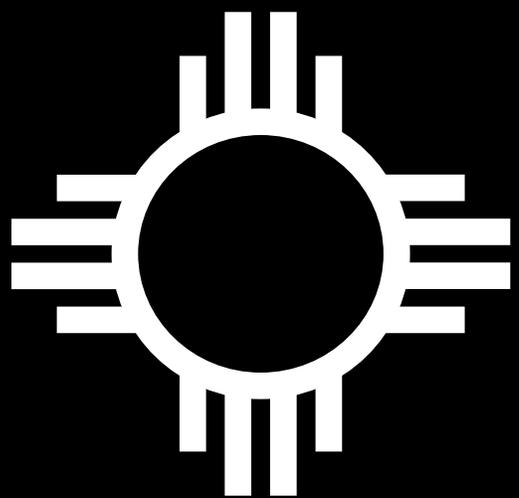


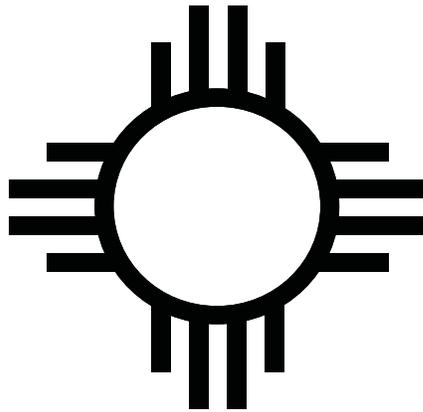
**NEW
MEXICO
REGISTER**



Volume XXIV
Issue Number 4
February 28 , 2013

New Mexico Register

**Volume XXIV, Issue Number 4
February 28, 2013**



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2013

COPYRIGHT © 2013
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XXIV, Number 4

February 28, 2013

Table of Contents

Notices of Rulemaking and Proposed Rules

| | |
|--|----|
| Albuquerque-Bernalillo County Air Quality Control Board | |
| Notice of Hearing and Regular Meeting | 87 |
| Environmental Improvement Board | |
| Notice of Rulemaking Hearing | 88 |
| Game Commission | |
| Public Meeting and Rule Making Notice | 89 |
| Public Records, Commission of | |
| Notice of Regular Meeting and Notice of Rulemaking | 89 |
| Regulation and Licensing Department | |
| Construction Industries Division | |
| Notice of Public Hearings | 89 |
| Taxation and Revenue Department | |
| Notice of Hearing and Proposed Rules (April 2, 2013) | 90 |
| Notice of Hearing and Proposed Rules (April 4, 2013) | 91 |
| Notice of Hearing and Proposed Rules (April 11, 2013) | 96 |
| Water Quality Control Commission | |
| Notice of Public Hearing to Consider Proposed Amendments to 20.6.2 NMAC - The Copper Rule (English and Spanish) | 98 |

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. “No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register.” Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

| | | |
|---|---|--|
| Architects, Board of Examiners for | | |
| 16.30.3 NMAC | A | Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification |
| | | 101 |
| Auditor, Office of the State | | |
| 2.2.2 NMAC | R | Requirements for Contracting and Conducting Audits of Agencies |
| 2.2.2 NMAC | N | Requirements for Contracting and Conducting Audits of Agencies |
| | | 102 |

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

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

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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

On April 10, 2013, at 5:30 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM.

The hearing will address: Proposal to Amend 20.11.60 NMAC, *Permitting In Nonattainment Areas*; 20.11.61 NMAC, *Prevention Of Significant Deterioration*; and 20.11.42 NMAC, *Operating Permits*. The Amendments to 20.11.42 NMAC Are Proposed As a Revision to the Title V Operating Permit Program, and the Amendments to 20.11.60 NMAC and 20.11.61 NMAC Are Proposed As a Revision to the New Mexico State Implementation Plan for Air Quality (SIP). The Air Quality Division (AQD) of the City of Albuquerque Environmental Health Department is proposing these amendments for the following reasons:

1. The provisions governing state implementation of the Nonattainment New Source Review (NSR) permit program are contained in the CFR, Title 40, *Protection of Environment*, Part 51, *Requirements for Submittal of Implementation Plans*, Subpart I, *Review of New Sources and Modifications*, Section 165, *Permit Requirements*. Albuquerque - Bernalillo County's implementation of this program is governed by 20.11.60 NMAC, *Permitting In Nonattainment Areas*.

2. The provisions governing state implementation of the Prevention of Signification Deterioration (PSD) permit program are contained in the CFR Title 40, *Protection of Environment*, Part 51, *Requirements for Submittal of Implementation Plans*, Subpart I, *Review of New Sources and Modifications*, Section 166, *Prevention of Significant Deterioration of Air Quality*. The provisions governing direct federal implementation of PSD are found at Title 40, *Protection of Environment*, Part 52, *Approval and Promulgation of*

Implementation Plans, Subpart A, *General Provisions*, Section 21, *Prevention of Significant Deterioration of Air Quality*. Albuquerque - Bernalillo County's implementation of the PSD program is governed by 20.11.61 NMAC, *Prevention of Significant Deterioration*.

3. The provisions governing major source operating permits pursuant to Title V of the Clean Air Act (CAA) are contained in 40 CFR Part 70, *State Operating Permit Programs*, and, within Albuquerque - Bernalillo County, at 20.11.42 NMAC, *Operating Permits*.

4. On **May 16, 2008**, the U.S. Environmental Protection Agency (EPA) promulgated "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})", effective 7/15/08 [Federal Register Vol. 73, No. 96, 28321-50]. These amendments affect 40 CFR 51.165, and have already been incorporated into the currently effective version of 20.11.60 NMAC. These amendments also affect 40 CFR 51.166 and 52.21, and all but one amendment has been incorporated into the currently effective version of 20.11.61 NMAC. This remaining amendment adds an additional exemption for stationary sources, and is cited as 20.11.61.18.D.(3) NMAC in the proposed draft. The department has the discretion to exempt a proposed major stationary source or major modification from *Air Quality Analysis And Monitoring Requirements*, with respect to monitoring for a particular pollutant if . . .the pollutant is **not** listed in Table 3 of 20.11.61.28 NMAC, *Significant Monitoring Concentrations*:

5. On **October 20, 2010**, the EPA promulgated "PSD for PM_{2.5} - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)", effective 12/20/10 [Federal Register Vol. 75, No. 202, 64864-907]. These amendments affect 40 CFR 51.165, and have been incorporated into the proposed draft of 20.11.60 NMAC. These amendments also affect 40 CFR 51.166 and 52.21 and have been incorporated into the proposed draft of 20.11.61 NMAC. One exception is for an amendment that would have been inserted at 20.11.61.15.B.(2) NMAC, re: "SILs" [see 40 CFR 51.166.(k)(2) & 52.21(k)(2)], but which EPA has conceded to be vacated and remanded to EPA, in response to *Sierra Club v. EPA*, another exception is the proposed SMC for PM_{2.5} at 20.11.61.28 NMAC which was also vacated by the US Court of Appeals [Case No . 10-1413, decided January 22, 2013]. Incorporation of changes to the federal PSD rule into the local PSD rule

are required not only to keep the local PSD program up to date, but is also required for the Infrastructure SIP for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards (NAAQS) because EPA requires that any i-SIP submittal should address any new or revised PSD program requirements. The NO₂ i-SIP is anticipated to be submitted to EPA in May, 2013.

6. On **March 30, 2011**, the EPA promulgated "PSD and NNSR: Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions", effective 3/30/11 [Federal Register Vol. 76, No. 61, 17548-56]. These amendments affect 40 CFR 51.165, 51.166 and 52.21, and have been incorporated into the proposed drafts of 20.11.60 NMAC, and 20.11.61 NMAC.

7. On **July 20, 2011**, EPA promulgated "Deferral for CO₂ Emissions From Bioenergy and Other Biogenic Sources Under the PSD and Title V Programs", effective 7/20/11. "State, local, and tribal permitting authorities may adopt the deferral at their option but the deferral is effective upon publication for the PSD and Title V permit programs that are implemented by EPA." [Federal Register Vol. 76, No. 139, 43490-43508]. These amendments affect 40 CFR 51.166 and 52.21, and have been incorporated into the proposed draft of 20.11.61 NMAC. They also affect 40 CFR 70, *State Operating Permit Programs*, at 70.2, *Definitions*, and have been incorporated into the proposed draft of 20.11.42 NMAC, *Operating Permits*, at 20.11.42.7.II.(2) NMAC.

"This final action defers, for a period of three years, the application of the PSD and Title V permitting requirements to CO₂ emissions from bioenergy and other biogenic stationary sources (biogenic CO₂). Adoption of the biomass deferral provisions will allow the Division to avoid the need to determine net carbon cycle impacts for bio-energy projects until EPA has adopted a consistent and practical framework for such calculations, and avoid spending valuable time and resources evaluating sources that may have *de minimis*, neutral or positive impact on net CO₂ levels in the atmosphere.

8. On **July 12, 2012**, EPA promulgated "PSD and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits", effective 8/13/12 [Federal Register Vol. 77, No. 134, 41051-75]. These amendments affect 40 CFR 52.21, and have been incorporated into the proposed draft of 20.11.61 NMAC.

Adoption of the PAL amendments for GHGs would allow the Division to provide greater operational flexibility to permitted sources by issuing GHG PALs to GHG-only sources without requiring the sources to become a major source. GHG-only sources could obtain a GHG PAL and remain a minor source as long as their GHG emissions remain below the PAL.

9. On **October 25, 2012**, EPA promulgated "Implementation of the NSR Program for PM_{2.5}": Amendment to the Definition of "Regulated NSR Pollutant" Concerning Condensable Particulate Matter", **effective 12/24/12** [Federal Register Vol. 77, No. 207, 65107-19]. These amendments affect 51.166 and 52.21, and have been incorporated into the proposed draft of 20.11.61 NMAC

These amendments to EPA's rules for the CAA NSR permitting program regard the definition of "regulated NSR pollutant," clarifying when "condensable particulate matter" should be measured.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the Proposal to Amend 20.11.47 NMAC, *Emissions Inventory Requirements*, Incorporate Said Amendments into the New Mexico State Implementation Plan For Air Quality (SIP) and Repeal 20.11.48 NMAC, *Greenhouse Gas Emissions Reporting*.

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

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

Anyone intending to present technical testimony is required by 20.11.82 NMAC, *Rulemaking Procedures - AQCB*, to submit a written Notice Of Intent (NOI) before 5:00 pm on March 26, 2013 to: Attn: April Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box

1293, Albuquerque, NM 87103, or in person in Suite 3023, 400 Marquette Avenue NW. The NOI shall identify the person's name, address and affiliation.

Non-technical testimony may be provided at the hearing pursuant to 20.11.82.22 NMAC, but to ensure adequate time for review of submitted testimony, the AQD requests that written comments to be incorporated into the public record be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on April 3, 2013. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or by phone 768-2660, or by e-mail at nbutt@cabq.gov, or by downloading a copy from the City of Albuquerque Air Quality Division website.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on May 3, 2013 at 10:00 a.m. in Room 307 at the State Capitol in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 12-06(R), proposed revision to the New Mexico State Implementation Plan ("SIP") regarding Air Quality Control Regulation Part 98 of 20.2 New Mexico Administrative Code (Conformity of General Federal Action to the State Implementation Plan) ("20.2.98 NMAC").

The proponent of this regulatory adoption and revision is the New Mexico Environment

Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to repeal 20.2.98 NMAC. The proposed repeal is in response to the U.S. Environmental Protection Agency's ("EPA") March 24, 2010 amendments to the federal general conformity rule, 40 CFR Part 93, Subpart B – Determining Conformity of General Federal Actions to State or Federal Implementation Plans. 40 CFR 93 Subpart B was amended to make the adoption and submittal of General Conformity SIPs optional rather than mandatory for states. Upon adoption by the Board, the repeal of 20.2.98 NMAC would be submitted to EPA for incorporation into New Mexico's SIP.

The NMED will host an informational open house on the proposed repeal of 20.2.98 NMAC at the NMED Air Quality Bureau Office, 1301 Siler Rd, Building B, Santa Fe, New Mexico 87507, from 12:00p.m.-3:00p.m. on March 20, 2013. To attend the informational open house, please contact Gail Cooke at 505-476-4319 or gail.cooke@state.nm.us.

The proposed revised regulation may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Road, Building B, Santa Fe, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Gail Cooke at (505) 476-4319 or gail.cooke@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the Air Quality Control Act Section, NMSA 1978, 74-2-6, and other applicable procedures.

