1) is described in Paragraph (2) of Subsection L of 19.15.16.7 NMAC;

(2) consists of a single spacing unit;

(3) consists of two or more spacing units within a single section that collectively comprise:

(a) the entire section, a half-section or half-section equivalent, or a quarter section or quarter-section equivalent; or

(b) the north, south, east or west half of a half-section or half-section equivalent or of a quarter section or quarter-section equivalent; or

(4) consists of a combination of two or more otherwise standard project areas, if the resulting area is substantially in the form of a rectangle; provided that a project area consisting of three 40-acre units within a single section and excluding the fourth spacing unit is not a standard project area.

[J:] “Project well” means a well drilled, completed, produced or injected into as either a vertical well, deviated well or directional well.

K. “Spacing unit” means the acreage that is dedicated for a well in accordance with 19.15.15 NMAC. Included in this definition is a unit of proration for oil or gas as defined by the division and all non-standard units the division has previously approved.]

[E:] N. “Terminus” means the farthest point attained along the well bore or lateral.

[M:] O. “Vertical well” means a well that does not have an intentional departure or course deviation from the vertical.

[19.15.16.7 NMAC - Rp, 19.15.3.111 NMAC, 12/1/08; A, 2/15/12]

19.15.16.14 DEVIATION TESTS [AND]; DEVIATED, DIRECTIONAL AND HORIZONTAL WELLS:

A. Deviated well bores.

(1) Deviation tests required. An operator shall test a vertical or deviated well that is drilled or deepened at reasonably frequent intervals to determine the deviation from the vertical. The operator shall make the tests at least once each 500 feet or at the first bit change succeeding 500 feet. The operator shall file with the division a tabulation of deviation tests run, that is sworn to and notarized, with form C-104.

(2) Excessive deviation. When the deviation averages more than five degrees in a 500-foot interval, the operator shall include the calculations of the hole’s maximum

possible horizontal displacement. When the maximum possible horizontal displacement exceeds the distance to the appropriate unit’s nearest outer boundary line the operator shall run a directional survey to establish the location of the producing interval or intervals.

(3) Unorthodox locations. If the results of the directional survey indicate that the producing interval is more than 50 feet from the approved surface location and closer than the minimum setback requirements to the applicable unit’s outer boundaries, then the well is considered unorthodox. To obtain authority to produce the well, the operator shall file an application with the director with a copy to the appropriate division district office, and shall otherwise follow the normal process outlined in Subsection C of 19.15.15.13 NMAC to obtain approval of the unorthodox location.

(4) Directional survey requirements. Upon the director’s request, the operator shall directionally survey a vertical or deviated well. The operator shall notify the appropriate division district office of the approximate time the operator will conduct the directional survey. The operator shall file directional surveys run on a well with the division upon the well’s completion. The division shall not assign an allowable to the well until the operator has filed the directional surveys.

B. Directional or horizontal well bores.

(1) Directional drilling within a project area. The appropriate division district office may grant a permit to directionally drill a well bore if the producing interval is entirely within the producing area or at an unorthodox location the division previously approved. Additionally, if the project area consists of a combination of drilling units and includes state, federal or tribal lands, the operator shall send a copy of form C-102 to the state land office or the BLM, as applicable.

(2) Unorthodox [well bores] locations. If all or part of a directional well bore’s [producing] completed interval is projected to be outside of the producing area, or if any portion of a directional well bore’s completed interval, as drilled, is located more than 50 feet from its projected location as indicated on form C-102 filed with the application for permit to drill the well and is outside of the producing area, the well’s location is considered unorthodox. To obtain approval for the well’s location, the [applicant] operator shall file a written application in [duplicate with the director with a copy to the appropriate division district office and shall otherwise follow the normal process in] the Santa Fe office of the division in accordance with Subsection C of [19.15.15.3] 19.15.15.13 NMAC.

(3) Allowables for project areas

with multiple proration units. The division shall ~~[base the maximum allowable it assigns]~~ assign to ~~[the]~~ a project area within a prorated pool ~~[upon]~~ an allowable equal to the applicable unit allowable for the pool multiplied by the number of standard spacing units or approved non-standard spacing units ~~[that the directional well bore's producing interval develops or traverses. The maximum allowable shall apply to production from the project area, including vertical well bores on standard spacing units inside the project area.]~~ that a horizontal well's or lateral's completed interval develops. If a project area includes a spacing unit or smaller project area dedicated to an existing well bore, unless the operators of all wells in the project area otherwise agree, the project area's allowable shall be computed by deducting the actual production from the existing well bore or well bores from the total allowable for the project area not to exceed the existing allowable for the well bore or well bores.

(4) Directional surveys required. An operator shall run a directional survey on each well drilled pursuant to Subsection B of 19.15.16.14 NMAC. The operator shall notify the appropriate division district office of the approximate time the operator will conduct the directional survey. The operator shall file a directional survey run on a well with the division upon the well's completion. The division shall not assign an allowable to the well until the operator files the directional survey. If the directional survey indicates that part of the producing interval is outside of the producing area, or, in the case of an approved unorthodox location, less than the approved setback requirements from the applicable unit's outer boundary, then the operator shall file an application with the director with a copy to the appropriate division district office and shall otherwise follow the normal process outlined in Subsection C of 19.15.15.13 NMAC to obtain approval of the unorthodox location.

(5) Re-entry of vertical or deviated well bores for directional drilling projects. These well bores are considered orthodox provided the surface location is orthodox and the producing interval's location is within the tolerance allowed for deviated well bores under Paragraph (3) of Subsection A of 19.15.16.14 NMAC.

C. Additional matters.

(1) Directional surveys that 19.15.16.14 NMAC requires shall have shot points no more than 200 feet apart and shall be run by competent surveying companies that are approved by the director. The division shall allow exceptions to the minimum shot point spacing provided the survey's accuracy is still within acceptable limits.

(2) The director may set an

application for administrative approval whereby the operator shall submit appropriate information and give notice as the director requests. The division may approve unopposed applications administratively within 20 days after the division receives the application and supporting information. If the application is protested, or the director decides that a hearing is appropriate, the division may set the application for hearing.

(3) The division shall grant permission to deviate or directionally drill a well bore for any reason or in a manner not provided for in 19.15.16.14 NMAC only after notice and opportunity for hearing. [19.15.16.14 NMAC - Rp, 19.15.3.111 NMAC, 12/1/08; A, 2/15/12]

19.15.16.15 SPECIAL RULES FOR HORIZONTAL WELLS:

A. Directional and horizontal well consent requirement. An operator shall not file an application for permit to drill nor commence drilling of a horizontal or directional well until the operator has either:

(1) received the consent of at least one lessee or owner of an unleased mineral interest in each tract (in the target pool or formation) in which any part of the well's completed interval will be located; or

(2) obtained a compulsory pooling order from the division.

B. Setbacks.

(1) Horizontal wells drilled in project areas as defined in Subsection L of 19.15.16.7 NMAC shall have setbacks from the outer boundaries of the project area the same as if the well were drilled in a single spacing unit for the pool.

(2) Subject to the provisions of Paragraph (2) of Subsection B of 19.15.16.14 NMAC, every point of the completed interval must meet the minimum setback requirement from the outer boundaries of the project area, or an exception must be approved for a non-standard location.

(3) No internal setbacks are required within the project area.

(4) A horizontal well's surface location may be outside the setbacks or outside the project area provided, that the completed interval is entirely within the project area and complies with the applicable setback requirements.

C. Existing and subsequent wells in project areas.

(1) Existing wells in spacing units or project areas that are included in a newly designated project area remain dedicated to their existing spacing units or project areas and are not part of the new project area unless otherwise agreed by all working interest owners in the existing and newly designated project areas.

(2) Subject to the terms of any applicable joint operating agreement,

subsequent wells with a completed interval in a horizontal well's project area may be drilled only with the approval of all working interest owners in the project area, or by order of the division after notice to all working interest owners in the project area and opportunity for hearing.

D. Pool rules. Provision of statewide rules or special pool orders in effect on February 15, 2012 that limit the number of wells that may simultaneously produce from the portion of a pool or area underlying a spacing unit, or a particular portion of spacing unit, do not apply to horizontal wells. Without limitation of any other right or remedy, an owner or operator of a tract in the same pool as a project area, that is not included in the project area, who contends that a horizontal well in the project area is impairing, or will impair, the owner's or operator's correlative rights may file an application with the division. The division, after notice and hearing, may grant such relief as it determines to be necessary and appropriate, including, but not limited to, imposing a limitation on the rate or amount of production from the project area.

E. Formation of project areas:

(1) Except as provided in Paragraphs (2) and (3) of Subsection E of 19.15.16.15 NMAC, a project area may be formed by filing a form C-102 designating the proposed project area, and simultaneously mailing or delivering a copy thereof to the New Mexico state land office if the proposed project area includes state trust lands.

(2) Before designating a non-standard project area, the operator shall give 20-days notice by certified mail, return receipt requested, to affected persons, as defined in Subparagraph (a) of Paragraph (2) of Subsection A of 19.15.4.12 NMAC, in all spacing units that:

(a) are excluded from the project area, if the project area would be a standard project area except for the exclusion of one spacing unit; or

(b) adjoin the project area, in all other cases.

(3) The notice shall state that the affected persons may protest the designation of a non-standard project area by mailing a protest to the operator within 20 days after mailing of notice as provided in Paragraph (2) of Subsection E of 19.15.16.15 NMAC. Within seven business days after receiving a protest of the proposed non-standard project area, the operator shall notify the division of the protest, and the division shall set the matter for hearing. Unless otherwise authorized by the division, the operator shall not commence drilling in the proposed non-standard project area until the protest has been determined by division order.

(4) No project area may be designated that lies partly within, and

partly outside of, a state exploratory unit, or a federal exploratory unit or participating area if the project area includes state trust lands, without the written consent of the commissioner of public lands.

F. Consolidation of project area. If a horizontal well is dedicated to a project area in which there is more than one owner of any interest in the mineral estate, the operator of the horizontal well shall cause the project area to be consolidated by voluntary agreement or, if applicable, compulsory pooling before the division may approve a request for form C-104 for the horizontal well.

[19.15.16.15 NMAC - Rp, 19.15.3.112 NMAC, 12/1/08; 19.15.16.15 NMAC - N, 2/15/12]

~~[19.15.16.15]~~ **19.15.16.16 MULTIPLE COMPLETIONS; BRADENHEAD GAS WELLS:**

A. Multiple completions.

(1) Filing. An operator intending to multiple complete shall file form C-101 or C-103 with the division for approval before completing and C-104 after completing along with information required by the form instructions.

(2) Operation and testing.

(a) The operator shall complete and produce wells so that commingling of hydrocarbons from separate pools does not occur.

(b) The operator shall commence a segregation or packer leakage test within 20 days after the multiple completion. The operator shall also make segregation tests or packer leakage tests any time the packer is disturbed. The operator shall conduct other tests and determinations the division requires. The operator shall notify the appropriate division district office 48 hours in advance of tests so the district office may schedule personnel to witness the tests. Offset operators may witness such tests and shall advise the operator in writing if they desire to be notified of the tests. The operator shall file test results with the division within 20 days of test completion. In the event a segregation or packer leakage test indicates communication between separate pools, the operator shall immediately notify the division and commence corrective action on the well.