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

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

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

(5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on April 12, 2013 and should reference the docket number, EIB 12-06(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room 2150-N
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-0310

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by April 18, 2013 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, March 21, 2013**, beginning at 9:00 a.m., in the **New Mexico Museum of Natural History and Science, 1801 Mountain Road NW, Albuquerque, NM 87104**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following:

Department reorganization summary and vacancy status, annual renewal of Open Meetings procedures, chair of the Game Commission, pronghorn and mule deer trap and transplant update, ibex management update, legislative update, presentation of fiscal year 2012 financial statements and audit report as required by rule, approval to sell at auction obsolete fixed assets, and State Land easement agreement. Additionally they will hear and consider action as appropriate on proposed amendments to the following rules: Hunter orange for certain big game firearms hunts in Hunting and Fishing Manner and Method of Taking 19.31.10 NMAC, Taking and Possession of Protected Wildlife for Scientific and Educational Purposes 19.35.6 and 19.36.2 NMAC, Upland Game 19.31.5 NMAC, Migratory Game Birds 19.31.6 NMAC. They will hear general public comments (comments are limited to three minutes). A closed executive session is planned to discuss matters related to litigation.

Obtain a copy of the agenda from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Game Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Game Department at 505-476-8000 if a summary or other type of accessible format is needed.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, March 19, 2013, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by March 4, 2013. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the meeting.

NOTICE OF RULEMAKING

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

Amendment

- 1.18.308 NMAC ERRDS, Office of the State Auditor
- 1.18.341 NMAC ERRDS, Department of Finance and Administration
- 1.18.420 NMAC ERRDS, Regulation and Licensing Department

Repeal

- 1.18.464 NMAC ERRDS Board Of Licensure for Professional Engineers and Surveyors

Replace

- 1.18.464 NMAC ERRDS Board Of Licensure for Professional Engineers and Surveyors

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES DIVISION

of the
Regulation and Licensing Department

NOTICE OF PUBLIC HEARINGS

Public hearings on the proposed changes to the following CID Rules: 14.6.6 NMAC, Classifications and Scopes, 14.7.4 NMAC 2009 New Mexico Earthen Building Materials

Code and 14.12.3 NMAC New Mexico Modular Building Structures; will be held as follows:

April 24, 2013, 9:00 a.m. – 12:00 p.m.: SANTA FE, NM – CID Conference Room, 2550 Cerrillos Road, Santa Fe, NM.

April 24, 2013, 9:00 a.m. – 12:00 p.m.: LAS CRUCES, NM – CID Conference Room, 505 South Main Street, Suite 150, Las Cruces, NM.

April 24, 2013, 9:00 a.m. – 12:00 p.m.: ALBUQUERQUE, NM – CID Conference Room, 5200 Oakland Avenue NE, Albuquerque, NM.

Copies of the proposed rules are currently available on the Construction Industries Division’s website: www.rld.state.nm.us/construction and at the CID office in Santa Fe. You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., on April 22, 2013. If you require special accommodations to attend the hearing, please notify the Division by phone, email, or fax, of such needs no later than April 22, 2013. Telephone: 505-476-4700 (option “0”). Email: fermin.aragon@state.nm.us Fax No. 505-476-4619.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to repeal, amend or adopt the following rules:

Gross Receipts and Compensating Tax Act

3.2.204.10 NMAC - Proposed Repeal Section 7-9-46 NMSA 1978 (Electricity)

3.2.204.13 NMAC - Proposed Amendment Section 7-9-46 NMSA 1978 (Photographic Supplies)

3.2.204.14 NMAC - Proposed Amendment Section 7-9-46 NMSA 1978 (Upholstery Materials)

3.2.204.15 NMAC - Proposed Amendment Section 7-9-46 NMSA 1978

(Packaging Materials)

3.2.204.16 NMAC - Proposed Amendment Section 7-9-46 NMSA 1978 (Receipts from Custom Software Developed for Manufacturer of Packaged Software not Deductible)

3.2.204.18 NMAC - Proposed Amendment Section 7-9-46 NMSA 1978 (Car Washing and Detailing)

3.2.204.19 NMAC - Proposed Adoption Section 7-9-46 NMSA 1978 (Manufacturing Consumables)

3.2.204.20 NMAC - Proposed Adoption Section 7-9-46 NMSA 1978 (Tools and Equipment)

3.2.204.21 NMAC - Proposed Adoption Section 7-9-46 NMSA 1978 (Protective Clothing, Devices and Equipment)

3.2.204.22 NMAC - Proposed Adoption Section 7-9-46 NMSA 1978 (Fuel Consumed in the Manufacturing Process)

These proposals were placed on file in the Office of the Secretary on February 15, 2013. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about April 30, 2013.

A public hearing will be held on these proposals on Tuesday, April 2, 2013, at 2:00 p.m. in the Secretary’s Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Office of the Secretary, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before April 2, 2013.

3.2.204.10 [ELECTRICITY: A. Electricity used in manufacturing a product for sale does not become an ingredient or component part of the manufactured product.

B. Example: X, a public service company, sells electricity to Y, a manufacturing company, which is engaged in manufacturing clothing. X contends that the gross receipts derived from the sale of electricity are deductible because the sale is made to a manufacturer. This

is not an allowable deduction. Although electricity is defined in the Gross Receipts and Compensating Tax Act as tangible personal property, and without the electricity the manufacturing process could not be completed, the electricity does not become an ingredient or component part of the manufactured article. The receipts from this sale of electricity are not deductible.] [RESERVED]

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.10 NMAC - Rn, 3 NMAC 2.46.10, 5/31/01; Repealed, XXX]

3.2.204.13 PHOTOGRAPHIC SUPPLIES:

A. Sensitized paper, backing paper, frames, mounts, glass and other items used by a photographer, photographic processor or developer in the production of a photograph for sale in the ordinary course of business are ingredients or component parts of a manufactured product.

B. Film used by a photographer is not an ingredient or component part of a finished photograph but it is consumed in the manufacturing of the photographs. Therefore, the sale of film to a photographer may [not] be deducted pursuant to Subsection B of Section 7-9-46 NMSA 1978 as [an ingredient or component part of a manufactured product] tangible personal property consumed in the manufacturing process.

C. This version of 3.2.204.13 NMAC applies to transactions occurring on or after January 1, 2013.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.13 NMAC - Rn, 3 NMAC 2.46.13 & A, 5/31/01; A, XXX]

3.2.204.14 UPHOLSTERY MATERIALS:

Upholsterers are engaged in the business of performing a service and are not manufacturers. If an upholsterer separately states on the billings to customers the value of the material used in conjunction with the services, the upholsterer may issue a Type 2 nontaxable transaction certificate (NTTC) to the supplier of the material. If the value of the material is not separately stated on the billings to customers and either an NTTC is [issued] executed or the materials are purchased without a sales or gross receipts tax appearing on the invoice from an out-of-state vendor, the upholsterer will be liable for compensating tax on the value of the material.

[1/6/84, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.14 NMAC - Rn, 3 NMAC 2.46.14, 5/31/01; A, XXX]

3.2.204.15 [SOFTWARE] PACKAGING MATERIALS: Packaging

materials such as blank diskettes, blank video disks, packaging, paper and labels which are used by a person who manufactures and sells in the ordinary course of business [~~copies of computer software~~] the manufactured product, together with explanatory materials and instructions, are either ingredient and component parts of a manufactured product or tangible personal property consumed in the manufacturing process.

[4/30/97; 3.2.204.15 NMAC - Rn, 3 NMAC 2.46.15, 5/31/01; A, XXX]

3.2.204.16 RECEIPTS FROM CUSTOM SOFTWARE DEVELOPED FOR MANUFACTURER OF PACKAGED SOFTWARE NOT DEDUCTIBLE:

A. Receipts from developing custom software for a manufacturer of packaged software are not deductible under Subsection A of Section 7-9-46 NMSA 1978 because the deduction under Subsection A of Section 7-9-46 NMSA 1978 is available only for receipts from selling tangible personal property which is incorporated as an ingredient or component part of the manufactured product. Developing custom software is a service.

B. Example: M, a manufacturer of packaged software, contracts with S, a software development company, for the development of a new personal finances program which M plans to manufacture and sell. S is performing a service under this contract. M may not execute and S may not accept a [Type 1 or Type 2] nontaxable transaction certificate. [4/30/97; 3.2.204.16 NMAC - Rn, 3 NMAC 2.46.16 & A, 5/31/01; A, XXX]

3.2.204.18 CAR WASHING AND DETAILING:

Persons who engage in the business of car washing, car waxing or car detailing are not thereby in the business of manufacturing. The deduction provided by Subsection A of Section 7-9-46 NMSA 1978 does not apply to receipts from car washing, car waxing or car detailing.

[3.2.204.18 - N, 10/31/00; A, XXX]

3.2.204.19 MANUFACTURING CONSUMABLES:

A. Beginning January 1, 2013, receipts from selling tangible personal property to a manufacturer are deductible if the property is consumed in the manufacturing process. Such property includes, but is not limited to:

- (1) lubricants;
- (2) electricity;
- (3) water;
- (4) fuel/energy;
- (5) chemicals used to produce reactions in the manufacturing process, even though the chemicals do not become part of the manufactured product;

(6) materials used to prepare the manufactured product for sale, shipment or use;

(7) cleaning solvents and materials used to keep the manufacturing equipment sanitary and functional; and

(8) light bulbs or filaments for the facility's lighting system; replaceable air filters, seals, gaskets, hoses and similar items for any air purification system or heating and cooling system; and similar items necessary to keep the manufacturing equipment operational.

B. Tangible personal property used in administrative, personnel, security, inventory control, record keeping, ordering, billing or similar functions are not considered consumed in the manufacturing process and are not deductible under Subsection B of Section 7-9-46 NMSA 1978.

[3.2.204.19 NMAC - N, XXX]

3.2.204.20 TOOLS AND EQUIPMENT:

A. Tools and equipment used by a person engaged in the manufacturing business to manufacture a product are not considered to be consumed in the manufacturing process and therefore are not deductible under Subsection B of Section 7-9-46 NMSA 1978. As used in Section 7-9-46 NMSA 1978 the terms "tool" and "equipment" are defined as follows:

(1) "tool" means an implement, instrument, utensil, usually hand held, that is used to form, shape, fasten, add to, take away from, or otherwise change the manufactured product or equipment; and

(2) "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation.

B. If any piece of a tool or equipment that breaks during the manufacturing process that is required to be replaced, is not considered to be consumed in the manufacturing process and the related receipts are not deductible under Subsection B of Section 7-9-46 NMSA 1978.

C. This version of 3.2.204.20 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.204.20 NMAC - N, XXX]

3.2.204.21 PROTECTIVE CLOTHING, DEVICES AND EQUIPMENT:

A. Except as provided in Subsection B of 3.2.204.21 NMAC, the following items are not consumed in the manufacturing process and are not deductible under Subsection B Section 7-9-46 NMSA 1978:

(1) protective clothing and devices, such as safety shoes, gloves, earplugs, hard hats, respirators, etc. that:

(a) are used more than one time and are necessary to protect workers from physical harm that may result from machinery or components used in the manufacturing process; or

(b) are necessary to ensure quality control of the property being manufactured;

(2) equipment that has been installed to protect workers or shield them from harm or used to detect, extinguish, prevent, cure, or mitigate fire, explosion, flood or similar events; and

(3) first-aid supplies and similar items that are used in response to an injury or emergency that occurs during the manufacturing process.

B. Protective clothing and devices that because of the nature of the manufacturing process, are destroyed after each use and cannot be reused, are consumed in the manufacturing process and deductible under Subsection B of Section 7-9-46 NMSA 1978.

C. This version of 3.2.204.21 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.204.21 NMAC - N, XXX]

3.2.204.22 FUEL CONSUMED IN THE MANUFACTURING PROCESS:

A. Fuel that is used to operate equipment or machinery used in the manufacturing process, or that provides energy for the manufacturing process itself, is considered consumed and are deductible under Subsection B of Section 7-9-46 NMSA 1978.

B. Tangible personal property, such as coal crushers and fuel filters, used to treat fuel are not considered consumed in the manufacturing process and not deductible under Subsection B of Section 7-9-46 NMSA 1978.

C. This version of 3.2.204.22 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.204.22 NMAC - N, XXX]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend and adopt the following rules:

Tax Administration Act

3.1.4.12 NMAC Section 7-1-13 NMSA 1978
(*Extensions*)

Taxation and Revenue Department Act

3.1.4.19 NMAC Section 9-11-6.4 NMSA 1978
(*Electronic Filing of Information Returns and Reports*)

Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act

3.3.5.7 NMAC Section 7-3A-3 NMSA 1978
(*Definitions*)

3.3.5.11 NMAC Section 7-3A-3 NMSA 1978

(Withholding Minimums)

3.3.5.13 NMAC Section 7-3A-3 NMSA 1978

(Payments to 501(C)(3) Organizations)

3.3.5.14 NMAC Section 7-3A-5 NMSA 1978

(“Reasonable Cause” for Not Withholding)

3.3.5.15 NMAC Section 7-3A-7 NMSA 1978

(Statements of Withholding and Information Returns)

3.3.5.16 NMAC Section 7-3A-3 NMSA 1978

(Principal Place of Business or Residence in New Mexico)

3.3.5.17 NMAC Section 7-3A-5 NMSA 1978

(Optional Withholding Payment by Remittee, Owner)

3.3.5.18 NMAC Section 7-3A-3 NMSA 1978

(Disregarded Entities)

3.3.5.19 NMAC Section 7-3A-7 NMSA 1978

(E-Filing Requirements)

These proposals were placed on file in the Office of the Secretary on February 15, 2013. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about April 30, 2013.

A public hearing will be held on these proposals on Thursday, April 4, 2013, at 9:30 a.m. in the Secretary’s Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Office the Secretary, Post Office Box 630, Santa Fe, New Mexico

87504-0630 on or before April 4, 2013.

3.1.4.12 EXTENSIONS
A. GOOD CAUSE FOR EXTENSIONS:

(1) “Good cause” for which the secretary or secretary’s delegate may grant extensions is construed strictly. Such extensions for no more than a total of 12 months will be granted only in situations in which the taxpayer shows a good faith effort to comply with the statute.

(2) Example 1: If the taxpayer operates a multistate business and the filing of returns for New Mexico taxes at the statutory due date would cause the taxpayer unreasonable bookwork and recordkeeping, an extension will be given favorable consideration by the secretary or secretary’s delegate.

(3) Example 2: If the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer’s return, an extension will be given favorable consideration.

(4) Example 3: If the conduct of the taxpayer’s business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer’s business or other similar impairments to the conduct of the taxpayer’s business causing the taxpayer an inability to compute taxes before the due date, an extension of time will be given favorable consideration.

(5) Example 4: If the taxpayer’s accountant has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to complete the return or to procure the services of a person to complete the return before the due date, an extension will be given favorable consideration.

(6) Example 5: If the taxpayer is awaiting the outcome of a court or administrative proceeding or the action of the internal revenue service on a federal tax claim, an extension will be given favorable consideration provided that the extension does not contravene the time limits established by this statute or other New Mexico or federal statute.

B. PROCEDURE FOR OBTAINING EXTENSIONS - PERIOD OF EXTENSION:

(1) The procedures in Subsection B of 3.1.4.12 NMAC apply only to extensions which the applicant must request; these procedures do not apply to automatic extensions under Subsection E of 3.1.4.12 NMAC.

(2) Any taxpayer may request an extension of time in which to file a tax return. Such a request must be in writing and must

be received by the department on or before the date that the tax is due. The application for extension must clearly set forth:

(a) the tax or tax return to which the extension, if granted, will apply;

(b) a clear statement of the reasons for the requested extension; and

(c) the signature of the taxpayer or the taxpayer’s authorized representative.

(3) The extension will not be granted unless a reason satisfactory to the secretary or secretary’s delegate appears in the request.

(4) An approved extension will ordinarily be granted for a period of 30 days. A request for longer extensions must state the reason why the 30 days is insufficient. Additional 30-day extensions or a longer extension may be granted by the secretary or secretary’s delegate for up to a maximum aggregate extension of 12 months.

(5) Example 1: P is in the business of preparing tax returns. P realizes that, because of the great volume of business, P will be unable to complete all of P’s customers’ tax returns before the due date. P submits to the secretary a request for an extension of time on behalf of each customer whose return P is unable to complete. The request will be denied. It is irrelevant to consider whether or not P’s request states a good cause because an extension will not be granted unless the taxpayer’s personal necessity is the basis of the request. In this case, each of the taxpayers must request an extension and give “good cause” for this privilege.

(6) Example 2: On April 20, 20XX, T is granted a 30-day extension for payment of March, 20XX, taxes due April 25, 20XX. On May 20, 20XX, T, showing good cause, requests a further extension of the March taxes for 12 months. A 12-month extension will not be granted because the payment or filing date for any tax liability may not be extended for more than 12 months after the date on which the taxes were due and no series of extensions exceeding 12 months when aggregated will be granted to any taxpayer. The maximum extension that could be granted to T is until April 25 of the year following 20XX.

C. EXTENSIONS GRANTED WHEN NO LIABILITY HAS ARISEN:

(1) An extension may be granted even though the tax liability has not yet arisen. The following examples illustrate the application of Subsection E of 7-1-13 NMSA 1978.

(2) Example 1: B’s business is destroyed by flood on June 1, 20XX. B, a cash-basis taxpayer, is expecting to receive payment in July for items sold in May. In June B requests a six-month extension for those taxes for which B will be liable in July and which will become due August 25,

20XX. Upon a showing of good cause, the request may be granted notwithstanding that the liability for the tax has not yet arisen.

(3) Example 2: Under the same facts as in Example 1, in January of the following year, B, showing good cause, requests a further extension of the July, 20XX taxes for a period of nine months to September 25 of the year following 20XX. The nine-month extension will not be granted because the reporting period for any tax liability may not be extended for an aggregate period of more than 12 months after the date the taxes were due. The maximum extension which could have been granted was until August 25 of the year following 20XX.

D. AUTOMATIC EXTENSION FOR REPORT OF FEDERAL FORM 990-T INCOME:

A taxpayer who is required to file a New Mexico corporate income and franchise tax return to report taxable income from unrelated activities included in a federal Form 990-T is hereby granted an automatic extension to the 15th day of the fifth month following the close of the taxable year to file a return reporting that income. Interest will accrue during the period of the automatic extension.

E. AUTOMATIC FEDERAL INCOME TAX EXTENSIONS - GENERAL:

(1) An automatic extension of time to file a federal income tax return as provided in the Internal Revenue Code shall be considered to be an approved federal extension of time and shall be sufficient to extend the time for filing the New Mexico income tax return. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then a copy of the federal form claiming the automatic extension for federal tax purposes shall be attached to the taxpayer's New Mexico income tax return and shall serve as the basis for extending the time for filing the New Mexico return to the date of filing the federal return under the automatic extension provided by the Internal Revenue Code. If it is not necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then the due date for filing the New Mexico income tax return shall be extended automatically to the same date as the extension for the federal return unless the federal extended date is more than six months from the original due date, in which case the extended due date for the New Mexico return shall be six months after the original due date.

(2) If the taxpayer desires additional time beyond the automatic extension for filing the New Mexico income tax return, a written request for the additional time must be made by the taxpayer prior to the expiration of the

extended federal date. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal return, then a copy of the federal form requesting the automatic extension for filing the federal return must accompany the taxpayer's request for additional time to file the New Mexico income tax return beyond the extended federal date. The total combined extension for filing the New Mexico return shall not exceed 12 months beyond the actual due date for that return.

F. INVALIDATION OF FEDERAL EXTENSION: If an extension of time to file a federal income tax return is invalidated for any reason for federal income tax purposes, it is also invalidated for New Mexico income tax purposes.

G. FAILURE TO FILE, PAY OR PROTEST BY EXTENDED DUE DATE:

(1) The term "extended due date" means:

(a) for income tax returns, the latest date to which the due date for filing the New Mexico income tax return has been extended by either an extension granted by the internal revenue service with respect to the taxpayer's federal income tax return or by an extension granted by the department; and

(b) for all other tax returns, the latest date to which the due date for filing the tax return has been extended by the department.

(2) A taxpayer becomes a delinquent taxpayer if the taxpayer fails by the extended due date either to file the required return and, if a tax is due, to pay the tax due or to protest in accordance with Section 7-1-24 NMSA 1978 the payment or filing requirement.

H. AUTOMATIC EXTENSION FOR CERTAIN INFORMATION RETURNS:

The due date for Form 1099-MISC or pro forma 1099-MISC information returns that are required to be electronically filed pursuant to 3.3.5.19 NMAC is automatically extended to the first day of April of the year following the year for which the statement is made. This extended due date conforms to the federal due date for electronic filings of Form 1099-MISC.

[7/19/67, 11/5/85, 3/31/86, 8/22/88, 8/15/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.12 NMAC - Rn & A, 3 NMAC 1.4.12, 12/29/00; A, 12/30/03; A, 10/31/07; A, XXX]

3.1.4.19 ELECTRONIC FILING OF INFORMATION RETURNS AND REPORTS:

A. Annual income and withholding information returns, federal Form 1099-MISC, pro forma 1099-MISC or successor forms must be filed with the department using a department-approved

electronic medium if a pass-through entity has more than fifty New Mexico payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

B. The annual income and withholding detail report of pass-through entity allocable net income must be filed using a department-approved electronic medium if the pass-through entity has more than fifty New Mexico payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

C. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least thirty days before the taxpayer's electronic information return or report is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the information return or report to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

D. If a pass-through entity is required by regulation or statute to file information returns or reports electronically, the information return or report shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute.

[3.1.4.19 NMAC - N, XXX]

3.3.5.7 DEFINITIONS: For the purposes of 3.3.5 NMAC:

A. "gross amount" includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-MISC for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-MISC in box 2, royalties, and in box 7, nonemployee compensation; and

B. "resident of New Mexico" means (1) an individual domiciled in this state during all of the taxable year, or (2) an individual other than an individual described in Subsection D of [3.2.1.9] 3.3.1.9 NMAC who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile or (3) an individual who moves into this state with the intent to make New Mexico his permanent domicile[-; and

C. "net income" means

“net income” as defined in Section 7-3A-2C NMSA 1978, after appropriate allocation and apportionment to New Mexico in accordance with the Uniform Division of Income for Tax Purposes Act].

[3.3.5.7 NMAC - N, 10/15/03; A, 12/15/10; A, XXX]

3.3.5.11 WITHHOLDING MINIMUMS:

A. With respect to oil and gas proceeds, no withholding from a payment to a remittee is required if:

(1) the sum of all payments, including the subject payment, to that remittee by the remitter in the calendar quarter does not exceed thirty dollars (\$30.00); and

(2) the amount to be withheld from the subject payment is less than ten dollars (\$10.00).

B. With respect to net income from pass-through entities, no withholding is required from a payment to an owner if the sum of all payments, including the subject payment, to that owner by the pass-through entity in the calendar [quarter] year is less than ~~thirty dollars (\$30.00)~~ one hundred dollars (\$100.00).

C. The remitter may withhold from a payment described in Subsection A or B of this section without creating a right of action by the remittee or owner against the remitter or pass-through entity.

D. This version of 3.3.5.11 NMAC applies to payments for periods beginning on or after January 1, [2011] 2012. [3.3.5.11 NMAC - N, 10/15/03; A, 12/15/10; A, XXX]

3.3.5.13 PAYMENTS TO 501(C)(3) ORGANIZATIONS:

A remitter or pass-through entity is not obligated to deduct and withhold under the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from payments to a remittee or owner granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code. However, the obligation to deduct and withhold from payments of allocable net income to a remittee or owner of this type of organization does apply if that income constitutes unrelated business income.

Acceptable proof that a remittee or owner is a 501(c)(3) organization includes a copy of the remittee's or owner's federal Form W-9, or a copy of the determination letter from the internal revenue service granting the remittee or owner 501(c)(3) status. This version of 3.3.5.13 NMAC applies to payments for periods beginning on or after January 1, 2011.

[3.3.5.13 NMAC - N, 10/15/03; A, 12/15/10;

A, XXX]

3.3.5.14 “REASONABLE CAUSE” FOR NOT WITHHOLDING:

[In addition to the cause set forth in Subsection C of Section 7-3A-5 NMSA 1978.] The department will accept as “reasonable cause” for not withholding the following:

A. written notification from a remittee that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners or production payment interest owners;

B. internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners or production payment interest owners;

C. ~~[through December 31, 2011;]~~ reliance on a New Mexico address, shown on internal revenue service Form 1099-MISC, or a successor form, or on a pro forma 1099-MISC, or a successor form, for those entities that do not receive an internal revenue service Form 1099-MISC, supplied by the remittee; the remitter may rely on a New Mexico address supplied by the remittee for up to thirty (30) days after receiving written notice from the remittee of a change in address to an address outside New Mexico;

D. receipt of a declaration signed under penalty of perjury, from the remittee or owner, stating that the individual is a resident of New Mexico or that the corporation maintains a principal place of business in New Mexico;

~~[D:] E.~~ receipt of a written agreement from a remittee or owner under 3.3.5.17 NMAC that the remittee or owner will timely report and pay amounts required to be withheld and remitted;

~~[E:] E.~~ inability to make payment of withholding from net income for the quarter due to nonavailability of cash or due to contracts and other binding written covenants with unrelated third parties, unless cash payments have been made to any owner during the quarter, in which case the pass through entity is liable for payment of the withholding amount due up to the extent of the cash payment made during the quarter;

~~[F:] G.~~ with respect to tax years 2014 through 2018, the pass-through entity has elected pursuant to 26 USC 108(i) to defer income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008 and before January 1, 2011 of an applicable debt instrument for the period 2014 through 2018 and the entity has insufficient cash to remit the withholding amount due on the deferred

income reported in the year; and

~~[G:] H.~~ any other reason acceptable to the secretary, to be determined on a case-by-case basis.