(c) The operator shall equip wells so that reservoir pressure may be determined for each of the separate pools, and may install meters so that the gas or oil produced from each of the separate pools may be accurately measured.

(d) No multiple completion shall produce in a manner unnecessarily wasting reservoir energy.

(e) The division may require the operator to properly plug a zone of a multiple-completed well if the plugging

appears necessary to prevent waste, protect correlative rights or protect ground water, public health or the environment.

B. Bradenhead gas wells.

(1) The division may permit production of gas from a bradenhead gas well only after hearing, except as noted in Paragraph (3) of Subsection B of ~~[19.15.16.15]~~ 19.15.16.16 NMAC.

(2) The operator shall submit the application for a hearing to the division in triplicate and include an exhibit showing the location of wells on applicant's lease and offset wells on offset leases, together with a diagrammatic sketch showing the casing program, formation tops, estimated top of cement on each casing string run and other pertinent data, including drill stem tests.

(3) The director may grant an exception to Subsection A of ~~[19.15.16.15]~~ 19.15.16.16 NMAC's requirements without notice and hearing where the operator files the application in due form, and when the lowermost producing zone involved in the completion is an oil or gas producing zone within an oil or gas pool's defined limits and the producing zone to be produced through the bradenhead connection is a gas producing zone within a gas pool's defined limits. The applicant shall include with the application a written stipulation that the applicant has properly notified offset operators.

(4) The applicant shall furnish operators who offset the lease upon which the subject well is located a copy of the application. The director shall wait at least 10 days before approving gas production from the bradenhead gas well, and shall approve the production only in the absence of an offset operator's objection. If an operator objects to the completion the director shall consider the matter only after proper notice and hearing.

(5) The division may waive the 10-day waiting period requirement if the applicant furnishes the division with the written consent to the production of gas from the bradenhead connection by the offset operators involved.

(6) Subsection B of ~~[19.15.16.15]~~ 19.15.16.16 NMAC shall apply only to wells completed after January 1, 1950 or, in Lea County after February 1, 1937, as bradenhead gas wells.

[19.15.16.16 NMAC - Rp, 19.15.3.113 NMAC, 12/1/08; 19.15.16.16 NMAC - Rn & A, 19.15.16.15 NMAC, 2/15/12]

~~[19.15.16.16]~~ **19.15.16.17 SHOOTING AND CHEMICAL TREATMENT OF WELLS:**

If shooting, fracturing or treating a well injures the producing formation, injection interval, casing or casing seat and may create underground waste or contaminate fresh water, the operator shall within five working days notify in writing the division and proceed with diligence

to use the appropriate method and means for rectifying the damage. If shooting, fracturing or chemical treating results in the well's irreparable injury the division may require the operator to properly plug and abandon the well.

[19.15.16.17 NMAC - Rp, 19.15.3.115 NMAC, 12/1/08; 19.15.16.17 NMAC - Rn, 19.15.16.16 NMAC, 2/15/12]

~~[19.15.16.17]~~ **19.15.16.18 WELL AND LEASE EQUIPMENT:**

A. The operator shall install and maintain christmas tree fittings or wellhead connections in first class condition so that necessary pressure tests may easily be made on flowing wells. On oil wells the christmas tree fittings shall have a test pressure rating at least equivalent to the calculated or known pressure in the reservoir from which production is expected. On gas wells the christmas tree fittings shall have a test pressure equivalent to at least 150 percent of the calculated or known pressure in the reservoir from which production is expected.

B. The operator shall install and maintain valves in good working order to permit pressures to be obtained on both casing and tubing. The operator shall equip each flowing well to control properly the flowing of each well, and in case of an oil well, produce the well into an oil and gas separator of a type the industry generally uses.

[19.15.16.18 NMAC - Rp, 19.15.3.117 NMAC, 12/1/08; 19.15.16.18 NMAC - Rn, 19.15.16.17 NMAC, 2/15/12]

~~[19.15.16.18]~~ **19.15.16.19 L O G , COMPLETION AND WORKOVER REPORTS:**

A. Within 20 days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different common source of supply, the operator shall file a completion report with the division on form C-105. For the purpose of ~~[19.15.16.18]~~ 19.15.16.19 NMAC, a hole drilled or cored below fresh water or that penetrates oil- or gas-bearing formations or that an owner drills is presumed to be a well drilled for oil or gas. The operator shall signify on form C-105, or alternatively on form C-103, whether the well has been hydraulically fractured.

B. For a hydraulically fractured well, the operator shall also complete and file the division's hydraulic fracturing disclosure form within 45 days after completion of the well. The hydraulic fracture disclosure form shall include the well API number; the well name; the well number; the well location by unit, lot, section, township and range; the county where the well is located; the well's surface and bottom hole locations by footage from the section

line; the operator's name and address; the operator's OGRID; the operator's phone number; the fracture date; the well's production type (oil or gas); the pool code; the well's gross fractured interval; the well's true vertical depth; the total volume of fluid pumped; and a description of the hydraulic fluid composition and concentration listing each ingredient and for each ingredient the trade name, supplier, purpose, chemical abstract service number, maximum ingredient concentration in additive as percentage by mass, maximum ingredient concentration in the hydraulic fracturing fluid as percentage by mass; certification by the operator that the information included on the hydraulic fracture disclosure form is true and complete to the best of the operator's knowledge and belief; and the signature, printed name, e-mail address and title of the operator or operator's designated representative. The division does not require the reporting of information beyond the material safety data sheet data as described in 29 C.F.R. 1910.1200. The division does not require the reporting or disclosure of proprietary, trade secret or confidential business information.

[19.15.16.19 NMAC - Rp, 19.15.13.1104 NMAC, 12/1/08; 19.15.16.19 NMAC - Rn & A, 19.15.16.18 NMAC, 2/15/12]

~~[19.15.16.19]~~

19.15.16.20 ALLOWABLES AND AUTHORIZATION TO TRANSPORT OIL AND GAS:

A. The division may assign an allowable to a newly completed or re-completed well or a well completed in an additional pool or issue an operator authorization to transport oil or gas from the well if the operator:

(1) has filed a complete form C-104;

(2) has provided a sworn and notarized tabulation of all deviation tests the operator has run on the well, and directional surveys with calculated bottom hole location, in accordance with the requirements of 19.15.16.14 NMAC;

(3) has dedicated a standard unit for the pool in which the well is completed, a standard unit has been communitized or pooled and dedicated to the well or the division has approved a non-standard unit; and

(4) is in compliance with Subsection A of 19.15.5.9 NMAC.

B. The allowable the division assigns to an oil well is effective at 7:00 a.m. on the completion date, provided the division receives form C-104 during the month of completion. The date of completion shall be that date when new oil is delivered into the stock tanks. Unless otherwise specified by special pool orders, the allowable the division assigns to a gas

well is effective at 7:00 a.m. on the date of connection to a gas transportation facility, as evidenced by an affidavit of connection from the transporter to the division, or the date of receipt of form C-104 by the division, whichever date is later.

[19.15.16.20 NMAC - Rn, 19.15.16.19 NMAC, 2/15/12]

[Continued on page 70]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.12 NMAC, Section 12, effective 2-15-2012.

19.31.12.12 ORYX HUNTING SEASONS:

A. Oryx premier hunts for any legal weapon shall be as indicated below, listing the open areas, eligibility requirements or restrictions, hunt dates, hunt code, number of licenses and bag limit. Two persons may apply on one application. These hunts are restricted; only those who have never held an oryx once-in-lifetime license may apply. Only New Mexico residents returning from military service in Iraq or Afghanistan are eligible to apply for oryx hunts designated as "Iraq/Afghanistan vets" or "I/A vets". Proof of military service in Iraq or Afghanistan must accompany application or, if applying online, forwarded to the department by the application deadline date, pursuant to 19.31.3.11 NMAC.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
Rhodes canyon YO	9/8-9/10	[9/6-9/8] 9/7-9/9	[9/5-9/7] 9/6-9/8	[9/4-9/6] 9/5-9/7	ORX-1-100	30	ES
Rhodes canyon MI	9/8-9/10	[9/6-9/8] 9/7-9/9	[9/5-9/7] 9/6-9/8	[9/4-9/6] 9/5-9/7	ORX-1-101	20	ES
Stallion range	9/23-9/25	9/21-9/23	9/20-9/22	9/19-9/21	ORX-1-102	70	ES
Stallion range I/A vets	9/23-9/25	9/21-9/23	9/20-9/22	9/19-9/21	ORX-1-103	5	ES
Rhodes canyon	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ORX-1-104	70	ES
Rhodes canyon I/A vets	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ORX-1-105	5	ES
Stallion range	11/18-11/20	11/16-11/18	11/15-11/17	11/14-11/16	ORX-1-106	70	ES
Stallion range I/A vets	11/18-11/20	11/16-11/18	11/15-11/17	11/14-11/16	ORX-1-107	5	ES
Rhodes canyon	12/2-12/4	11/30-12/2	11/29-12/1	11/28-11/30	ORX-1-108	70	ES
Rhodes canyon I/A vets	12/2-12/4	11/30-12/2	11/29-12/1	11/28-11/30	ORX-1-109	5	ES
Stallion range	1/13-1/15	1/11-1/13	1/10-1/12	1/9-1/11	ORX-1-110	70	ES
Stallion range I/A vets	1/13-1/15	1/11-1/13	1/10-1/12	1/9-1/11	ORX-1-111	5	ES
Rhodes canyon	1/27-1/29	1/25-1/27	1/24-1/26	1/23-1/25	ORX-1-112	70	ES
Rhodes canyon I/A vets	1/27-1/29	1/25-1/27	1/24-1/26	1/23-1/25	ORX-1-113	5	ES
Stallion range	2/10-2/12	2/8-2/10	2/7-2/9	2/6-2/8	ORX-1-114	70	ES
Stallion range I/A vets	2/10-2/12	2/8-2/10	2/7-2/9	2/6-2/8	ORX-1-115	5	ES
Rhodes canyon	2/24-2/26	2/22-2/24	2/21-2/23	2/20-2/22	ORX-1-116	70	ES
Rhodes canyon I/A vets	2/24-2/26	2/22-2/24	2/21-2/23	2/20-2/22	ORX-1-117	5	ES

B. Oryx restricted on-range hunts, shall be as indicated below or as specific dates and hunt areas are determined by the department. The following hunts have restrictions that must be met prior to application. These hunts are not once-in-a-lifetime oryx hunts. Oryx WSMR security-badged hunts are available only to personnel with official valid security badges, or their guests, in accordance with White Sands missile range provisions and pursuant to 19.31.3.11 NMAC. Youth hunters must provide hunter education certificate number on application. Only military personnel stationed at WSMR can apply for the military only (MO) security badged hunt.

open areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
WSMR security badged: TBA/ MO	TBD	TBD	TBD	TBD	ORX-1-118	15	ES
WSMR security badged: TBA	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-119	30	ES
WSMR security badged: TBA	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-120	30	ES
WSMR security badged: TBA	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-121	30	ES
WSMR security badged: TBA	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-122	30	ES
WSMR security badged: TBA	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-123	30	ES
WSMR security badged: TBA	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-124	30	ES
WSMR security badged: TBA	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-125	30	ES

WSMR security badged: TBA	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-126	30	ES
Stallion range	9/23-9/25	9/21-9/23	9/20-9/22	9/19-9/21	ORX-1-127	10	BHO
Rhodes canyon	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ORX-1-128	10	BHO
Stallion range	11/18-11/20	11/16-11/18	11/15-11/17	11/14-11/16	ORX-1-129	10	BHO
Rhodes canyon	12/2-12/4	11/30-12/2	11/29-12/1	11/28-11/30	ORX-1-130	10	BHO
Stallion range	1/13-1/15	1/11-1/13	1/10-1/12	1/9-1/11	ORX-1-131	10	BHO
Rhodes canyon	1/27-1/29	1/25-1/27	1/24-1/26	1/23-1/25	ORX-1-132	10	BHO
Stallion range	2/10-2/12	2/8-2/10	2/7-2/9	2/6-2/8	ORX-1-133	10	BHO
Rhodes canyon	2/24-2/26	2/22-2/24	2/21-2/23	2/20-2/22	ORX-1-134	10	BHO

C. **Oryx hunts off of White Sands missile range** shall be as indicated below, listing the open areas, eligibility requirements or restrictions, hunt dates, hunt code, number of licenses and bag limit. The department shall issue military only oryx hunting licenses for McGregor range to full time military personnel providing a valid access authorization issued by Fort Bliss (McGregor range MO).

[open areas	2011-12 hunt dates	2012-13 hunt dates	2013-14 hunt dates	2014-15 hunt dates	hunt code	lic.	bag limit
statewide, off-range	4/1-4/30	4/1-4/30	4/1-4/30	4/1-4/30	ORX-1-200	50	ES
statewide, off-range, YO	4/1-4/30	4/1-4/30	4/1-4/30	4/1-4/30	ORX-1-201	15	ES
statewide, off-range	5/1-5/31	5/1-5/31	5/1-5/31	5/1-5/31	ORX-1-202	50	ES
statewide, off-range, YO	5/1-5/31	5/1-5/31	5/1-5/31	5/1-5/31	ORX-1-203	15	ES
statewide, off-range	6/1-6/30	6/1-6/30	6/1-6/30	6/1-6/30	ORX-1-204	50	ES
statewide, off-range, YO	6/1-6/30	6/1-6/30	6/1-6/30	6/1-6/30	ORX-1-205	15	ES
statewide, off-range	7/1-7/31	7/1-7/31	7/1-7/31	7/1-7/31	ORX-1-206	50	ES
statewide, off-range, YO	7/1-7/31	7/1-7/31	7/1-7/31	7/1-7/31	ORX-1-207	15	ES
statewide, off-range	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-208	50	ES
statewide, off-range, YO	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-209	15	ES
statewide, off-range	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-210	50	ES
statewide, off-range, YO	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-211	15	ES
statewide, off-range	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-212	50	ES
statewide, off-range, YO	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-213	15	ES
statewide, off-range	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-214	50	ES
statewide, off-range, YO	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-215	15	ES
statewide, off-range	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-216	50	ES
statewide, off-range, YO	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-217	15	ES
statewide, off-range	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-218	50	ES
statewide, off-range, YO	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-219	15	ES
statewide, off-range	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-220	50	ES
statewide, off-range, YO	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-221	15	ES
statewide, off-range	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-222	50	ES
statewide, off-range, YO	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-223	15	ES
McGregor range	1/7-1/8	1/12-1/13	1/11-1/12	1/10-1/11	ORX-1-224	25	ES
McGregor range, MO	1/7-1/8	1/12-1/13	1/11-1/12	1/10-1/11	ORX-1-225	25	ES
McGregor range	12/10-12/11	12/8-12/9	12/7-12/8	12/6-12/7	ORX-1-226	25	ES
McGregor range, MO	12/10-12/11	12/8-12/9	12/7-12/8	12/6-12/7	ORX-1-227	25	ES]

open areas	2011-12 hunt dates	2012-13 hunt dates	2013-14 hunt dates	2014-15 hunt dates	hunt code	lic.	bag limit
statewide, off-range	6/1-6/30	6/1-6/30	6/1-6/30	6/1-6/30	ORX-1-204	60	ES
statewide, off-range, YO	6/1-6/30	6/1-6/30	6/1-6/30	6/1-6/30	ORX-1-205	18	ES
statewide, off-range	7/1-7/31	7/1-7/31	7/1-7/31	7/1-7/31	ORX-1-206	60	ES
statewide, off-range, YO	7/1-7/31	7/1-7/31	7/1-7/31	7/1-7/31	ORX-1-207	18	ES
statewide, off-range	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-208	60	ES

statewide, off-range, YO	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-209	18	ES
statewide, off-range	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-210	60	ES
statewide, off-range, YO	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-211	18	ES
statewide, off-range	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-212	60	ES
statewide, off-range, YO	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-213	18	ES
statewide, off-range	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-214	60	ES
statewide, off-range, YO	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-215	18	ES
statewide, off-range	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-216	60	ES
statewide, off-range, YO	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-217	18	ES
statewide, off-range	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-218	60	ES
statewide, off-range, YO	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-219	18	ES
statewide, off-range	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-220	60	ES
statewide, off-range, YO	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-221	18	ES
statewide, off-range	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-222	60	ES
statewide, off-range, YO	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-223	18	ES
McGregor range	1/7-1/8	1/12-1/13	1/11-1/12	1/10-1/11	ORX-1-224	25	ES
McGregor range, MO	1/7-1/8	1/12-1/13	1/11-1/12	1/10-1/11	ORX-1-225	25	ES
McGregor range	12/10-12/11	12/8-12/9	12/7-12/8	12/6-12/7	ORX-1-226	25	ES
McGregor range, MO	12/10-12/11	12/8-12/9	12/7-12/8	12/6-12/7	ORX-1-227	25	ES

D. Private land-only oryx hunts: Private land-only oryx licenses shall be valid only on deeded private land and restricted to the season dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the public land hunt codes listed 19.31.12.12 NMAC above. The number of private land-only oryx licenses shall be unlimited and available only through department offices or department’s web site.

E. Oryx population management hunts:

(1) The respective area chief may authorize population management hunts for oryx when justified in writing by department personnel.

(2) The respective area chief shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, and number of licenses. No qualifying license holder shall take more than one oryx per license year.

(3) The specific hunt dates, hunt area, the name of the department representative providing the information and the date and time of notification shall be written on the license after notification by telephone.

(4) Application may be made either on-line or through the special hunt application form provided by the department. On-line applications must be submitted by the deadline date set by the department. Application forms postmarked by the deadline date will be accepted up to five working days after the deadline date.

(5) Applications for licenses may be rejected, and fees returned to an applicant, if such applications are not on the proper form or do not supply adequate information.

(6) In the event that an applicant is not able to hunt on the dates specified, the applicant’s name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

(7) No more than one person may apply under each application.

(8) Population management hunts for oryx may be anywhere in the state with dates, number of licenses, bag limit, and specific hunt areas to be determined by the department. The hunt codes to apply for oryx population management hunts shall be as indicated in the table below.

open areas	hunt dates	hunt code	licenses	bag limit
standard management hunt, TBA	TBA	ORX-5-510	250	ES
Fort Bliss (west of US highway 54) management hunt, TBA	TBA	ORX-5-511	30	ES

(9) Military only hunters must be full time active military and proof of military status must accompany application or, if applying online, forwarded to the department by the application deadline date.

(10) The oryx population management hunt ORX-5-511 is restricted to Fort Bliss military personnel only. Proof of assignment to Fort Bliss must accompany application or, if applying online, forwarded to the department by the application deadline.

(11) In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter’s names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

F. Oryx incentive authorizations:

The director may annually allow up to two oryx authorizations to be issued by drawing to elk and deer hunters reporting their prior year’s harvest information as well as trappers reporting their trapping activities by the published deadline using the department’s established website. These incentives may also be available for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorization certificates to purchase the license may be used either by the applicant or any individual of the selected applicant’s choice and may be transferred through sale, barter, or gift. Oryx incentive hunts shall be any one premier oryx season (excluding population management hunts) of the hunter’s choice. Bag limit shall be either sex with the legal sporting arms and hunt area of the selected hunt.

G. Wounded warrior project oryx hunt: The department shall annually issue three authorizations to the wounded warrior project for hunting by injured service men and women as identified by the wounded warrior project on White Sands missile range. Authorization as used in this subsection shall mean the document or number generated by the department that authorizes the holder to purchase a specified license to hunt oryx. Hunt dates for each authorization to be determined annually.
[19.31.12.12 NMAC - Rp, 19.31.12.12 NMAC, 4-1-11; A, 2-15-12]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.14 NMAC, Sections 13 and 15, effective 2-15-2012.

19.31.14.13 SPECIAL ELK HUNTING OPPORTUNITIES:

A. Elk enhancement program:

(1) **Program description:** The director of the department shall collect all proceeds generated through the auction and lottery of special bull elk permits, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit elk and for direct costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the preservation, restoration, utilization, and management of elk.

(2) Requirements for issuance of special elk permits:

(a) The state game commission shall authorize the director of the department to issue not more than two special elk permits in any one license year to take one bull elk per permit. The director shall allow the sale of one permit through auction to the highest bidder and one permit to a person selected through a random drawing of a lottery ticket by the department or an incorporated, nonprofit organization dedicated to the conservation of elk.

(b) Proposals for auctioning one special elk permit and the sale of lottery tickets to obtain one special elk permit through a random drawing shall be submitted to the director of the department prior to January 31, preceding the license year when the permit may be legally used.

(c) The proposals for auctioning one permit, and for the sale of lottery tickets and subsequent selection of a recipient for a second permit through a random draw shall each contain and identify: (1) the name of the organization making the request as well as the names, addresses and telephone numbers of those members of the organization who are coordinating the proposal; (2) the estimated amount of money to be raised and the rationale for that estimate; and (3) a copy of the organization's articles of incorporation with a letter attesting that the organization has tax-exempt status. The letter must also affirm that the proponent agrees to the conditions set forth by the director of the department. The letter must be signed and dated by the president and secretary-treasurer, or their equivalents.

(d) The director of the department shall examine all proposals following the close of the application period. The director may reject any application which does not conform with the requirements of this section. In selecting a marketing organization, the director shall consider the qualifications of the organization as a fund raiser; the proposed fund raising plan; the fee charged by the marketing organization for promotional and administrative costs, relative to the funds obtained from auctioning the permit; and the organization's previous involvement with elk management and its conservation objectives. The director may accept any proposals when it is in the best interest of elk to do so.

(e) After a proposal has been approved, the state game commission shall establish open season dates, open areas, and license requirements.