[3.3.5.14 NMAC - N, 10/15/03; A, 12/15/10; A, XXX]

3.3.5.15 STATEMENTS OF WITHHOLDING AND INFORMATION RETURNS:

A. Each remitter shall:

(1) provide a federal Form 1099-MISC, or a successor form, or for those entities that do not receive an internal revenue service Form 1099-MISC, a pro forma 1099-MISC, or a successor form, to each remittee on or before February 15 of the year following the year for which the statement is made, reflecting the proceeds paid to the remittee and the state tax withheld;

(2) ~~[an “annual summary of oil and gas proceeds withholding tax” information return with the department on or before the last day of February of the year following the year for which the statement is made]~~ provide a federal Form 1099-MISC, or a successor form, or for those entities that do not receive an internal revenue service Form 1099-MISC, a pro forma 1099-MISC, or a successor form, to the department on or before the last day of February of the year following the year for which the statement is made; and

(3) ~~[attach to the “annual summary of oil and gas proceeds withholding tax” information return copies of federal Form 1099-MISC for each remittee of oil and gas proceeds from whom withholding was required. Remitters who submit federal Form 1099-MISC information returns by magnetic media or electronic transfer using the combined federal/state program, with the records coded to be forwarded to New Mexico, are not required to submit paper copies of federal Form 1099-MISC with the annual summary]~~ provide to the department, a report listing the remitees to whom oil and gas proceeds were paid by the remitter, and for whom the remitter has received an agreement pursuant to Subsection G of Section 7-3A-3 NMSA 1978; this report must include:

(a) the name, address and federal identification number for each remittee;

(b) the gross oil and gas proceeds paid to the remittee during the tax year of the report; and

(c) the remitter's name, federal identification number and the total New Mexico gross oil and gas proceeds distributed by the remitter to all remitees.

B. ~~[Remitters who are not required by federal law to file a federal Form 1099-MISC but have a withholding tax obligation pursuant to the Oil and Gas Proceeds Withholding Tax Act must provide~~

New Mexico an "annual statement of withholding of oil and gas proceeds," a pro forma federal Form 1099-MISC, or a form containing equivalent information, to each remittee and file a copy with the department to satisfy the filing requirements of the Oil and Gas Proceeds Withholding Tax Act.] The reports provided to the department pursuant to Paragraphs (3) of Subsection A above, must be provided using a department-approved electronic medium, unless the remitter is not required to file electronically pursuant to 3.3.5.19 NMAC.

C. If a pass-through entity is not required to file a federal income tax return for the taxable year, the entity shall file an annual information returns with the department not later than one hundred five (105) days after the end of its taxable year and provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act or Corporate Income and Franchise Tax Act with respect to the owner's share of the net income.

[3.3.5.15 NMAC - N, 10/15/03; A, 12/15/10; A, XXX]

3.3.5.16 PRINCIPAL PLACE OF BUSINESS OR RESIDENCE IN NEW MEXICO:

[A. Remitters and pass-through entities are not required to withhold from corporations whose principal place of business is in New Mexico or from individuals who are residents of New Mexico. If the corporation establishes that its place of business is in New Mexico or an individual establishes that his or her residence is in New Mexico, it does not matter where remittances to the corporation or individual are sent.

B. Corporations: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the corporation because the corporation is described in Paragraphs (2) through (4) of Subsection C of Section 7-3A-3 NMSA 1978 or the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the corporation's principal place of business is in New Mexico except as provided in Subsection E of this section.

(1) Corporations incorporated in New Mexico: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining a copy of the corporation's incorporation papers, sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the public regulation commission website indicating that the

corporation is a New Mexico corporation in good standing and its address.

(2) Corporations incorporated in New Mexico or elsewhere: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining from the corporation a statement, signed under penalty of perjury or notarized, that the corporation's principal place of business is in New Mexico and setting forth the physical location of that principal place of business; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the corporation are not acceptable as a physical location of the corporation for the purposes of Section 7-3A-3 NMSA 1978.

C. Individuals: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the individual because the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the individual is a resident of New Mexico except as provided in Subsection E of this section. The remitter or pass-through entity may establish that the individual is a resident of New Mexico by acquiring and retaining a statement, signed under penalty of perjury or notarized that the individual is a resident of New Mexico and setting forth the physical location of the individual's abode in New Mexico; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the individual are not acceptable as a physical location of the individual for the purposes of Section 7-3A-3 NMSA 1978.]

A. If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments because of the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the corporation's principal place of business or the individuals residence is in New Mexico except as provided in Subsection E of this section.

B. Once the corporation establishes that its place of business is in New Mexico or an individual establishes that his or her residence is in New Mexico, it does not matter where remittances to the corporation or individual are sent.

C. A remitter or pass-through entity may establish residency if the address provided by the remittee or owner, to which federal Form 1099-MISC, *pro forma*

1099-MISC or successor form is to be mailed. A remitter or pass-through entity may also accept a declaration signed under penalty of perjury, from the remittee or owner, stating that the individual is a resident of New Mexico or that the corporation maintains a principal place of business in New Mexico.

D. The obligation to deduct and withhold applies with respect to all remitees and owners that are not corporations or individuals regardless of the remittee's or owner's physical or mailing address, effective January 1, 2011, unless the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection [H] G of Section 7-3A-3 NMSA 1978.

E. This version of 3.3.5.16 NMAC applies to payments for periods beginning on or after January 1, 2011. However, to ease the transition to the new requirements of this section, remitters and pass-through entities may continue to rely on New Mexico addresses pursuant to 3.3.5.12 NMAC for withholding for calendar quarters ending prior to January 1, 2012.

[3.3.5.16 NMAC - N, 12/15/10; A, XXX]

3.3.5.17 OPTIONAL WITHHOLDING PAYMENT BY REMITTEE, OWNER:

A. A remitter may enter into an agreement with a remittee that the remittee will remit to the taxation and revenue department at the time and in the manner required by the department the amounts that the remitter is required to withhold and remit with respect to payments to the remittee. Similarly, a pass-through entity may enter into an agreement with an owner, except as provided in Subsection E, that the owner will remit to the department the amounts that the pass-through entity is required to withhold and remit with respect to payments to the owner.

B. The agreement must be in a form prescribed by the department or substantially equivalent to such form. It must be in the remitter's or pass-through entity's possession at the time it files its annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978. The agreement may remain in effect for a single taxable year, multiple taxable years, or an indefinite term, and may be revoked or amended on mutual agreement of the parties.

C. Upon notice by the department that the remittee or owner has not complied with the requirements of the agreement, the remitter or pass-through entity must revoke the agreement and withhold and remit with respect to future payments to the remittee or owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Once an agreement has been revoked a new agreement between the remitter and remittee

or between the pass-through entity and the owner, may not be entered into for two years from the date the department notifies the remitter or the pass-through entity of the remitte'e's or owner's failure to pay amounts required by the agreement.

[C.] D. Remittances to the department pursuant to an agreement by a remitte'e or owner that is subject to corporate income tax or personal income tax may be credited against the remitte'e's or owner's estimated tax liability pursuant to Section 7-2A-9.1 NMSA 1978 or Section 7-2-12.2 NMSA 1978 since the remittances relate to the remitter's or owner's own corporate income tax or personal income tax liability.

E. Pursuant to Subsections H and I of Section 7-3A-3 NMSA 1978 a pass-through entity that is a personal service business as defined in Subsection J of Section 7-3A-2 NMSA 1978 cannot enter into an agreement with its owners.

[3.3.5.17 NMAC - N, 12/15/10; A, XXX]

3.3.5.18 DISREGARDED ENTITIES

A. The term "pass-through entity," [in addition to the exclusions listed in] pursuant to Subsection H of Section 7-3A-2 NMSA 1978, [also excludes entities treated as "disregarded entities"] excludes a single member limited liability company that is treated as a disregarded entity for federal income tax purposes. These include qualified subchapter S subsidiaries, as defined in 26 USC Section 1361(b)(3)(B), partnerships electing under 26 USC Section 761(a) to be treated as disregarded entities, qualified joint ventures, as defined in 26 USC Section 761(f), and qualified entities defined in internal revenue service revenue procedure 2002-69.

B. When a business association is treated as a disregarded entity for federal income tax purposes for only part of the association's taxable year, the association is subject to the withholding and reporting requirements of the Oil and Gas Proceeds and Pass-Through Entity Tax Withholding Act for that portion of the taxable year in which it is not treated as a disregarded entity and must submit an annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978 covering that portion its taxable year in which the association was not treated as a disregarded entity.

[3.3.5.18 NMAC - N, 12/15/10; A, XXX]

3.3.5.19 E - F I L I N G REQUIREMENTS:

A. Annual income and withholding information returns, federal Form 1099-MISC, *pro forma* 1099-MISC or successor forms must be filed with the department using a department-approved electronic medium if the remitter or pass-through entity has more than fifty (50)

New Mexico payees in a tax year, unless the remitter or pass-through entity obtains an exception pursuant to Subsection C of 3.3.5.19 NMAC.

B. The annual income information report of oil and gas proceeds distributed - no tax withheld, and the annual income and withholding detail report of pass-through entity allocable net income must be filed using a department-approved electronic medium if the pass-through entity or remitter has more than fifty (50) New Mexico payees in a tax year, unless the remitter or pass-through entity obtains an exception pursuant to Subsection C of 3.3.5.19 NMAC.

C. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least thirty (30) days before the taxpayer's electronic information return or report is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the information return or report to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

D. If a remitter or pass-through entity is required by regulation or statute to file information returns or reports electronically, the information return or report shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute. [3.3.5.19 NMAC - N, XXX]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend and adopt the following rules:

Film Production Tax Credit Act

3.13.9.7 NMAC - Proposed Amendment Section 7-2F-2 NMSA 1978 (*Definitions*)

3.13.9.8 NMAC - Proposed Adoption Section 7-2F-1 NMSA 1978 (*Film Production Tax Credit Application - Last Direct Production or Postproduction*)

Expenditure in New Mexico)

3.13.9.9 NMAC - Proposed Adoption Section 7-2F-1 NMSA 1978

(*Claiming the Film Production Tax Credit*)

3.13.9.10 NMAC - Proposed Adoption Section 7-2F-1 NMSA 1978

(*Determination of Physical Presence for Purposes of Claiming the Film Production Tax Credit*)

3.13.9.11 NMAC - Proposed Adoption Section 7-2F-1 NMSA 1978

(*Qualification of Direct Production Expenditures*)

These proposals were placed on file in the Office of the Secretary on February 15, 2013. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about April 30, 2013.

A public hearing will be held on these proposals on Thursday, April 11, 2013, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Office of the Secretary, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before April 11, 2013.

3.13.9.7 DEFINITIONS: The terms defined in 3.13.9.7 NMAC apply to the implementation of the film production tax credit.

A. "Direct production expenditures" as defined in Subsection [B] C of Section 7-2F-2 NMSA 1978 includes only those expenditures directly incurred and paid by the qualified production company to the vendor of the services or property and does not include expenditures incurred and paid by a third party even if incurred on behalf of the qualified production company.

B. "Performing artist" as used in Paragraph [2] (1) of Subsection [B] C of Section 7-2F-2 NMSA 1978 includes "stunt coordinators" when the stunt coordinator contracts with the production company under a standard stunt performer's contract.

[3.13.9.7 NMAC - N, 9/30/10, A, XXX]

3.13.9.8 FILM PRODUCTION TAX CREDIT APPLICATION - LAST DIRECT PRODUCTION OR POSTPRODUCTION EXPENDITURE IN NEW MEXICO:

A. A film production

company is required to submit its film production tax credit application for approval within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico as it relates to its production. Since a claim for an approved film production tax credit must be made on a taxable year basis, the department encourages film production tax companies to submit separate applications for each taxable year so long as all applications are submitted within one year of the last expenditure in New Mexico.

B. Example 1: X, a film production company, who for income tax purposes, has a taxable year on a calendar year basis, has direct production expenditures for tax year 2010 and for tax year 2011. The last direct production expenditure in New Mexico is June 20, 2011. X is required to submit its film production tax credit applications for the last direct production expenditure for tax year 2010 and tax year 2011 by no later than June 19, 2012. X may also submit individual applications for each tax year, any of which may be submitted prior to the June 19, 2012, deadline.

[3.13.9.8 NMAC - N, XXX]

3.13.9.9 CLAIMING THE FILM PRODUCTION TAX CREDIT:

A. In order to claim an approved film production tax credit, a film production company must complete a timely filed tax return after the close of its taxable year.

B. When determining how an approved film production tax credit will be paid out pursuant to Subsection E of Section 7-2F-1 NMSA 1978, each tax return is equivalent to a single credit claim.

C. Example 1: Two separate film production companies elect to be part of a New Mexico consolidated tax return. Each film production company submits a separate film production tax credit application for approval of direct production expenditures; one application is for two million dollars (\$2,000,000) and the second for one million dollars (\$1,000,000). The department approves both applications. The total amount of three million dollars (\$3,000,000) from the two approved applications will be considered a single credit claim since the two film production companies elect to file as part of a New Mexico consolidated tax return.

D. Example 2: X, a film production company, is organized as a corporation who files its income taxes on a calendar year basis. For tax year 2012, X will file its corporate income tax return on March 15, 2013, and claim the approved film production tax credit amount from the department. The credit claim will be considered received by the department because the taxpayer filed a complete and

timely tax return pursuant to the Corporate Income and Franchise Tax Act.

E. Example 3: A film production company files a complete and timely tax return for a certain tax period. The department does not approve the production company's application for the film production tax credit until after the production company has filed its tax return. The taxpayer ultimately files an amended tax return within three years of the end of the calendar year in which the payment of tax was originally due and at that time, claims the film production tax credit that was previously approved by the department. The credit claim will be considered received because the filing of the amended return by the production company was a complete and timely tax return pursuant to the Corporate Income and Franchise Tax Act.

[3.13.9.9 NMAC - N, XXX]

3.13.9.10 DETERMINATION OF PHYSICAL PRESENCE FOR PURPOSES OF CLAIMING THE FILM PRODUCTION TAX CREDIT:

A. Any vendor (provider) who provides goods or performs services, who occupies and maintains one or more physical places of business in New Mexico, not a virtual or online business, has established "physical presence," for purposes of the film production tax credit, if the following conditions are present:

(1) a provider of goods or services, or its employees, or representatives, is available at that provider's place of business during established times;

(2) a provider of goods maintains an inventory of the goods sold at the provider's New Mexico place of business and those goods are held for sale in the vendor's ordinary course of business at that place of business; and

(3) critical elements of any service performed by a service provider occur, are managed at or coordinated from the service provider's place of business.

B. The following indicia will be considered in determining if the above conditions are present:

(1) the provider of the goods or services is a resident or has at least one laborer who is a New Mexico resident, as defined in the Income Tax Act;

(2) a telephone is assigned for the exclusive use by the provider of goods or services at the provider's place of business;

(3) the place of business has been designated for the use of the goods or services provided;

(4) the place of business contains office furniture or equipment for the use by the provider;

(5) the goods or services provider is identified by business name on a sign located in or adjacent to the place of business; and

(6) a client or other persons can expect to communicate, either in person or by telephone, with the goods or services provider, or employees or representatives of the provider, at the place of business.

[3.13.9.10 NMAC - N, XXX]

3.13.9.11 QUALIFICATION OF DIRECT PRODUCTION EXPENDITURES:

A. A payment to a personal service business for the services of a performing artist qualifies as a direct production expenditure if the personal services business:

(1) pays gross receipts tax in New Mexico on the portion of those payments that are qualified expenditures for the film production tax credit; and

(2) deducts and remits withheld income tax pursuant to Subsection I of Section 7-3A-3 NMSA 1978 or the film production company deducts and remits, or causes to be deducted and remitted, withheld income tax at the maximum rate in New Mexico on the portion of those payments qualifying for the film production tax credit.

B. Example 1: S, a super loan-out company, receives payments for the services of a performing artist (personal services business) from a film production company. S pays gross receipts tax on the payments they receive and deducts and remits withheld income tax on the payments to the performing artist. The payment from the production company to S qualifies as a direct production expenditure for purposes of the film production tax credit.

C. Example 2: G, a super loan-out company, receives payments for the services of a performing artist from a film production company and pays gross receipts tax on the payments received. G contracts with P, a payroll service company, to provide payroll services. The film production company by agreement with P causes P to deduct and remit withheld income tax on the payments to the performing artist. The payment from the production company to G qualifies as a direct production expenditure for purposes of the film production tax credit.

D. Example 3: H, a super loan-out company, receives payments for the direct hires (performing artists who do not own their own company) from a film production company and pays gross receipts tax on the payments received. No tax is deducted and remitted on the payments for the direct hires pursuant to Subsection I of Section 7-3A-3 NMSA 1978 because the direct hires are employees of the super loan-out company and wages are excluded from this requirement to withhold. The payment from the production company to S for the services of the direct hires qualifies as a direct production expenditure for purposes

of the film production tax credit.

E. Example 4: A, an actor loan-out company, receives payments for the services of a performing artist from S, a super loan out company. S executes a nontaxable transaction certificate to A and pays gross receipts tax on the payments they receive from the production company for the services of the performing artist. S, or the payroll company by agreement with the production company, deducts and remits withheld income tax on the payments to the performing artist. The payment from the production company to S for the services of the performing artist qualifies as a direct production expenditure for purposes of the film production tax credit.

F. Example 5: Y, an actor loan-out company (owned by the performing artist), receives payments for the services of a performing artist who is a resident of New Mexico. Y pays gross receipts tax on the payments they receive. No withheld income tax is deducted or remitted on the payments that are due to the performing artist from Y (personal services business) because the obligation to deduct and withhold does not apply to payments made to an individual who is a resident of New Mexico (Subsection C of Section 7-3A-3 NMSA 1978). The payments from the production company to Y for the services of a performing artist qualify as direct production expenditures for purposes of the film production tax credit. [3.13.9.11 NMAC - N, XXX]

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.2 NMAC - THE COPPER RULE

The New Mexico Water Quality Control Commission will hold a public hearing beginning at 9:00 a.m. on April 9, 2013 at the New Mexico State Capitol Building, Room 307, 409 Old Santa Fe Trail, Santa Fe, New Mexico to consider proposed amendments to the Commission's Ground and Surface Water Protection Rule, 20.6.2 NMAC, referred to as the Copper Rule and proposed in WQCC 12-01 (R) by the New Mexico Environment Department (NMED). The hearing will proceed as necessary throughout April 9-11, April 16-18, April 23-25 and April 30-May 2 in Santa Fe; a public comment session will be held in Silver City on May 3, 2013, from 4-7 p.m. in the Global Resource Center at Western New Mexico University, 817 West 12th Street.

The proposed amendments would establish new rules for the copper mine industry to specify measures to be taken to prevent water pollution and to monitor water quality.

The proposed amendments may be reviewed during regular business hours at the Commission Administrator's office located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2150 Santa Fe, New Mexico, 87502. In addition, the proposed amendments and related pleadings, including an amended petition, are posted on the Commission webpage at <http://www.nmenv.state.nm.us/wqcc/>.

The hearing will be conducted in accordance with the Guidelines for Water Quality Control Commission Regulation Hearings, the Water Quality Act, Section 74-6-6 NMSA 1978, and other applicable procedures and procedural orders. Written comments regarding the proposed revisions may be addressed to Pam Castañeda, Commission Administrator, at the above address; reference docket number WQCC 12-01 (R).

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of hearing.

Persons wishing to present technical testimony must file with the Commission a written notice of intent to do so. The requirements for a notice of intent can be found in the Commission's Guidelines for Regulation Hearings and have been modified by a procedural order entered in this matter, which may be obtained from the Administrator or found on the Commission's webpage. Notices of intent for the hearing must be received by in the Office of the Commission Administrator by 5:00 pm on February 22, 2013, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 12-01 (R).

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by March 9, 2013. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, and (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

NEW MEXICO AGUA CONTROL DE CALIDAD DE LA COMISIÓN AVISO DE AUDIENCIA PÚBLICA PARA CONSIDERAR LAS ENMIENDAS PROPUESTAS A 20.6.2 NMAC-LA REGLA DE COBRE

El Agua de Nuevo México Comisión de Control de la Calidad llevará a cabo una audiencia pública comienzo a las 9:00 am el 9 de abril de 2013 a la New Mexico State Capitol Building, Room 307, 409 Old Santa Fe Trail, Santa Fe, Nuevo México, para examinar las enmiendas propuestas a motivo de la Comisión y de la Regla de Agua Superficial Protección, 20.6.2 NMAC, conocido como la Regla de cobre y propuso en WQCC 12-01 (R) por el Departamento de Medio Ambiente de Nuevo México (NMED). La audiencia se haga lo necesario durante todo abril 9-11, 16 a 18 abril, abril 23-25 y desde abril 30 hasta mayo 02 en Santa Fe, una sesión de comentarios públicos se llevará a cabo en Silver City el 3 de mayo de 2013, a partir de 4 - 7 pm en el Centro de Recursos Mundiales en Western New Mexico University, 817 West 12th Street.

Las enmiendas propuestas establecen nuevas normas para la industria de la mina de cobre para especificar las medidas que deben adoptarse para evitar la contaminación del agua y para controlar la calidad del agua.

Las modificaciones propuestas pueden ser revisados durante el horario regular en la oficina del Administrador de la Comisión ubicadas en el edificio Harold Runnels, 1190 St. Francis Drive, Room N-2150 en Santa Fe, Nuevo México, 87502. Además, las modificaciones propuestas y argumentos relacionados, incluyendo una petición enmendada, se publican en la página web de la Comisión en <http://www.nmenv.state.nm.us/wqcc/>.

La audiencia se llevará a cabo de conformidad con las Directrices para el Control de la Calidad del Agua Audiencias Reglamento de la Comisión, la Ley de Calidad del Agua, Sección 74-6-6 NMSA 1978 y otros procedimientos aplicables y las órdenes de procedimiento. Los comentarios escritos sobre las revisiones propuestas pueden dirigirse a Pam Castañeda, de la Comisión Administradora, en la dirección arriba, la referencia número de expediente WQCC 12-01 (R).

Todas las personas interesadas se les dará

oportunidad razonable en la audiencia para presentar pruebas pertinentes, los datos, opiniones y argumentos, de forma oral o por escrito, a presentar pruebas y testigos. Cualquier persona que desee presentar una declaración no técnico escrito para que conste en lugar de testimonio oral debe presentar dicha declaración antes del cierre de la audiencia.

Las personas que deseen presentar testimonio técnico deberá presentar a la Comisión una notificación por escrito de su intención de hacerlo. Los requisitos para la notificación de intención se puede encontrar en las Directrices de la Comisión sobre el Reglamento de Audiencias y han sido modificados por una orden de procedimiento consignados en el presente asunto, que se puede obtener del administrador o que se encuentran en la página web de la Comisión. Las notificaciones de intención para la audiencia debe ser recibida por la Oficina de la Comisión Administradora de las 5:00 pm el 22 de febrero de 2013, y deberá hacer referencia al nombre de la regulación, la fecha de la audiencia, y el número de expediente WQCC 01.12 (R).

Si usted es una persona con una discapacidad y necesita asistencia o ayuda auxiliar, por ejemplo, un intérprete de lenguaje, para participar en cualquier aspecto de este proceso, por favor póngase en contacto con la Oficina de Servicios de Personal el 9 de marzo de 2013. La oficina puede ser contactada en el Departamento Ambiental de Nuevo México, 1190 St. Francis Drive, PO Box 5469, Santa Fe, NM 87502-5469, y 827 a 9872 (505). Los usuarios de TDD o TDY pueden acceder a este número a través de New Mexico Relay Network (Albuquerque TDD: (505) 275-7333; fuera de Albuquerque: 1-800-659-1779)

La Comisión podrá adoptar una decisión sobre las modificaciones propuestas regulatorias a la conclusión de la audiencia, o podrá convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

**End of Notices and Proposed
Rules Section**

This page intentionally left blank

Adopted Rules

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

This is an amendment to 16.30.3 NMAC, Section 11, effective March 13, 2013.

16.30.3.11 REGISTRATION RENEWAL:

A. Fees: Renewal fees are paid biennially in even-numbered years. New registrations occurring in a non-renewal year shall be prorated on a yearly basis and shall expire on December 31st of that odd-numbered year. The fees for two (2) years are:

- | | |
|------------------|----------|
| (1) in state | \$225.00 |
| (2) out of state | \$325.00 |

B. Continuing education: Effective December 31, 2001, all architects will be required to show compliance with these mandatory education requirements as a condition for renewing registration:

(1) Purpose and scope:

(a) These rules provide for a continuing education program to insure that all architects remain informed of these technical subjects necessary to safeguard life, health, property, and promote the public welfare.

(b) Continuing education is [focused on registrants becoming more proficient at their architectural practice. Activities not at an architectural registrant level or within an architectural context cannot be claimed for continuing education credit] post licensure learning that enables a registered architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety and welfare.