(f) The marketing organization must agree in writing to the following: (1) to transfer all proceeds on or before the tenth day of the month following the auction and drawing for the lottery, and (2) to provide the department with the names, addresses, and the physical descriptions of the individuals to whom the special elk permits are issued.

(g) The department and the marketing organization must agree to the arrangements for the deposit of the proceeds, payment for services rendered, the accounting procedures, and final audit.

(h) Unless his or her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit a bid for the special elk auction permit or purchase lottery tickets in an attempt to be selected for the special elk lottery permit.

(i) The special elk permits issued through auction and lottery may be transferred, through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

(j) Special elk permits granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime' permits.

(3) **Enhancement hunts:** Elk enhancement licenses shall be valid from September 1 through January 31 for any legal sporting arms. These licenses shall be valid statewide where hunting is allowed. Bag limit shall be one bull elk. The hunt code shall be ELK-1-500. The authorization to obtain an elk enhancement license may be used either by the applicant or any individual. The authorization may be transferred through sale, barter, or gift.

B. Elk incentive programs:

(1) The director may annually allow up to two elk authorizations to be issued by drawing to elk and deer hunters reporting their prior year's harvest information as well as trappers reporting their trapping activities by the published deadline using the department's established website. These incentives may also be available for deer and elk hunters submitting their legally harvested animal for CWD testing.

(2) Authorization certificates to purchase incentive license may be used either by the applicant or any individual. The authorization may be transferred through sale, barter or gift.

(3) Elk incentive hunts shall be valid only for the dates, legal sporting arms, bag limit and area specified by the director.

C. Application requirements, procedures for determination of the hunting access authorization holders for the Valles Caldera national preserve hunts, and hunt administration:

(1) The department shall issue elk hunting licenses only to persons holding a valid VCNP elk hunting access authorization in accordance with 17-3-16 NMSA.

(2) Prior to the department issuing any elk hunting licenses to persons holding a valid VCNP elk hunting access agreement, the VCNP must provide to the department, written verification from the contractor conducting the drawing process to determine the holders of VCNP elk hunting access authorizations, that the provisions of 17-3-16B, C and D NMSA have been met with respect to all authorizations issued.

(3) The VCNP shall utilize a contractor to conduct the drawing that determines the holders of any VCNP elk hunting access authorization. The contractor must be approved by the department prior to the drawing process conducted in accordance with this subsection.

(4) Each Valles Caldera national preserve elk hunting license shall be valid for one hunt in GMU 6B for which the bag limit and hunt period is specified on the Valles Caldera national preserve elk hunting access authorization.

(5) Valles Caldera national preserve elk hunts, listing the sporting arms, hunt dates, hunt code, number of licenses and bag limit shall be as indicated in 19.31.14.15 NMAC.

D. Unique late season archery bull elk hunts: Late season bow-only elk hunts. These hunts will be administered by the department through an internet registration process, web sale, rather than the random draw process. The open GMUs, hunt dates, hunt code, number of licenses and bag limit shall be as indicated below.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	licenses	bag limit
12	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-2-433	25	APRE/6
34	12/17-12/21	12/15-12/19	12/14-12/18	12/13-12/17	ELK-2-434	200	APRE/6
37	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-2-435	50	APRE/6

E. Youth encouragement hunts:

(1) Only youth hunters as defined by 19.31.3.11 NMAC that successfully fulfilled all application requirements and responsibilities for draw hunts for deer, elk, antelope, ibex, oryx, or bighorn sheep in the current license year and were unsuccessful in drawing any licenses or permits will be eligible to ~~register for these hunts~~ apply for licenses for these hunts for 14 days subsequent to the original posting of availability of these hunts on the department website. Licenses remaining after the first 14 days of availability shall be available to any youth hunters as defined by 19.31.3.11 NMAC and eligible to purchase an elk license.

(2) The director, with concurrence of the chairman of the state game commission, may adjust the number of licenses available in all youth encouragement hunts listed below based on changes in population levels, harvest rates, habitat availability, or increases in unlawful hunting activities resulting from these hunts.

(3) These hunts will be administered by the department through an internet registration process, web sale, rather than the random draw process. The open GMUs, hunt dates, hunt code, number of licenses and bag limit shall be as indicated below.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	licenses	bag limit
5B	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-401	20	A
6A	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-402	50	A
6A	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-403	50	A
6C	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-404	50	A
6C	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-405	50	A
9	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-3-406	[450] 75	A
9	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-407	[50] 75	A
10	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-408	35	A
13	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-3-409	60	A
13	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-410	60	A
15	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-3-411	[60] 75	A
15	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-412	[60] 75	A
16A	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-413	[60] 75	A
16A	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-414	[60] 75	A
16C	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-415	[60] 75	A
16C	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-416	[60] 75	A
16D	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-417	[60] 75	A
16D	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-418	[60] 75	A
16E	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-419	[60] 75	A
16E	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-420	[60] 75	A
17	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-3-421	60	A
17	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-422	60	A
34	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-423	80	A
36	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-424	60	A
36	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-425	60	A

49	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-426	50	A
50	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-427	[80] 60	A
51	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-428	[90] 75	A
51	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-429	[90] 75	A
52	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-430	50	A
53	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-431	[40] 60	A
53	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-432	[100] 60	A

[19.31.14.13 NMAC - Rp, 19.31.14.13 NMAC, 4-1-11; A, 2-15-12]

19.31.14.15 ELK HUNTS in COER GMUs: This section lists elk management information and subsequent hunting opportunities for GMUs in elk regions where a core occupied elk range has been established. The listed information includes regional elk population information, management goals, harvest objectives, total number of hunting opportunities, GMUs or areas open for hunting, season dates, hunt codes, bag limits, legal weapons, number of licenses available in the public draw and the number and type of authorization certificates available for private lands within the COER of each GMU. Hunt codes for elk hunts allowing the “any legal weapon” type shall be designated ELK-1, hunt codes for elk hunts allowing the “bow only” weapon type shall be designated as ELK-2, hunt codes for elk hunts allowing the “muzzle loading rifles or bow” weapon type shall be designated as ELK-3. Youth hunters must provide their hunter education certification number on the application. Military only hunters must be full time active military and proof of military status must accompany application. Proof of this service is required. Mobility impaired hunt applicants shall meet eligibility requirements, as designated by the director, prior to applying for mobility impaired hunts.

A. Elk management goals:

(1) Quality hunt management (QHM):

(a) Elk harvest in regional populations, herd units or GMUs within a region results in the trend of annual bull mortality rates to be below 35%.

(b) Seasons should be designed to ensure timing and length of hunts is desirable.

(c) At least 2/3 of all hunters are “satisfied” with the experience.

(2) Optimal opportunity management (OOM):

(a) Elk harvest in regional populations, herd units or GMUs within a region results in the trend of annual bull mortality rates to be below 45%, and harvest near optimal sustainable yield.

(b) Season structure should be designed to ensure timing and length of hunts provides significant amount of opportunity.

(c) At least 1/3 of all hunters are “satisfied” with the experience.

B. Northwest region: GMUs 2, 5A, 9 and 10.

(1) Quality hunt management within COER area in GMU 2.

(2) Optimal opportunity management within COER areas in GMUs 5A, 9 and 10.

(3) Foundational resource information for the northwest region is indicated below.

northwest region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
San Juan (GMU 2)	500-1100	37:100:39	37-80	45-99
Lindrith (GMU 5A)	950-1150	34:100:36	75-91	81-99
Mt. Taylor (GMU 9)	4734-6336	36:100:31	340-441	356-476
Zuni (GMU 10)	565-860	27:100:38	49-74	53-80

GMU	management goals	total licenses by bag limit			
		MB (or ES-1 or ES-3)	A	ES bow only	total licenses
2	QHM	235	177	282	694
5A	OOM	250	250	65	565
9	OOM	356	932	500	1788
10	OOM	206	324	368	898
total		1047	1683	1215	3945

(4) Public land elk hunts listing the eligibility requirements or restrictions, GMU or area, hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
2	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-100	120	ES
2	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-101	120	ES
2	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-102	125	MB
2	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-103	75	MB
2	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-104	100	A
2 YO	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-105	50	A

5A public land only	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22	ELK-2-106	10	ES
5A public land only	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-107	10	MB
5A public land only	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-108	10	A
5A public land only	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-109	10	MB
5A public land only	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-110	10	A
5A public land only	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-111	10	MB
5A public land only	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-112	10	A
5A public land only	10/29-11/2	10/27-10/31	10/26-10/30	10/25-10/29	ELK-1-113	10	MB
5A public land only	10/29-11/2	10/27-10/31	10/26-10/30	10/25-10/29	ELK-1-114	10	A
9: Marquez WMA	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-115	5	ES
9: Marquez WMA	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-116	5	ES
9: Marquez WMA	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-117	5	MB
9: Marquez WMA	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-118	5	MB
9: Marquez WMA	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-3-119	5	MB
9: Marquez WMA	10/29-11/2	10/27-10/31	10/26-10/30	10/25-10/29	ELK-3-120	5	A
9: Marquez WMA	11/5-11/9	11/3-11/7	11/2-11/6	11/1-11/5	ELK-3-121	5	A
9: Marquez WMA	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-3-123	5	A
9: (including Water canyon WMA)	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-124	160	ES
9: (including Water canyon WMA)	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-125	160	ES
9: (including Water canyon WMA) MI	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-126	40	ES
9: (including Water canyon WMA)	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-127	70	MB
9: (including Water canyon WMA)	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-3-128	70	MB
9: (including Water canyon WMA)	10/29-11/2	10/27-10/31	10/26-10/30	10/25-10/29	ELK-3-129	40	MB
9: (including Water canyon WMA)	11/5-11/9	11/3-11/7	11/2-11/6	11/1-11/5	ELK-1-130	200	A
9: (including Water canyon WMA)	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-1-131	200	A
9: (including Water canyon WMA)	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-132	200	A
10	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22	ELK-2-133	250	ES
10	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-134	70	MB
10	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-135	70	MB
10 YO	11/12-11/16	11/10-11/14	11/9-11/13	11/8-11/12	ELK-1-136	120	A
10	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-137	100	A

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-12, 2012-13, 2013-14, 2014-15 hunt seasons			
	MB (or ES-1 or ES-3)	A	ES bow only	total
2	35	27	42	104
5A	210	210	55	475
9	121	317	170	608
10	66	104	118	288
Total	432	658	385	1475

(6) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired hunters" or "youth only" hunt periods.

legal sporting arms	open GMUs or area	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates
bows only	5A,10	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22
bows only	2, 9	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15
bows only	2, 9	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22
muzzle loading rifles and bows	2, 10	any 5 consecutive days, 10/8-12/31	any 5 consecutive days, 10/6-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/4-12/31
muzzle loading rifles and bows, MI	9	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8
muzzle loading rifles and bows	9	any 5 consecutive days, 10/15 - 12/31	any 5 consecutive days, 10/13-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/11-12/31
any legal sporting arms, antlerless ONLY	9	any 5 consecutive days, 11/5-12/31	any 5 consecutive days, 11/3-12/31	any 5 consecutive days, 11/2-12/31	any 5 consecutive days, 11/1-12/31
any legal sporting arms	2, 10	any 5 consecutive days, 10/15-12/31	any 5 consecutive days, 10/13-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/11-12/31
any legal sporting arms	5A	any 5 consecutive days, 10/8-12/31	any 5 consecutive days, 10/6-12/31	Any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/4-12/31