(c) These rules apply to all architects registered in New Mexico.

(2) Definitions:

(a) [~~“Eligible contact hour” means fifty (50) minutes actual time engaged in continuing education activities supported by documentation of content and registrant participation.~~] “Continuing education hour (CEH)” is one continuous instructional hour (minimum 50 minutes of contact) spent in structured educational activities intended to increase or update the architect's knowledge and competence in health, safety and welfare subjects. If the provider of the structured educational activities prescribes a customary time for completion of such an activity, then such prescribed time shall, unless the board finds the prescribed time to be unreasonable, be accepted as the architect's time for continuing education hour purposes irrespective of actual time spent on the

activity.

(b) “Health, safety and welfare in architecture” is anything that relates to the structure or soundness of a building or site or its role in promoting the health, safety or well-being of its occupants.

(c) [~~“Public protection hours” means continuing education contact hours in which the subject matter is health, safety and welfare as defined in Subparagraph (b) of Paragraph (2) of Subsection B of 16.30.3.11 NMAC above. Twenty-four (24) public protection hours are required for each renewal cycle.~~] “Health, safety and welfare subjects” are technical and professional subjects that the board deems appropriate to protect the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction and utilization of buildings and the built environment.

(i) Building systems: structural, mechanical, electrical, plumbing, communications, security, fire protection.

(ii) Construction contract administration: contracts, bidding, contract negotiations.

(iii) Construction documents: drawings, specifications, delivery methods.

(iv) Design: urban planning, master planning, building designs, site design, interiors, safety and security measures.

(v) Environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(vi) Legal: laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, insurance to protect owners and public.

(vii) Materials and methods: construction systems, products, finishes, furnishings, equipment.

(viii) Pre-design: land use analysis, programming, site selection, site and soils analysis, surveying.

(ix) Preservation: historic, reuse, adaptation.

(d) [~~“Continuing education provider” means any association, organization or business entity which supplies structured, architectural registrant continuing education activities and the corresponding documentation of content and participation. If a continuing education provider includes a testing component to be successfully completed in order to receive a certificate, the registrant must complete all phases of the provider's program. Contact hours shall be credited as indicated by the provider.~~] “Structured educational activities” are educational activities in which

at least 75 percent of an activity's content and instruction time must be devoted to health, safety and welfare subjects related to the practice of architecture, including courses of study or other activities under the areas identified as health, safety and welfare subjects and provided by qualified individuals or organizations, whether delivered by direct contact or distance learning methods.

(3) Requirements:

(a) [~~To renew registration, in addition to other requirements, an architect must have acquired continuing education for each 24-month period since the architect's last renewal of initial registration, or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration, or other disciplinary action, or both.~~] In addition to all other requirements for registration renewal, an architect must complete a minimum of 12 continuing education hours each calendar year or be exempt from these continuing education requirements as provided below to begin January 1, 2014. Failure to complete these requirements may result in non-renewal of the architect's registration.

(b) [~~Renewal period: For any 24-month biennial renewal period a total of twenty-four (24) contact hours from the activities listed in Paragraph (4) of Subsection B of 16.30.3.11 NMAC below must be reported. All twenty-four (24) contact hours shall be in public protection subjects: safeguarding life, health, property and promoting the public welfare.~~] Continuing education hours must be completed in health, safety and welfare subjects acquired in structured education activities. Continuing education hours may be acquired at any location. Excess continuing education hours may not be credited to a future calendar year.

(4) Activities: The following list shall be used by all registrants in determining the types of activities that would fulfill continuing education requirements:

(a) [contact] continuing education hours in attendance at short courses or seminars dealing with architectural subjects and sponsored by academic institutions;

(b) [contact] continuing education hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and functions; such presentations as those sponsored by the American institute of architects, construction specifications institute, construction products manufacturers council or similar organizations devoted to architectural education may qualify;

(c) ~~[contact]~~ continuing education hours in attendance at short courses or seminars related to new technology and offered by colleges, universities, professional organizations or system suppliers;

(d) ~~[contact]~~ continuing education hours spent in self-study courses such as those sponsored by the national council of architectural registration boards, American institute of architects or similar organizations;

(e) up to three preparation hours may be credited for each class hour spent teaching architectural courses or seminars; college or university faculty may not claim credit for teaching regular curriculum courses;

(f) up to three (3) ~~[contact]~~ continuing education hours spent in architectural research that is published or formally presented to the profession or public;

(g) college or university credit courses dealing with architectural subjects; each semester hour shall equal fifteen (15) ~~[contact]~~ continuing education hours; a quarter hour shall equal ten (10) ~~[contact]~~ continuing education hours;

(h) up to four (4) ~~[contact]~~ continuing education hours in service to the public that is directly related to the practice of architecture in the area of public protection, also known as health, safety and welfare.

(5) Records and record-keeping:

(a) A registered architect shall complete and submit forms prescribed or accepted by the board certifying to the architect's having obtained the required continuing education hours. ~~[Registrants also shall maintain substantiating information in support of each continuing education claim.]~~ Documentation of reported continuing education hours shall be maintained by the architect for three years from the date of award.

(b) One (1) continuing education hour shall represent a minimum of actual course time. No credit will be allowed for introductory remarks, meals, breaks or administrative matters related to courses of study.

(c) Failure to fulfill the continuing education requirements, or file the required biennial report, properly and completely signed, shall result in non-renewal of an architect's certificate of registration.

(d) Any untrue or false statements or the use thereof with respect to course attendance or any other aspect of continuing education activity is fraud or misrepresentation and will subject the registrant to revocation of registration or other disciplinary action.

(6) Initial registration:

~~[(a)]~~ An architect whose initial registration occurs less than twelve (12)

months from the December 31st deadline of the next renewal cycle shall not be required to report continuing education hours for that calendar year.

~~[(b) An architect whose initial registration occurs more than twelve (12) months from the December 31st deadline of the next renewal cycle but less than twenty-four (24) months from the date of initial registration shall be required to report twelve (12) contact hours, all of which shall be in public protection subjects.]~~

(7) Reinstatement: A former registrant may only apply for reinstatement under 16.30.3.13 NMAC if all delinquent ~~[contact]~~ continuing education hours are earned within the twenty-four (24) months preceding the application to renew. However, if the total number of ~~[contact]~~ continuing education hours required to become current exceeds twenty-four (24), then twenty-four (24) shall be the maximum number of contact hours required.

(8) Exemptions: A registrant shall be deemed to have complied with the foregoing continuing education requirements if the architect attests in the required affidavit that for not less than twenty-one (21) months of the preceding two-year-period of registration, the architect:

(a) has served honorably on active duty in the military service (exceeding ninety (90) consecutive days); or

(b) is a government employee working as an architect and assigned to duty outside the United States.

(9) The board may consider a hardship case.

(10) Audit: A number of registrants shall be selected at random to submit substantiating information to support their continuing education claim. If any credits are disallowed by the board, then the registrant shall have ~~[one hundred and eighty (180)]~~ sixty (60) calendar days after notification to substantiate the original claim or obtain other ~~[contact]~~ continuing education hours to meet the minimum requirements. Such ~~[contact]~~ continuing education hours shall not be used again in the next renewal cycle. Additional audits may be conducted at the board's discretion.

(11) Non-compliance: Failure to comply with the requirements of this section shall result in non-renewal of registration and forfeit of the renewal fee.

[16.30.3.11 NMAC - Rp 16 NMAC 30.3.11, 9/6/2001; A, 9/15/2003; A, 4/15/2004; A, 9/16/2004; A, 3/12/2006; A, 5/4/2008; A, 6/1/2009; A, 3/13/2013]

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 28, 2013. It will be replaced with 2.2.2 NMAC, *Requirements for Contracting and Conducting Audit of Agencies*, which will become effective February 28, 2013.

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, 2-28-13]

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, 2-28-13]

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, 2-28-13]

2.2.2.4 D U R A T I O N :
Permanent
[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 2-28-13]

2.2.2.5 EFFECTIVE DATE:
February 28, 2013, unless a later date is cited at the end of a section.
[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 2-28-13]

2.2.2.6 OBJECTIVE: The objective is to establish policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, and attestation engagements 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, 2-28-13]

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. "AUP" means agreed upon procedures.

E. "CPE" means continuing professional education.

F. "DFA" means the New Mexico department of finance and administration.

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

H. "FDIC" means federal deposit insurance corporation.

I. "FDS" means financial data schedule.

J. "GAAP" means accounting principles generally accepted in

the United States of America.

K. "GAGAS" means generally accepted government auditing standards.

L. "GASB" means governmental accounting standards board.

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

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

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

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

Q. "IPA" means independent public accountant.

R. "IRC" means internal revenue code.

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

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

U. "NMAC" means New Mexico administrative code.

V. "NMSA" means New Mexico statutes annotated.

W. "Office" means the New Mexico office of the state auditor.

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

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

Z. "PHA" means public housing authority.

AA. "REAC" means real estate assessment center.

BB. "REC" means regional education cooperative.

CC. "RSI" means required supplemental information.

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

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

FF. "State auditor" may refer to either the elected state auditor of the state of New Mexico, personnel of his office designated by him, or independent auditors designated by him.

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

HH. "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.

II. "UFRS" means uniform financial reporting standards.

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

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 2-28-13]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

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 M 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. List of approved firms:
The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts and agreed upon procedures engagements with agencies as defined by Subsection A of 2.2.2.7 NMAC. The state auditor's list of approved audit firms shall be reviewed and updated on an annual basis. The office shall annually send written notification to IPA firms to submit their firm profiles for consideration to be included on the state auditor's list of approved firms. The state auditor shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency's annual financial audit.

(1) To be included on the state auditors list of approved firms, an IPA shall submit its annual firm profile in accordance with the guidelines set forth herein.

(2) The office shall review each firm profile for compliance with the requirements set forth in Subsection A of 2.2.2.8 NMAC.

(3) The state auditor may approve contracts only with IPA firms that have submitted a complete and correct firm profile complying with all the requirements set forth in this rule and that has been approved by the office.

(4) The office shall inform all IPAs whose firm profiles were submitted by the deadline whether they are on the list of

approved firms.

(5) Concurrent with publication of the list of approved firms, the office shall inform government agencies and local public bodies that they are to select an IPA to perform their audit or agreed upon procedures engagement. The notification shall inform the agency or local public body that it should consult its prospective IPA to determine whether the prospective IPA has been restricted by the office as to the type of engagement or number of contracts it is eligible to perform.

C. Conditional approval:
An IPA firm may be added to the list of approved firms even though the firm has one or more of the deficiencies of its firm profile listed below, except that the office shall not approve any contracts for the deficient IPA until the office receives documentation demonstrating all deficiencies have been cured.

(1) The firm profile does not include at least one CPA with a current CPA certificate.

(2) The firm does not have at least one CPA that meets the 80 hour GAGAS CPE requirement of Subsection A, of 2.2.2.14 NMAC.

(3) The firm profile does not include a copy of the IPA's current proof of insurance.

(4) The IPA employs only one CPA qualified to sign a GAGAS audit report and the firm has not submitted the completed original contingency subcontractor form required by Subsection L of 2.2.2.8 NMAC.

(5) The IPA's peer review is scheduled to be completed on or before publication of the list of approved firms, but is missing from the firm profile.

(6) The firm profile does not include either the signed attestation form regarding CPE or the signed attestation form regarding the firm profile.

D. Disqualified firms: An IPA firm shall not be included on the list of approved firms if any of the following applies to that IPA:

(1) the firm received a peer review rating of "failed";

(2) the firm does not have a current New Mexico firm permit to practice;

(3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of 2.2.2.14, NMAC, to perform GAGAS audits; or

(4) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

E. Restriction:

(1) IPAs may be placed on contract restriction based on the office's review of the firm profile and deficiency considerations as described below. Contract restriction

may take the form of limiting the type of engagement or number of audit contracts an IPA may hold. The office may impose a corrective action plan associated with the contract restriction. The deficiency considerations include, but are not necessarily limited to:

(a) failure to submit reports in accordance with Paragraph (1) of Subsection A of 2.2.2.9 NMAC or the terms of their individual agency contract(s) whichever applies;

(b) failure to submit late report notification letters in accordance with Paragraph (5) of Subsection A of 2.2.2.9 NMAC;

(c) failure to comply with Paragraphs (1) and (2) of Subsection M of 2.2.2.8 NMAC;

(d) poor quality reports as determined by the office;

(e) poor quality working papers as determined by the office;

(f) a peer review rating of "pass with deficiencies" with the deficiencies being related to governmental audits;

(g) failure to submit to the office a dated signed engagement letter within 30 days of execution;

(h) lack of compliance with the procurement code; or

(i) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

(2) The office shall notify IPAs that are under restriction. If the restriction includes a limitation on the number of engagements the IPA is eligible to hold, the IPA shall not enter into audit contracts with new government agencies if the number of multi-year proposals the IPA possesses at the time of restriction is equal to or exceeds the limitation on the number of engagements for which the IPA is restricted.