C. North central region: COER areas of GMUs 4, 5B, 50, 51 and 52.

- (1) Optimal opportunity management within COER areas in GMUs 4, 5B, 50, 51 and 52.
- (2) Foundational resource information for the north central region shall be as indicated below.

north central region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
Chama-San Antonio (GMUs 4, 5B, 50, 51, and 52)	18060-22584	40:100:41	1391-1739	1657-2072

GMU	management goals	total licenses by bag limit			
		MB (or ES-1 or ES-3)	A	ES bow only	total licenses
4	OOM	1060	645	475	2180
5B	OOM	367	213	160	740
50	OOM	331	117	156	604
51	OOM	970	789	434	2193
52	OOM	685	489	500	1674
total		3413	2253	1725	7391

(3) Public land elk hunts listing the eligibility requirements or restrictions, GMU or area, hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
4:Sargent WMA	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-138	10	ES
4:Sargent WMA	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-139	10	ES
4:Sargent WMA	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-140	10	MB
4:Sargent WMA	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-141	10	MB
4:Sargent WMA	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-142	10	MB
4:Sargent WMA	10/29-11/2	10/27-10/31	10/26-10/30	10/25-10/29	ELK-1-143	10	MB
4:Sargent WMA	11/5-11/9	11/3-11/7	11/2-11/6	11/1-11/5	ELK-1-144	10	A
4:Sargent WMA, YO	11/5-11/9	11/3-11/7	11/2-11/6	11/1-11/5	ELK-1-145	10	A
4:Humphries WMA only	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-146	10	ES
4:Humphries WMA only	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-147	10	ES
4:Humphries/Rio Chama WMAs	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-148	15	MB

4:Humphries/Rio Chama WMAs	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-149	15	MB
4:Humphries/Rio Chama WMAs	11/5-11/9	11/3-11/7	11/2-11/6	11/1-11/5	ELK-1-150	10	A
4:Humphries/Rio Chama WMAs, YO	11/5-11/9	11/3-11/7	11/2-11/6	11/1-11/5	ELK-1-151	15	A
5B	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-152	75	ES
5B	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-153	75	ES
5B	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-154	165	MB
5B	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-155	100	A
5B	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-156	165	MB
5B	10/29-11/2	10/27-10/31	10/26-10/30	10/25-10/29	ELK-1-157	100	A
5B	12/17-12/21	12/15-12/19	12/14-12/18	12/13-12/12	ELK-1-158	15	MB
50	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22	ELK-2-159	120	ES
50	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-160	130	MB
50	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-161	45	A
50	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-162	125	MB
50	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-163	45	A
51	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-164	180	ES
51	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-165	180	ES
51	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-166	220	MB
51	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-167	220	MB
51	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-168	220	MB
51	11/5-11/9	11/3-11/7	11/2-11/6	11/1-11/5	ELK-1-169	240	A
51	11/12-11/16	11/10-11/14	11/9-11/13	11/8-11/12	ELK-1-170	240	A
51	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-1-171	175	A
51	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-3-172	145	ES
52	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-173	230	ES
52	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-174	230	ES
52 MI	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-175	50	MB
52	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-176	120	MB
52	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-177	50	A
52	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-178	230	MB
52	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-179	230	MB
52 YO	11/12-11/16	11/10-11/14	11/9-11/13	11/8-11/12	ELK-1-180	100	A
52 MI	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-1-181	75	A
52	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-1-182	75	A
52	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-183	150	A

(4) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-12, 2012-13, 2013-14, 2014-15 hunt seasons			
	MB (or ES-1 or ES-3)	A	ES bow only	total
4	990	600	435	2025
5B	22	13	10	45
50	76	27	36	139
51	165	134	74	372
52	55	39	40	134
Total	1278	813	624	2715

(5) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired hunters" or "youth only" hunt periods.

legal sporting arms	open GMUs or area	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates
bows only	5B, 51, 52	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15
bows only	5B, 51, 52	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22
bows only	4, 50	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22
any legal sporting arms, MI only	52	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8
muzzle loading rifles and bows	52	any 5 consecutive days, 10/8-12/31	any 5 consecutive days, 10/6-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/4-12/31
any legal sporting arms	4	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31	Any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31
any legal sporting arms	5B, 50, 51	any 5 consecutive days, 10/8-12/31	any 5 consecutive days, 10/6-12/31	Any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/4-12/31
any legal sporting arms	52	any 5 consecutive days, 10/15-12/31	any 5 consecutive days, 10/13-12/31	Any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/11-12/31

D. Jemez region: COER areas of GMUs 6A, 6B, 6C and 7.

- (1) Quality hunt management goals for GMU 6A and 6B.
- (2) Optimal opportunity management within COER areas in GMU 6C and 7.
- (3) Foundational resource information for the Jemez region shall be as indicated below.

Jemez region population information			sustainable harvest pursuant to goals	
Jemez herd unit	population estimate	bull:cow:calf ratio	bulls	cows
GMUs 6A, 6B, 6C, and 7	5824-8412	40:100:25	269-389	357-516

GMU	management goal	total licenses by bag limit			
		MB	A	ES	total licenses
6A	QHM	361	117	297	775
6B	QHM	45	151	30	226
6C	OOM	429	306	300	1035
7	OOM	68	62	36	166
total		903	636	663	2202

(4) Public land elk hunts listing the eligibility requirements or restrictions, GMU or area, hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
6A	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-184	150	ES
6A	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-185	105	ES
6A	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-186	110	MB
6A	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-187	100	MB
6A	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-188	100	MB
6A	10/29-11/2	10/27-10/31	10/26-10/30	10/25-10/29	ELK-1-189	100	A
6B:VCNP	9/6-9/12	9/4-9/10	9/3-9/9	9/2-9/8	ELK-2-190	15	ES
6B:VCNP	9/16-9/20	9/14-9/18	9/13-9/17	9/12-9/16	ELK-2-191	15	ES
6B:VCNP mzl only	10/1-10/5	10/6-10/10	10/4-10/9	10/3-10/8	ELK-3-192	15	MB
6B:VCNP mzl only	10/1-10/5	10/6-10/10	10/4-10/9	10/3-10/8	ELK-3-193	10	A
6B:VCNP	10/8-10/12	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-194	15	MB
6B:VCNP	10/8-10/12	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-195	10	A
6B:VCNP	10/15-10/19	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-196	15	MB
6B:VCNP	10/15-10/19	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-197	10	A
6B:VCNP MI	10/22-10/24	10/27-10/29	10/26-10/28	10/25-10/27	ELK-1-198	15	A
6B:VCNP M/Y	10/29-10/31	11/3-11/5	11/2-11/4	11/1-11/3	ELK-1-199	20	A

6B:VCNP veterans only	11/5-11/7	11/10-11/12	11/9-11/11	11/8-11/10	ELK-1-200	20	A
6B:VCNP	11/12-11/14	11/17-11/19	11/16-11/18	11/15-11/17	ELK-1-201	20	A
6B:VCNP	11/19-11/21	11/24-11/26	11/23-11/25	11/22-11/24	ELK-1-202	20	A
6B:VCNP 2-person	11/26-11/28	12/1-12/3	11/30-12/2	11/29-12/1	ELK-1-203	26	A
6C	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-204	150	ES
6C	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-205	105	ES
6C	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-206	155	MB
6C	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-207	105	MB
6C	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-208	105	MB
6C	10/29-11/2	10/27-10/31	10/26-10/30	10/25-10/29	ELK-1-209	130	A
6C	11/26-11/30	11/24-11/28	11/23-11/27	11/22-11/26	ELK-1-210	130	A
7	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-211	15	ES
7	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-212	15	ES
7	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-213	25	MB
7	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-214	30	MB
7	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-215	50	A

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-12, 2012-13, 2013-14, 2014-15 hunt seasons			
	bull	antlerless	ES	total
6A	51	17	42	110
6C	64	46	45	155
7	13	12	6	31
total	128	75	93	296

(6) Private land elk hunts for ranches designated as “ranch only” shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the “mobility impaired hunters” or “youth only” hunt periods.

legal sporting arms	open GMUs or area	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates
bows only	6A, 6C, 7	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15
bows only	6A, 6C, 7	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22
muzzle loading rifles and bows	6A, 6C, 7	any 5 consecutive days, 10/8-12/31	any 5 consecutive days, 10/6-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/4-12/31
any legal weapon	6A, 6C, 7	any 5 consecutive days, 10/15-12/31	any 5 consecutive days, 10/13-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/11-12/31

E. Southwest region:

(1) Quality hunt management for COER areas of GMUs 13, 15, 16A, 16B/22, 16C, 16D, 16E and 17.

(2) Optimal opportunity management for COER areas of GMUs 21A, 21B and 23.

(3) Foundational resource information for the southwest region shall be as indicated below.

southwest region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
Datil (GMU 13)	2211-3465	45:100:53	222-348	240-376
greater Gila (GMUs 15, 16A-E)	15749-18610	40:100:45	1437-1698	1551-1833
lesser Gila (GMUs 21A, 21B, 22, 23, 24)	1000-1800	33:100:30	69-124	75-134
San Mateo (GMU 17)	1022-1863	45:100:49	97-176	105-191

GMU	management goals	total licenses by bag limit			
		MB (or ES-1 or ES-3)	A	ES bow only	total licenses
13	QHM	583	370	556	1509
15	QHM	923	641	769	2333
16A	QHM	232	155	412	799

16B/22	QHM	323	0	394	717
16C	QHM	200	118	294	612
16D	QHM	148	114	171	433
16E	QHM	239	217	217	673
totals (15, 16A-E)		2648	1615	2813	7076
17	QHM	262	262	233	757
21A	OOM	102	0	102	204
21B	OOM	94	113	94	301
23	OOM	180	0	206	386
24	OOM	39	0	28	67
totals (21A, 21B, 23, 24)		677	375	663	1715
southwest region total		3325	1990	3476	8791

(4) Public land elk hunts listing the eligibility requirements or restrictions, hunt dates, hunt code, number of licenses, bag limits, and weapon types shall be as indicated below.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
13	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-216	125	ES
13	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18	ELK-2-217	100	ES
13	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24	ELK-2-218	75	ES
13 YO	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-219	25	ES
13	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-220	75	MB
13	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-3-221	115	MB
13	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-3-222	100	MB
13	11/26-11/30	11/24-11/28	11/23-11/27	11/22-11/26	ELK-3-223	100	A
13	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-3-224	100	A
15	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-225	250	ES
15	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18	ELK-2-226	200	ES
15	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24	ELK-2-227	150	ES
15 YO	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-228	25	ES
15	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-229	200	MB
15	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-3-230	245	MB
15	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-3-231	250	MB
15	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-3-232	250	A
15	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-3-233	250	A
16A	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-234	150	ES
16A	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18	ELK-2-235	150	ES
16A	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24	ELK-2-236	100	ES
16A MI	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-237	25	MB
16A	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-238	75	MB
16A	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-239	125	MB
16A	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-240	75	A
16A	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-241	75	A
16B/22	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-242	130	ES
16B/22	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18	ELK-2-243	130	ES
16B/22	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24	ELK-2-244	130	ES
16B/22	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-245	160	MB
16B/22	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-246	160	MB
16C	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-247	100	ES
16C	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18	ELK-2-248	75	ES
16C	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24	ELK-2-249	75	ES
16C YO	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-250	25	ES

16C	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-251	50	MB
16C	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-252	95	MB
16C	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-253	50	A
16C	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-254	50	A
16D	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-255	60	ES
16D	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18	ELK-2-256	50	ES
16D	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24	ELK-2-257	40	ES
16D MI	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-258	25	MB
16D	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-259	55	MB
16D	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-260	50	MB
16D	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-261	50	A
16D	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-262	50	A
16E	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-263	50	ES
16E	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18	ELK-2-264	50	ES
16E	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24	ELK-2-265	50	ES
16E YO	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-266	25	ES
16E	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-267	70	MB
16E	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-268	70	MB
16E	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-269	75	A
16E	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-270	75	A
17	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-271	75	ES
17	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18	ELK-2-272	75	ES
17	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24	ELK-2-273	50	ES
17 YO	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-274	25	ES
17	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-275	100	MB
17	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-3-276	100	MB
17	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-3-277	25	MB
17	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-3-278	25	A
17	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-3-279	100	A
17	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-3-280	100	A
21A	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-281	50	ES
21A	9/16-9/24	9/16-9/24	9/16-9/24	9/16-9/24	ELK-2-282	50	ES
21A	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-283	50	MB
21A	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-284	50	MB
21B	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-285	25	ES
21B	9/16-9/24	9/16-9/24	9/16-9/24	9/16-9/24	ELK-2-286	25	ES
21B	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-287	25	MB
21B	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-288	25	MB
21B	11/12-11/16	11/10-11/14	11/09-11/13	11/8-11/12	ELK-1-289	15	A
21B	11/19-11/23	11/17-11/21	11/16-11/20	11/15-11/19	ELK-1-290	15	A
21B	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-291	15	A
21B	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-292	15	A
23	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-293	75	ES
23	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18	ELK-2-294	75	ES
23	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24	ELK-2-295	50	ES
23 YO	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-296	25	ES
23	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-297	75	MB
23	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-298	75	MB

24-excluding Ft. Bayard management area	9/1-9/22	9/1-9/22	9/1-10/22	9/1-9/22	ELK-2-299	25	ES
24-excluding Ft. Bayard management area	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-300	15	MB
24-excluding Ft. Bayard management area	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-301	15	MB
24: Ft. Bayard management area, YO	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-302	5	ES

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-12, 2012-13, 2013-14, 2014-15 hunt seasons			
	MB (or ES-1 or ES-3)	A	ES bow only	total
13	268	170	256	694
15	203	141	169	513
16A	7	5	12	24
16B	3	0	4	7
16C	30	18	44	92
16D	18	14	21	53
16E	74	67	67	208
17	37	37	33	107
21A	2	0	2	4
21B	44	53	44	141
23	5	0	6	11
24	4	0	3	7
total	695	505	661	1861

(6) Private land elk hunts for ranches designated as “ranch only” shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the “mobility impaired hunters” or “youth only” hunt periods.

legal sporting arms	open GMUs or area	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates
bows only	24	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22
bows only	21A, 21B	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15
bows only	21A, 21B	9/16-9/24	9/16-9/24	9/16-9/24	9/16-9/24
bows only	13, 15, 16A, 16B/22, 16C, 16D, 16E, 17, 23	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10
bows only	13, 15, 16A, 16B/22, 16C, 16D, 16E, 17, 23	9/11-9/18	9/11-9/18	9/11-9/18	9/11-9/18
bows only	13, 15, 16A, 16B/22, 16C, 16D, 16E, 17, 23	9/19-9/24	9/19-9/24	9/19-9/24	9/19-9/24

muzzle loading rifles and bows	13, 15, 16E, 17, 23, 24	any 5 consecutive days, 10/15-12/31	any 5 consecutive days, 10/13-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/11-12/31
muzzle loading rifles and bows, YO	13, 15, 17	any 5 consecutive days, 10/8-12/31	any 5 consecutive days, 10/6-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/4-12/31
muzzle loading rifles only with approval of SW area chief and state game commission chairman, antlerless elk only	13	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	Any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31
any legal sporting arms	16E, 23, 24	any 5 consecutive days, 10/22-12/31	any 5 consecutive days, 10/20-12/31	any 5 consecutive days, 10/19-12/31	any 5 consecutive days, 10/18-12/31
any legal sporting arms	16A, 16B/22, 16C, 16D, 21A, 21B	any 5 consecutive days, 10/15-12/31	any 5 consecutive days, 10/13-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/11-12/31
any legal sporting arms, YO	16C, 16E, 23, 24	any 5 consecutive days, 10/8-10/12	any 5 consecutive days, 10/6-10/10	any 5 consecutive days, 10/5-10/9	any 5 consecutive days, 10/4-10/8
any legal sporting arms, MI	16A, 16D	any 5 consecutive days, 10/8-10/12	any 5 consecutive days, 10/6-10/10	any 5 consecutive days, 10/5-10/9	any 5 consecutive days, 10/4-10/8

F. South central region: GMUs 34 and 36.

- (1) Quality hunt management for GMU 36.
- (2) Optimal opportunity management goals for GMU 34.
- (3) Foundational resource information for the south central region shall be as indicated below.

southeast region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
Sacramento (GMU 34)	3013-4322	41:100:41	241-345	260-374
Ruidoso (GMU 36)	2503-3557	46:100:42	185-263	200-284

GMU	management goal	total licenses by bag limit			
		MB (or ES-1 or ES-3)	A	ES bow only	total licenses
34	OOM	603	833	460	1896
36	QHM	465	278	278	1021
Total		1068	1111	738	2917

(4) Public land elk hunts listing the hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
34	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-303	200	ES
34	9/13-9/22	9/13-9/22	9/13-9/22	9/13-9/22	ELK-2-304	200	ES
34 YO	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-305	75	ES
34 YO	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-306	75	A
34 MI	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-307	50	ES
34	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-308	250	MB
34	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-309	150	MB
34	11/26-11/30	11/24-11/28	11/23-11/27	11/22-11/26	ELK-1-310	250	A
34	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-311	250	A
34	12/10-12/14	12/8-12/12	12/7-12/11	12/6-12/10	ELK-1-312	150	A
36	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10	ELK-2-313	100	ES
36	9/13-9/22	9/13-9/22	9/13-9/22	9/13-9/22	ELK-2-314	100	ES

36	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-315	135	MB
36	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-316	100	MB
36	10/29-11/2	10/27-10/31	10/26-10/30	10/25-10/29	ELK-1-317	100	MB
36	11/26-11/30	11/24-11/28	11/23-11/27	11/22-11/26	ELK-1-318	100	A
36	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-319	100	A

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-12, 2012-13, 2013-14, 2014-15 hunt seasons			
	MB (or ES-1 or ES-3)	A	ES bow only	total
34	78	108	60	246
36	130	78	78	286
Total	197	186	149	532

(6) Private land elk hunts for ranches designated as “ranch only” shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the “mobility impaired hunters” or “youth only” hunt periods.

legal sporting arms	open GMUs or area	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates
bows only	34, 36	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10
bows only	34, 36	9/13-9/22	9/13-9/22	9/13-9/22	9/13-9/22
any legal sporting arms, YO & MI only	34	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8
muzzle loading rifles and bows	34	any 5 consecutive days, 10/15-12/31	any 5 consecutive days, 10/13-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/11-12/31
muzzle loading rifles and bows	36	any 5 consecutive days, 10/8-12/31	any 5 consecutive days, 10/6-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/4-12/31
any legal sporting arms	34	any 5 consecutive days, 10/20-12/31	any 5 consecutive days, 10/18-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31
any legal sporting arms	36	any 5 consecutive days, 10/15-12/31	any 5 consecutive days, 10/13-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/11-12/31
rifles only with approval of SE area chief and state game commission chairman, antlerless elk only	36	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31

G. Northeast region:

- (1) Quality hunt management for COER areas of GMU 45.
- (2) Optimal opportunity management goals for COER areas of GMUs 48, 49 and 53.
- (3) Foundational resource information for the northeast region shall be as indicated below.

northeast region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
Pecos (GMU 45)	1665-2604	27:100:27	109-160	118-185
Whites peak (GMU 48)	630-1400	32:100:44	55-123	64-142
Penasco (GMU 49)	350-1030	28:100:24	25-73	27-79
Ute-Midnight-San Cristobal (GMU 53)	1610-2957	40:100:32	102-187	121-223

GMU	management goal	total licenses by bag limit			
		MB (or ES-1 or ES-3)	A	ES bow only	total licenses
45	QHM	457	54	163	674
48	OOM	286	170	304	760
49	OOM	161	162	125	448
53	OOM	362	261	174	797

total	1266	647	766	2679
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(4) Public land elk hunts listing the hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates	hunt code	lic.	bag limit
45	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22	ELK-2-320	150	ES
45	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-321	140	MB
45	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-322	140	MB
45	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-323	140	MB
45	11/12-11/16	11/10-11/14	11/09-11/13	11/8-11/12	ELK-3-324	50	A
48	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15	ELK-2-325	85	ES
48	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22	ELK-2-326	85	ES
48	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-327	35	MB
48	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-3-328	65	MB
48	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-329	30	MB
48	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-330	45	A
48	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-331	30	MB
48	12/3-12/7	12/1-12/5	11/30-12/4	11/29-12/3	ELK-1-332	50	A
49	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22	ELK-2-333	120	ES
49	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-1-334	80	MB
49	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-335	75	MB
49	11/5-11/9	11/3-11/7	11/2-11/6	11/1-11/5	ELK-1-336	80	A
49	11/12-11/16	11/10-11/14	11/09-11/13	11/8-11/12	ELK-1-337	75	A
53	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22	ELK-2-338	120	ES
53 (exc. Cerro portion)	10/8-10/12	10/6-10/10	10/5-10/9	10/4-10/8	ELK-3-339	50	ES
53 (exc. Cerro portion)	10/15-10/19	10/13-10/17	10/12-10/16	10/11-10/15	ELK-1-340	75	MB
53 (exc. Cerro portion)	10/22-10/26	10/20-10/24	10/19-10/23	10/18-10/22	ELK-1-341	125	MB
53 (exc. Cerro portion)	11/5-11/9	11/3-11/7	11/2-11/6	11/1-11/5	ELK-1-342	90	A
53 (exc. Cerro portion)	11/12-11/16	11/10-11/14	11/09-11/13	11/8-11/12	ELK-1-343	90	A

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs and areas	2011-12, 2012-13, 2013-14, 2014-15 hunt seasons			
	MB (or ES-1 or ES-3)	A	ES bow only	total
45	37	4	13	54
48	126	75	134	312
49	6	7	5	18
53	112	81	54	247
total	281	167	206	631

(6) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during "mobility impaired" or "youth only" hunt periods.

legal sporting arms	open GMUs or area	2011-2012 hunt dates	2012-2013 hunt dates	2013-2014 hunt dates	2014-2015 hunt dates
bows only	45, 49, 53	9/1-9/22	9/1-9/22	9/1-9/22	9/1-9/22
bows only	48	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15
bows only	48	9/16-9/22	9/16-9/22	9/16-9/22	9/16-9/22
muzzle loading rifles and bows	45, 48, 53	any 5 consecutive days, 10/8-12/31	any 5 consecutive days, 10/6-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/4-12/31

any legal sporting arms	45, 53	any 5 consecutive days, 10/15-12/31	any 5 consecutive days, 10/13-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/11-12/31
any legal sporting arms	49	any 5 consecutive days, 10/8-12/31	any 5 consecutive days, 10/6-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/4-12/31
any legal sporting arms	[49] 48	any 5 consecutive days, 10/22-12/31	any 5 consecutive days, 10/20-12/31	any 5 consecutive days, 10/19-12/31	any 5 consecutive days, 10/18-12/31
rifles only with approval of NE area chief and state game commission chairman, antlerless elk only	48	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31

[19.31.14.15 NMAC - Rp, 19.31.14.15 NMAC, 4-1-11; A, 2-15-12]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.33.6 NMAC, Sections 8 and 10, effective 2-15-2012.