(3) An IPA under restriction is responsible for informing the agency whether the restricted IPA is eligible to engage in the proposed contract.

(4) If an agency or local public body submits an IPA recommendation letter to the office for an IPA that was ineligible to perform that contract due to its restriction, the office shall immediately reject the IPA recommendation in accordance with Subparagraph (f) of Paragraph (6) of Subsection G of 2.2.2.8 NMAC.

F. Procedures for imposition of contract restrictions:

(1) The state auditor may place an IPA under contract restriction in accordance with Subsection E of 2.2.2.8 NMAC:

(a) The state auditor or his designee shall cause written notice of the contract restriction to be sent by certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction. The letter shall

contain the following information: (i) the office has placed a restriction on the type of engagement and/or number of contracts the IPA is eligible to enter into; (ii) the conditions of the contract restriction; (iii) the reasons for the contract restriction; (iv) the action to place the IPA on restriction is brought pursuant to Section 12-6-3(A) NMSA 1978 and these regulations; (v) the IPA may request, in writing, reconsideration of the proposed contract restriction which must be received by the office within 15 calendar days from the day the IPA receives the letter of restriction; and (vi) the email or street address where the IPA's written request for reconsideration shall be delivered, and the name of the person to whom the request shall be sent.

(b) The IPA's written request for reconsideration shall include sufficient facts to rebut on a point for point basis each deficiency noted in the office's letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide supplemental argument as to why the office's determination should be modified or withdrawn. The IPA may be represented by an attorney licensed to practice law in the state of New Mexico.

(c) The IPA shall have forfeited its opportunity to request reconsideration of the contract restriction(s) if the office does not receive a written request for reconsideration within the 15 calendar days of the date of receipt of the letter of restriction. The state auditor may grant, for good cause shown, an extension of time within which the IPA has to submit a request for reconsideration.

(2) The office shall review an IPA's request for reconsideration and shall make a determination on reconsideration within 15 calendar days of receiving the request unless the IPA has asked to present its request for reconsideration in person, in which case the office shall make a determination within 15 calendar days from the date of the personal meeting. The office may uphold, modify or withdraw its contract restriction pursuant to its review of the IPA's request for reconsideration, and shall notify the IPA of its final decision in writing, which shall be sent to the IPA via certified mail, return receipt requested.

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

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

(6) After completing the evaluations for each IPA and making the IPA selection, each agency shall submit the 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 provided at www.osanm.org. Agencies shall print the form on agency letterhead.

(b) Agencies shall complete the applicable audit contract 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 deadlines shown below. If a completed IPA recommendation form and audit contract are not delivered to the state auditor by these deadlines, the auditor must include a finding of noncompliance with Paragraph (6) or Subsection G of 2.2.2.8 NMAC in the audit report: (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 and combined county/municipality governments - **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 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 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 may 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 fifteen (15) calendar days from the date of the disapproval and shall include documentation in support of its recommendation. 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 an IPA recommendation by the deadline contained in Subparagraph (c) of Paragraph (6) of this subsection, the state auditor may conduct the audit. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA.

(8) If the agency fails to submit an IPA recommendation within 60 days of notification from the state auditor to engage an IPA (pursuant to Paragraph (5) of this subsection), the state auditor may select the IPA for that agency. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA.

(9) In selecting an IPA for an agency pursuant to Paragraph (8) of this subsection, the state auditor shall at a minimum consider the following factors, but may consider other factors in the state auditor's discretion that serve the best interest of the state of New Mexico and the agency:

(a) the state auditor's IPA selection shall be drawn from the list of approved IPAs maintained by the state auditor;

(b) an IPA subject to contract restriction pursuant to Subsection E of 2.2.2.8 NMAC, is ineligible to be selected under this paragraph;

(c) whether the IPA has conducted one or more audits of similar government agencies;

(d) the physical proximity of the IPA to the government agency to be audited;

(e) whether the resources and expertise of the IPA are consistent with the audit requirements of the government

agency to be audited;

(f) the IPA's cost profile, including examination of the IPA's fee schedule and blended rates;

(g) the state auditor shall not select an IPA in which a conflict of interest exists with the agency or that may be otherwise impaired, or that is not in the best interest of the state of New Mexico.

(10) The state auditor shall consider, at a minimum, the following factors when considering which government agencies will be subject to the state auditor's selection of an IPA:

(a) whether the agency is demonstrating progress in its own efforts to select an IPA;

(b) whether the agency has funds to pay for the audit;

(c) whether the agency is on the state auditor's "at risk" list; and

(d) whether the agency is complying with the requirements imposed on it by virtue of being on the state auditor's "at risk" list.

(11) The state auditor may appoint a committee of the state auditor's staff to make recommendations for the state auditor's final determination as to which IPAs will be selected for each government agency subject to the discretion of the state auditor pursuant to Paragraph (8) of this subsection.

(12) Upon selection of an IPA to audit a government agency subject to the discretion of the state auditor pursuant to Paragraph (8) of this subsection, the state auditor shall notify in writing the agency of the selection of an IPA to conduct its audit. The notification letter shall include, at a minimum, the following statements:

(a) the agency was notified by the state auditor to select an IPA to perform its audit or agreed upon procedures engagement;

(b) 60 days or more have passed since such notification, and the agency failed to deliver its fully completed and signed IPA recommendation form for audits along with its completed audit contract in accordance with Subparagraph (c) of Paragraph (6) of this subsection;

(c) pursuant to Section 12-6-(14) A, NMSA, the state auditor is selecting the IPA for the agency;

(d) delay in completion of the agency's audit is contrary to the best interest of the state and the agency, and threatens the functioning of government and the preservation or protection of property;

(e) in accordance with Section 12-6-4, NMSA, the reasonable costs of such an audit shall be borne by the agency unless otherwise exempted;

(f) selection of the IPA is final, and the agency should immediately take appropriate measures to procure the services of the selected IPA.

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

H. 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) 12 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 M 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 mind 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 NMAC, was received from the office;

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

(m) failed to submit a completed firm profile as required by Paragraph (3) of Subsection B of 2.2.2.8 NMAC;

(n) reached the limit of contracts to which the state auditor restricted the IPA;

(o) failed to respond to communications from the office or engagement clients within a reasonable amount of time; or

(p) 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 an IPA received by the office which the state auditor decides to perform himself or with the assistance of an IPA, and pursuant to Section 12-6-3 NMSA, 1978, even if the agency or local public body was previously designated for audit or agreed upon procedures services by an IPA.

I. 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 G 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.

J. 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 with the firm information if the IPA performs only engagements 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.

K. 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 may be disqualified from conducting audits or agreed upon procedures engagements of agencies or local public bodies in New Mexico.

L. **SUBCONTRACTOR** 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 3.76 must submit with the firm profile, a completed original contingency subcontractor form that is dated to be effective until the following notification letter goes out to IPAs requesting the updated firm profile. The form shall indicate which IPA on the state auditor's current list of approved IPA's 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 original 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.

M. The GAGAS 2011 *Revision* was recently issued by the United States government accountability office (GAO). It is effective for financial audits and attestation engagements for periods ending on or after December 15, 2012 (FY13), and for performance audits beginning on or after December 15, 2011. Early implementation is not permitted. Pursuant to GAGAS 3.08, "Auditors should apply the GAGAS conceptual framework at the audit organization, engagement, and individual auditor level to: identify threats to independence; evaluate the significance of the threats identified; both individually and in the aggregate; and apply safeguards as necessary to eliminate the threats or reduce them to an acceptable level." Auditors should use GAGAS Paragraphs 3.33 and 3.58 in evaluating threats to independence related to nonaudit services. Note that the old guidance on this subject, *Government Auditing Standards: Answers to Independence Standard Questions* (GAO-02-870G, July 2002), has been retired. Pursuant to GAGAS 3.40, "auditors should establish and document their understanding with the audited entity's management or those charged with governance, the following: objectives of the nonaudit service; services to be performed; audited entity's acceptance of its responsibilities; the auditor's responsibilities; and any limitations of the nonaudit services."

(1) An IPA who performs the agency's annual financial audit shall not enter into any special audit or nonaudit service contract with the respective agency without the **prior written approval** of the state auditor. 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 shall review the requests and respond to the agency and the IPA by the 25th of each month. The following documentation must be submitted to the office for review and approval.

(a) 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.

(b) For nonaudit services, include the auditor's documentation of: (i) whether management has the ability to effectively oversee the nonaudit service pursuant to GAGAS 3.34; (ii) the documented assurance from the entity that management will assume all management responsibilities, oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience; evaluate the adequacy and results of the services performed; and accept responsibility for the results of the services pursuant to GAGAS 3.37; (iii) the auditor's establishment and documentation (engagement letter) of the auditor's understanding with the entity's management or those charged with governance of the objectives of the nonaudit service, the services to be performed, audited entity's acceptance of its responsibilities, the auditor's responsibilities, and any limitations of the nonaudit service, pursuant to GAGAS 3.39; and (iv) the auditor's consideration of significant threats (if applicable) to independence that have been eliminated or reduced to an acceptable level through the application of additional safeguards, and a description of those safeguards. 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:

(a) An agency's external auditor to perform the following nonaudit services that are management responsibilities: (i) "setting policies and strategic direction for the audited entity; (ii) directing and accepting responsibility for the actions of the audited entity's employees in the performance of their routine, recurring activities; (iii) having custody of an audited entity's assets; (iv) reporting to those charged with governance on behalf of management; (v) deciding which of the auditor's or outside third party's recommendations to implement; (vi) accepting responsibility for the management of an audited entity's project; (vii) accepting responsibility for designing, implementing, or maintaining internal control; (viii) providing services that are intended to be used as management's primary basis for making decisions that are significant

to the subject matter of the audit; (ix) developing an audited entity's performance measurement system when that system is material or significant to the subject matter of the audit; and (x) serving as a voting member of an audited entity's management committee or board of directors (GAGAS 3.36)."

(b) The following nonaudit services that pursuant to GAGAS 3.50, always impair the auditors' independence: (i) "determining or changing journal entries, account codes or classifications for transactions, or other accounting records for the entity without obtaining management's approval; (ii) authorizing or approving the entity's transactions; (iii) preparing or making changes to source documents without management approval. Source documents include those providing evidence that transactions have occurred (for example, purchase orders, payroll time records, customer orders, and contracts). Such records also include an audited entity's general ledger and subsidiary records or equivalent."

(c) The following nonaudit services that pursuant to GAGAS 3.53 and 3.54, always impair the auditors' independence: (i) "setting internal audit policies or the strategic direction of internal audit activities; (ii) performing procedures that form part of the internal control, such as reviewing and approving changes to employee data access privileges; and (iii) determining the scope of the internal audit function and resulting work; and performing or supervising ongoing internal control monitoring procedures."

(d) The following nonaudit services that pursuant to GAGAS 3.56, always impair the auditors' independence: (i) "designing or developing a financial or other IT system that will play a significant role in the management of an area of operations that is or will be the subject matter of an audit; (ii) providing services that entail making other than insignificant modifications to the source code underlying such a system; and (iii) operating or supervising the operations of such a system."

(e) Pursuant to GAGAS 3.47, "Valuation services that would have a material effect, separately or in the aggregate, on the financial statements or other information on which the audit firm is reporting, and the valuation involves a significant degree of subjectivity."

(f) Any of the nonaudit services listed at GAGAS 3.58 regarding the entity's non tax disbursements, benefit plan administration, investment advisory or management services, listed prohibited consulting or advisory services, executive or employee personnel matters, and business risk consulting.

N. 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) 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.

O. 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 M of 2.2.2.8 NMAC including documenting the safeguards as required by GAGAS 3.59, 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 related audit finding should be reported**. See SAS 115 Exhibit B, examples of circumstances that may be deficiencies, significant deficiencies, or material weaknesses.

P. 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.

Q. Auditor communication:

(1) The AICPA requirements for auditor communication with those charged with governance are set forth in AU-C 260, effective for periods ending on or after December 15, 2012 (FY13). The 2011 version of GAGAS has the following additional requirements at GAGAS 4.03 and 4.04:

(a) "Auditors should communicate pertinent information that in the auditors' professional judgment needs to be communicated to individuals contracting for or requesting the audit, and to cognizant legislative committees when auditors perform the audit pursuant to a law or regulation, or they conduct the work for the legislative committee that has oversight of the audited entity."

(b) "In those situations where there is not a single individual or group that both oversees the strategic direction of the audited entity and the fulfillment of its accountability obligations or in other situations where the identity of those charged with governance is not clearly evident, auditors should **document** the process followed and conclusions reached for identifying the appropriate individuals to receive the required auditor communications."