19.33.6.8 THREATENED AND ENDANGERED SPECIES OF NEW MEXICO:

A. MAMMALS

(1) Endangered:

- (a) Arizona shrew, *Sorex arizonae*
- (b) Mexican long-nosed bat, *Leptonycteris nivalis*
- (c) (Penasco) least chipmunk, *Neotamias minimus atristriatus*
- (d) meadow jumping mouse, *Zapus hudsonius*
- (e) (Arizona) montane vole, *Microtus montanus arizonensis*
- (f) gray wolf, *Canis lupus*

(2) Threatened:

- (a) North American least shrew, *Cryptotis parva*
- (b) lesser long-nosed bat, *Leptonycteris curasoae*
- (c) spotted bat, *Euderma maculatum*
- (d) western yellow bat, *Lasiurus xanthius*
- (e) white-sided jackrabbit, *Lepus callotis*
- (f) (Organ mountains) Colorado chipmunk, *Neotamias quadrivittatus australis*
- (g) southern pocket gopher, *Thomomys umbrinus*
- (h) American marten, *Martes Americana*
- (i) (desert) bighorn sheep, *Orvis canadensis mexicana*

— (3) Listing excepts individuals and populations of the desert bighorn sheep in the Peloncillo mountains in Hidalgo county and all stock in captivity.]

B. BIRDS

(1) Endangered:

- (a) brown pelican, *Pelecanus occidentalis*
- (b) aplomado falcon, *Falco femoralis*
- (c) white-tailed ptarmigan, *Lagopus leucurus*
- (d) whooping crane, *Grus americana*
- (e) least tern, *Sterna antillarum*
- (f) common ground-dove, *Columbina passerina*
- (g) buff-collared nightjar, *Caprimulgus ridgway*
- (h) elegant trogon, *Trogon elegans*
- (i) northern beardless-tyrannulet, *Camptostoma imberbe*
- (j) (southwestern) willow flycatcher, *Empidonax traillii extimus*
- (k) thick-billed kingbird, *Tyrannus crassirostris*
- (l) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammodramus*

(2) Threatened:

- (a) neotropic cormorant, *Phalacrocorax brasilianus*
- (b) bald eagle, *Haliaeetus leucocephalus*
- (c) common black-hawk, *Buteogallus anthracinus*
- (d) peregrine falcon, *Falco peregrinus*
- (e) (Gould's) wild turkey, *Meleagris gallopavo mexicana*
- (f) piping plover, *Charadrius melodus*
- (g) whiskered screech-owl, *Megascops trichopsis*
- (h) boreal owl, *Aegolius funereus*
- (i) broad-billed hummingbird, *Cyanthus latirostris*
- (j) white-eared hummingbird, *Hylocharis leucotis*
- (k) violet-crowned hummingbird, *Amazilia violiceps*

(l) lucifer hummingbird, *Calothorax lucifer*
 (m) Costa's hummingbird, *Calypte costae*
 (n) Gila woodpecker, *Melanerpes uropygialis*
 (o) Bell's vireo, *Vireo bellii*
 (p) gray vireo, *vireo vicinior*
 (q) Abert's towhee, *Pipilo aberti*
 (r) Baird's sparrow, *Ammodramus bairdii*
 (s) yellow-eyed junco, *Junco phaeonotus*
 (t) varied bunting, *Passerina versicolor*

C. REPTILES

(1) Endangered:

(a) Gila monster, *Heloderma suspectum*
 (b) sand dune lizard, *Sceloporus arenicolus*
 (c) gray-checked whiptail *Aspidoscelis dixonii*
 (d) gray-banded kingsnake, *Lampropeltis alterna*
 (e) Mexican gartersnake, *Thamnophis eques*
 (f) plain-bellied water snake, *Nerodia erythrogaster*
 (g) (New Mexico) ridgenosed rattlesnake, *Crotalus willardi obscurus*

(2) Threatened:

(a) western river cooter, *Pseudemys gorzugi*
 (b) Slevin's bunch grass lizard, *Sceloporus slevini*
 (c) canyon spotted whiptail, *Aspidoscelis burti*
 (d) mountain skink, *Eumeces callicephalus*
 (e) green ratsnake, *Senticolis triaspis*
 (f) narrow-headed gartersnake, *Thamnophis rufipunctatus*
 (g) western ribbonsnake, *Thamnophis proximus*
 (h) (mottled) rock rattlesnake, *Crotalus lepidus lepidus*

D. AMPHIBIANS

(1) Endangered:

(a) Jemez mountains salamander, *Plethodon neomexicanus*
 (b) lowland leopard frog, *Rana yavapaiensis*
 (c) mountain toad, *Bufo boreas*
 (d) Great Plains narrow-mouthed toad, *Gastrophryne olivacea*

(2) Threatened:

(a) Sacramento mountain salamander, *Aneides hardii*
 (b) Sonoran desert toad, *Bufo alvarius*

E. FISHES

(1) Endangered:

(a) Gila chub, *Gila intermedia*
 (b) Headwater chub, *Gila nigra*
 (c) Chihuahua chub, *Gila*

nigrescens
 (d) roundtail chub, *Gila robusta*
 (e) Rio Grande silvery minnow, *Hybognathus amarus*
 (f) spikedace *Meda fulgia*
 (g) Arkansas river shiner, *Notropis girard*

(h) (Pecos) bluntnose shiner, *Notropis simus pecosensis*
 (i) southern redbelly dace, *Phoxinus erythrogaster*
 (j) Colorado pikeminnow, *Ptychocheilus lucius*
 (k) loach minnow, *Tiaroga cobitis*
 (l) (Zuni) bluehead sucker, *Catostomus discobolus yarrowi*
 (m) blue sucker, *Cycleptus elongates*
 (n) gray redbelly, *Moxostoma congestum*
 (o) Pecos gambusia, *Gambusia nobilis*

(2) Threatened:

(a) Gila trout, *Oncorhynchus gilae*
 (b) Mexican tetra, *Astyanax mexicanus*
 (c) peppered chub, *Macrhybopsis tetranema*
 (d) suckermouth minnow, *Phenacobius mirabilis*
 (e) Pecos pupfish, *Cyprinodon pecosensis*
 (f) White Sands pupfish, *Cyprinodon Tularosa*
 (g) Gila topminnow, *Poeciliopsis occidentalis*
 (h) greenthroat darter, *Etheostoma lepidum*
 (i) bigscale logperch, *Percina macrolepidia*

(3) Listing exceptions:

Gila trout-excludes the population in McKnight creek, Grant county; Arkansas river shiner-excludes the population in the Pecos river drainage; bigscale logperch-excludes the population in the Canadian river drainage

F. CRUSTACEANS:

(1) Endangered:

(a) Socorro isopod, *Thermosphaeroma thermophilum*
 (b) Noel's amphipod, *Gammarrus desperatus*

G. MOLLUSKS

(1) Endangered:

(a) paper pondshell, *Utterbackia imbecillis*
 (b) Texas hornshell, *Popenaias popeii*
 (c) Koster's springsnail, *Juturnia kosteri*
 (d) Alamosa springsnail, *Pseudotryonia alamosae*
 (e) Chupadera springsnail, *Pyrgulopsis chupaderae*
 (f) Socorro springsnail, *Pyrgulopsis neomexicana*
 (g) Roswell springsnail, *Pyrgulopsis roswellensis*

(h) Pecos assiminea, *Assiminea pecos*,
 (i) wrinkled marshsnail, *Stagnicola caperata*
 (j) Florida mountainsnail, *Oreohelix florida*
(2) Threatened:
 (a) lake fingernailclam, *Musculium lacustre*
 (b) swamp fingernailclam, *Musculium partumeium*
 (c) long fingernailclam, *Musculium transversum*
 (d) Lilljeborg's peaclam, *Pisidium lilljeborgi*
 (e) Sangre de Cristo peaclam, *Pisidium sanguinichristi*
 (f) Gila springsnail, *Pyrgulopsis gilae*
 (g) Pecos springsnail, *Pyrgulopsis pecosensis*
 (h) New Mexico springsnail, *Pyrgulopsis thermalis*
 (i) star gyro, *Gyraulus crista*
 (j) shortneck snaggletooth, *Gastrocopta dalliana dalliana*
 (k) ovate vertigo, *Vertigo ovata*
 (l) Hacheta Grande woodlandsnail, *Ashmunella hebardii*
 (m) Cooke's peak woodlandsnail, *Ashmunella macromphala*
 (n) Mineral creek mountainsnail, *Oreohelix pilsbryi*
 (o) Doña Ana talussnail, *Sonorella todseni*

[1-11-91, 11-15-95, 12-31-96, 8-15-98; 19.33.1.8 NMAC - Rn & A, 19 NMAC 33.1.8, 4/14/00; 19.33.6.8 NMAC - Rn, 19.33.1.8 NMAC & A, 11/30/00; A, 11/14/02; A, 1/31/05; A, 9/15/05; A, 10/16/06; A, 12/29/06; A, 1/15/10; A, 1/31/12; A, 2/15/12]

19.33.6.10 SPECIES

FORMERLY LISTED: These species have been removed from the above list since 1997; because they have been determined to be not indigenous to New Mexico, or they have been extirpated from New Mexico, or they have recovered and are no longer threatened or endangered.

A. spotted chorus frog, *Pseudacris clarkii*
B. phantom shiner, *Notropis orca*
C. (Rio Grande) bluntnose shiner, *Notropis simus simus*
D. brook stickleback, *Culaea inconstans*
E. (desert) bighorn sheep, *Orvis canadensis mexicana*

[8-15-98; 19.33.1.8 NMAC - Rn, 19 NMAC 33.1.10, 4/14/00; 19.33.6.10 NMAC - Rn, 19.33.1.10 NMAC, 11/30/00; A, 2/15/12]

NEW MEXICO MINING COMMISSION

This is an amendment to 19.10.2 NMAC, Sections 202, 205 and 206, effective February 15, 2012.

19.10.2.202 ANNUAL FEES:

A. The annual fee for an existing mining operation shall be determined by adding:

(1) \$800.00 base fee;
(2) \$15.00 per acre for the first 50 acres of currently disturbed surface land plus \$3.00 per acre for all disturbed land over 50 acres;

(3) a fee determined in accordance with 19.10.2.203 NMAC;

(4) a surcharge of 75% shall be added to the total annual fees for mining operations that have 500 acres or more disturbed area in their permit as defined in Paragraph (2) of Subsection D of 19.10.1.7 NMAC; substantially reclaimed acreage as defined in Paragraph (1) of Subsection F of 19.10.2.202 NMAC will not be counted as disturbed acreage for purposes of this paragraph;

(5) a surcharge of 50% shall be added to the total annual fees for existing mining operations that did not obtain an extension in accordance with Subsection D of 19.10.5.501 NMAC and have not obtained closeout plan approval; and

(6) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before April 30th of each year until all Mining Act requirements are met.

B. The annual fee for the new mining operation shall be determined by adding:

(1) \$1,000.00 base fee;
(2) \$30.00 per acre for the first 50 acres of currently disturbed surface land plus \$10.00 per acre for all disturbed land over 50 acres;

(3) a fee determined in accordance with 19.10.2.203 NMAC; and

(4) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before April 30th of each subsequent year following initial submittal of a permit application.

C. The annual fee for a minimal impact existing mining operation shall be \$250.00. This fee shall be due on or before April 30th of each year following initial submittal of permit application.

D. The annual fee for a minimal impact new mining operation shall be \$250.00. This fee shall be due on or before April 30th of each year following initial submittal of permit application.

E. The provisions in Subsection A through D of 19.10.2.202 NMAC and Subsection F of 19.10.2.202 NMAC shall not be applicable to any fees due after ~~[March 31, 2012]~~ December 31, 2013.

F. Formula for reducing fees for substantially reclaimed acreage.

(1) For the purposes of 19.10.2 NMAC, "substantially reclaimed" means financial assurance has been released pursuant to 19.10.12.1210 NMAC except the amount to establish revegetation pursuant to Subsection A of 19.10.12.1204 NMAC.

(2) For the purposes of 19.10.2 NMAC, the total annual pre-reclamation fee is the total annual fee calculated assuming no reclamation has taken place.

(3) Base fees, disturbance fees and facility fees calculated pursuant to Subsection A of 19.10.2.202 NMAC or Subsection B of 19.10.2.202 NMAC shall be reduced in proportion to the area substantially reclaimed as compared to the total pre-reclamation fee but shall not be reduced to less than 60 percent of the total annual pre-reclamation fee. Formula for fee calculation: Fee owed = pre-reclamation fee - (AR/AT) * (pre-reclamation fee), where AT = total acreage and AR = reclaimed acreage. [7-12-94, 11-15-95, 2-15-96, 5-31-97, 6-30-99, 12-29-2000; 19.10.2.202 NMAC - Rn, 19 NMAC 10.2.2.202, 05-15-2001; A, 05-31-2001; A, 04-30-03; A, 12-30-05; A, 03-16-09; A, 2-15-12]

19.10.2.205 LATE FEES: A late fee shall be charged for fees that are paid after the due date of April 30th, each year. The late fee shall consist of (i) \$100 to cover administrative costs associated with the late payment and (ii) interest on the amount of the unpaid fees at an annual rate of fifteen percent (15%), compounded daily. The late fee will be applied to the mining act fund that is created by Section 69-36-19 of the New Mexico Mining Act.

[11-15-95, 12-15-95, 2-15-96, 5-31-97, 6-30-99; 19.10.2.205 NMAC - Rn, 19 NMAC 10.2.2.205, 05-15-2001; A, 12-28-01; A, 04-30-03; 19.10.2.205 NMAC - N, 2-15-12]

~~[19.10.2.205]~~ 19.10.2.206 SURCHARGE FOR DEPARTMENT OF GAME AND FISH ACTIVITIES:

A. To compensate the department of game and fish for its costs required to implement its involvement in implementing the act, a percentage surcharge shall be added in the same percentage to each of the above application and annual fees. This surcharge shall be 4.5 percent of fees collected in FY 96 to be used in FY 97 and FY 98. This surcharge shall be 4.2 percent of fees collected in FY 98 and FY 99, to be used in FY 99 and FY 2000.

This surcharge shall be 3.2 percent of fees collected in FY2000 to be used in FY 2001. No percentage surcharge shall be assessed in FY 2001 or FY 2002; instead, the balance of the surcharges assessed during FY 1996 through FY 2002 shall be used in FY 2002, FY 2003, FY 2004, FY 2005 and FY 2006.

B. Payment. On a quarterly basis, the director shall reimburse the department of game and fish, only from this surcharge, for its reasonably necessary costs incurred under the department's involvement with implementation of the act.

[19.10.2.206 NMAC - Rn, 19.10.2.205 NMAC, 2-15-12]

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to 15.2.6 NMAC, Subsections 8, 9 and 12, effective 02/15/12. In 15.2.6.8 NMAC, Subsections A, C and D were not published as there were no changes. In 15.2.6.8 NMAC, Subsections A through I were not published as there were no changes. In 15.2.6.12 NMAC, Subsections A and B were not published as there were no changes.

15.2.6.8 VETERINARY PRACTICES

B. TREATMENT RESTRICTIONS:

(1) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

(a) a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

(b) a non-injectable substance on the direction or by prescription of a licensed veterinarian;

(c) a non-injectable non-prescription medication or substance.

(3) No person shall possess [a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission.] on any location under the jurisdiction of the commission any of the following unless

approved by the commission:

(a) any drug which is a narcotic, stimulant, or depressant, or any other substance or medication that has been prepared or packaged for injection by a hypodermic syringe, or hypodermic needle;

(b) any hypodermic syringe, hypodermic needle or any equipment associated with the aid of intravenous administration.

(4) At any location under the jurisdiction of the commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the commission.

(5) If a person has a medical condition which makes it necessary to [have a syringe at any location under the jurisdiction of the Commission,] possess a prohibited item pursuant to Paragraph (3) of Subsection B of 15.2.6.8 NMAC, that person may:

(a) request permission of the stewards [and/or] or the commission in writing;

(b) furnish a letter from a licensed physician explaining why it is necessary for the person to possess a [syringe,] prohibited item;

(c) and must comply with any conditions and restrictions set by the stewards [and/or] or the commission.

(6) If the licensee is a trainer the following requirements are to be followed: Commencing on the day of the alleged violation, all of the trainer's horses that will be racing within 48 hours will be tested by the commission's official laboratory. Upon a finding of a violation by the board of stewards of Paragraph (3) of Subsection B of 15.2.6.8 NMAC payment of all costs for testing of the horses shall be borne by the trainer.

(7) The recommended penalty (in absence of mitigating circumstances) for violation of Paragraph (3) of Subsection B of 15.2.6.8 NMAC is a fifteen hundred dollar (\$1,500) fine and a six month suspension.

[15.2.6.8 NMAC - Rp, 15 NMAC 2.6.8, 04/13/2001; A, 07/15/2002; A, 02/15/2012]

15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

J. ENVIRONMENTAL SUBSTANCES: Although the following environmental contaminants or substances may be found in the horse, no sample or specimen shall exceed the following levels when tested: benzoyllecgonine - 150 nanograms per milliliter in urine; caffeine - 100 nanograms per milliliter in plasma/serum; cathinone - 10 nanograms

per milliliter in urine; hydrocortisone - 1000 nanograms per milliliter in urine; lidocaine - 50 nanograms per milliliter in urine; morphine/morphine glucuronides - 100 nanograms per milliliter in urine; scopolamine - 75 nanograms per milliliter in urine; strychnine - 100 nanograms per milliliter in urine; theobromine - 2000 nanograms per milliliter in urine; and theophylline - 400 nanograms per milliliter in urine.

K. SUSPENSION OF AUTHORIZED MEDICATION:

(1) After a public meeting that has been noticed in accordance with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA, 1978, the commission may, for any cause, temporarily suspend the authorized administration to a horse entered to race of any drug, substance or medication that is otherwise permitted under Subsection C of 15.2.6.9 NMAC.

(2) The temporary suspension of the authorized administration of a drug, substance or medication may be for a race, breed, or race meeting, provided all horses in the same race compete under the same conditions.

(3) The commission shall notify in writing the racing association, the trainer's organization, and licensed veterinarians of any temporary suspension of authorization to administer a drug, substance or medication to a horse entered to race. The written notification shall at minimum:

(a) state the authorized medication whose use is temporarily suspended,

(b) the period of time for which the use of the authorized medication is temporarily suspended, and

(c) whether the temporary suspension is for a specific breed or a race meeting.

(4) A suspension of authorization to administer a drug, substance or medication to a horse entered to race shall not exceed 12 months.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012]

15.2.6.12 PHYSICAL INSPECTION OF HORSES:

C. POST MORTEM EXAMINATION:

(1) The commission may require a postmortem examination of any horse that dies or is euthanized on association grounds.
(2) The commission may require

a postmortem examination of any horse that dies or is euthanized at recognized training facilities within this jurisdiction.

(3) If a postmortem examination is to be conducted, the commission shall take possession of the horse upon death for a postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse.

(4) If a postmortem examination is to be conducted, the commission or its representative shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization. The commission may submit blood, urine, bodily fluid, or other biologic specimens collected during a postmortem examination for testing analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation.

(5) Requests for each postmortem examination shall be filed with the official veterinarian by the owner's or trainer's veterinarian within one hour of the death and shall be submitted on a necropsy submission form entitled New Mexico racing commission necropsy submission form, hereby incorporated by reference and which is available at all official veterinarian offices and all stable gates. The trainer or their designee is responsible to supply all information to complete this form.

(6) All licensees shall be required to comply with postmortem examination requirements as a condition of licensure. In proceeding with a postmortem examination the commission or its designee shall coordinate with the owner or the owner's authorized agent to determine and address any insurance requirements.

(7) Postmortem examinations shall be conducted according to the most recent edition of the American association of equine practitioners' guidelines for the necropsy of racehorses.

(8) Upon completion of the postmortem examination the diagnostic laboratory shall file a written report with the racing commission's agency director and official veterinarian.

(9) The owner or the owner's authorized agent will be responsible for all costs of a postmortem examination, i.e., testing fees, transportation of the horse, disposal, etc. when the results of a postmortem examination constitute a violation of the New Mexico racing commission rules.

[15.2.6.12 NMAC - Rp, 15 NMAC 2.6.12, 04/13/2001; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012]

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Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
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