(2) After the agency and auditor have an approved audit contract in place, the IPA 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. In addition to meeting the requirements of the AICPA guidance and the GAGAS requirements, the engagement letter should state that the engagement will be performed in accordance with 2.2.2 NMAC.

(3) **Within 30 days of execution of the engagement letter, 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. Failure to provide this information within 30 days of execution could result in a restriction of contracts.

(4) All communications with management and the agency oversight officials during the audit, 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 4.33. 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.

R. 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 M 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) If a proposed contract amendment is disapproved for lack of adequate information, the IPA and agency may submit a corrected version for reconsideration.

(5) The audit engagement letter shall not include any fee contingencies. The engagement letter shall not be interpreted as amending the contract. Nothing in the engagement letter can impact or change the amount of compensation for the audit services. Only a contract amendment submitted pursuant to Paragraph (3) of Subsection R of 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

S. 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, 2-28-13]

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 and combined county/municipality governments: **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 **five 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: 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.osanm.org). The report review guide should reference applicable page numbers in the audit report and be signed by the person completing the review guide. The audit manager or person responsible for the firm's quality control system should either complete the report review guide or sign off as having reviewed it. A report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed 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. If the due date falls on a weekend or holiday the audit report shall be postmarked by the following workday. 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. This notification shall consist of a letter with official signatures, not an email. However, a scanned version of the official letter sent via email that contains the required signatures is acceptable. 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. If the review guide is not accurately completed or incomplete, the report will be rejected.

(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. The electronic file must:

(a) be created and saved as a PDF document in a single PDF file format (simply naming the file using a PDF extension .pdf does not by itself create a PDF file;

(b) be version 5.0 or newer;

(c) not exceed 10 MB per file submitted (contact the office to request an exception if necessary);

(d) have all security settings like self-sign security, user passwords, and/or permissions removed or deactivated so the office is not prevented from opening, viewing, or printing the file;

(e) not contain any embedded scripts and/or executables, including sound or movie (multimedia) objects;

(f) have a file name that ends with .pdf;

(g) be free of worms, viruses or other malicious content (a file with such

content will be deleted by the office);

(h) be "flattened" into a single layer file prior to submission;

(i) not contain any active hypertext links, or any internal/external links (although it is permissible for the file to textually reference a URL as a disabled link);

(j) be saved at 300 DPI (lower DPI will make the file hard to read and higher DPI will make the file too large); and

(k) In addition, the office recommends that the electronic file name begin with the agency number, followed by the name of the agency and the fiscal year, and then end with .pdf.

(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, or the state auditor may impose, 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 in the audit report.

F. For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, the state auditor may require the agency to submit a status report to the office in accordance with deadlines specified by the state auditor. The status 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 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.

[2.2.2.9 NMAC - Rp, 2.2.2.9 NMAC, 2-28-13]

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)(B)(a) NMSA 1978 requires all 501(c) 3 component unit organizations with a gross annual income in excess of \$250,000 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 in writing by the state auditor, 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 fund financial statements, and the combining and individual fund financial statements if separately issued financial statements of the component units are not available (AAG-SLV 3.20); and (ii) individual fund budgetary comparisons when a legally adopted budget

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

(2) Audits of state and local governmental agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:

(a) The level of planning materiality required by the state auditor is at the **individual fund level**. The state auditor requires that the budgetary comparison statements be audited and included as part of the basic financial statements consistent with GASBS 34 footnote 53 and AAG-SLV 11.13.

(b) The scope of the audit includes the following statements and 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 (AU-C 725) 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 119 (AU-C 725). (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 119 (AU-C 725). See also the independent auditor's 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 2011 revision;

(2) *U. S. Auditing Standards-AICPA (Clarified)* effective for periods ending on or after December 15, 2012;

(3) *OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organization*, 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 government accounting standards board (GASB) *Codification*, latest edition. Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB, other applicable pronouncements, and GASB illustrations and 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' practice aides 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 (Sections 13-1-1 to 13-1-199 NMSA 1978) and state purchasing regulations 1.4.1 NMAC;

(2) Per Diem and Mileage Act (Sections 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/293b21bdb0c44c04bd0dbc6de01def7e/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 (Sections 10-9-1 to 10-9-25 NMSA 1978) and State Personnel Administration 1.7.1 NMAC (state agencies only);

(4) Public Money (Sections 6-10-1 to 6-10-63 NMSA 1978) including the requirements of Section 6-10-10(A) and (B) that county and municipal treasurers deposit money in their respective counties, and the requirement of Section 6-10-17 that the agency receive a joint safe keeping receipt for pledged collateral;

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

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

(7) For Public Employees Retirement Act (Sections 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 (Sections 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 (Sections 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 2012 Regular Session, Chapter 19, Section 3, Subsection K 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 2012 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, 2012, the contribution rates did increase; see the applicable statute for more information; and

(19) Governmental Conduct Act (Sections 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) **Generally Accepted Government Auditing Standards** (GAGAS) issued by the U.S. general accounting office, latest effective edition;

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

(c) OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, revised May 10, 2004;

(d) OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, revised October 7, 1994 and further amended August 29, 1997;

(e) 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;

(f) OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, (June 26, 2007 revision);

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

(h) 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 Albuquerque, NM at 505-837-5610.

I. Audit findings:

(1) Internal control related findings: Pursuant to GAGAS 4.23, "auditors should communicate in the report on internal control over financial reporting and compliance, based upon the work performed: significant deficiencies and material weaknesses in internal control; instances of fraud and noncompliance with provisions of laws or regulations that have a material effect on the audit and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements that has a material effect on the audit; and abuse that has a material effect on the audit."

(a) AU-C 260.09 requires the auditor to evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses. Guidance for evaluating deficiencies is available at AU-C 260. A5 through 269.A11. Examples of circumstances that may be deficiencies, significant deficiencies, or material weaknesses are listed at AU-C 260.A37.

(b) GAGAS Paragraph 4.26(b) states that "When auditors detect any instances of fraud, noncompliance with provisions of laws, regulations, contracts or grant agreements, or abuse that do not warrant the attention of those charged with governance, the auditors' determination of whether and how to communicate such instances to audited entity officials is a matter of professional judgment." In contrast, 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.** Examples of reports on internal control that include items that are neither a significant deficiency nor a material weakness are available on the office website at www.osanm.org.

(2) GAGAS Section 4.05 (2011 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 or financial data significant to the audit objectives. When planning the audit, auditors should ask management of the audited entity to identify previous audits, attestation engagements, and other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented. Auditors should use this information in assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives.” In addition to this standard, the IPA will report the status of **all** prior-year findings in the current year audit report including the prior year number, the title of the finding, and whether the finding has been resolved or repeated in the current year. Findings from special audits performed by the state auditor must be included in the findings of the annual financial and compliance audits of the related fiscal year.

(3) Current-year audit findings:

(a) All audit findings must have a reference number such as 2011-1, 2012-3, and 2013-1 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 4.33 (2011 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. Pursuant to GAGAS 4.38, “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 in the report 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.” Lack of agency responses within the 10 business days does not warrant a delay of the audit report. Pursuant to GAGAS 4.39, “If the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited entity. In such cases, the auditors should indicate in the report that the audited entity did not provide comments.”

(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 submit the completed IPA recommendation form and contract by the due date at Subparagraph (c) Paragraph (6) of Subsection G of 2.2.2.8 NMAC or 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 findings should also be reported as significant deficiencies 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 M 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, but do not rise to the level of significant deficiencies or material weaknesses and are classified as not warranting the attention of those charged with governance pursuant to GAGAS 4.26, 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 Section 12-6-5 NMSA 1978, which are described in the accompanying schedule of findings and responses as findings 13-5 and 13-6.” (See the report on internal control examples at www.osanm.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. If **extraordinary circumstances** exist that will prevent the exit conference from taking place in person, the IPA shall submit a written request for an exemption from this requirement to the state auditor at least 48 hours prior to the scheduled exit conference. The written request for the exemption must include the justification for the request and the concurring signature of the agency. The IPA may not hold a telephonic or webcam exit conference without prior written approval of the state auditor. The date of the conference(s) and the names and titles of personnel attending must be stated in the last page of the audit report.

(2) The IPA shall deliver to the agency a complete and accurate draft of the audit report (stamped “draft”), **a list of the “passed audit adjustments,”** and a copy of all the adjusting journal entries before the exit conference. The draft audit report shall include the MD&A, independent auditor’s report, a complete set of financial statements, notes to the financial statements, required

schedules, audit findings that include responses from agency management, status of prior-year audit findings, and the reports on internal control and compliance required by government auditing standards and the Single Audit Act. The agency will have at least five 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 by the agency in writing, 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 Meetings Act, if applicable. The presentation of the audit report should be documented in the minutes of the meeting. See AU-C 260.12 to 260.14 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 4.30 to 4.32 and GAGAS 4.40 to 4.44.

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

(1) GAGAS 2011 revision, Paragraphs 4.06 to 4.08 state that "In addition to the AICPA requirements concerning fraud and noncompliance with provisions of laws and regulations, when performing a GAGAS financial audit, auditors should extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements. 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, or noncompliance with provisions of laws, regulations, contracts, or grant agreements. Because the determination of abuse is subjective, auditors are not required to detect abuse in financial audits. However, as part of a GAGAS audit, if auditors become aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, 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 noncompliance with provisions of laws, regulations, contracts, or grant agreements."

(2) Pursuant to Section 12-6-6 NMSA 1978 (Criminal Violations), an agency or IPA 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 the 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 the agency 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 position: 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: *AU-C 501, Audit Evidence-Specific Considerations for Selected Items*, Paragraphs .04 through .10; and *AU-C 620, Using the Work of an Auditor's Specialist*.

(3) 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; and

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

(4) Pledged collateral:

(a) All audit reports should disclose the collateral requirements in the notes to the financial statements. In addition, there should be a **supplementary schedule** 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
- (iii) Uninsured public funds 200,000
- (iv) Pledged collateral held by agency's agent in the agency's name (50,000)
- (v) Pledged collateral held by the pledging bank's trust department in the agency's name (75,000)
- (vi) Pledged collateral held by the pledging financial institution (12,500)
- (vii) Pledged collateral held by the pledging bank's trust department or agent but not in the agency's name (12,500)
- (viii) Uninsured and uncollateralized (\$50,000)

*Beginning January 1, 2013, noninterest-bearing transaction accounts will no longer be insured separately from depositors' other accounts at the same FDIC-insured depository institutions (IDI). Instead, noninterest-bearing transaction accounts will be added to any of a depositor's other accounts in the applicable ownership category, and the aggregate balance insured up to at least the standard maximum deposit insurance amount of \$250,000 per depositor, at each separately chartered IDI. See the FDIC website at <http://www.fdic.gov/deposit/deposits/unlimited/expiration.html>, for more information.

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) above.

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)

(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. State agencies should not request the pledged collateral information from the state treasurer. In the event pledged collateral information specific to the state 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.

(5) 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 http://www.nmsto.gov/gasb_40_disclosure; 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 2.2.2.10 NMAC 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 14.52 and AAG-SLV 14.88 (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 after the auditor confirms the finding with the agency's budget oversight entity (if applicable), 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 an "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 investment 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 investment 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 and the *AICPA Audit and Accounting Guide Government Auditing Standards and Circular A-133 Audits* (latest edition), 4.51, Appendix A Example No. 4-2.

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 7 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 4.18 (2011). This statement should be modified in accordance with GAGAS 2.24b (July 2011) if some GAGAS requirements were not followed. As applicable, the first sentence of the SAS 119 (AU-C 725) 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*, (latest edition) 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 and are classified as not warranting the attention of those charged with governance pursuant to GAGAS 4.26, 2011 revision) that must be reported pursuant to Section 12-6-5 NMSA 1978. 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. If there are no findings classified as "other matters" that do not warrant the attention of those charged with governance pursuant to GAGAS 4.26, (2011 revision), the IPA shall omit from the report the paragraph that provides, "We also noted certain other matters that are required to be reported pursuant to Section 12-6-5 NMSA 1978."

(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 Q 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 (AU-C 725) 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 Section 12-6-5 NMSA 1978, GAGAS 4.17 and AU-C 265.11 to 265.16); 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 725 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 AU-C 402. The AU-C section has been updated to: (1) allow the IPA to make reference to the work of the service auditor, to explain a modification of the IPA's opinion (AU-C 402.22) if applicable; and (2)

require the IPA to inquire of management of the user entity regarding whether the user entity is aware of any service organization fraud, noncompliance with laws and regulations, or uncorrected misstatements that affect the financial statements of the user entity (AU-C 402.19).

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 GASBS 62.69. 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 position (GASBS 34 Paragraph 110 as amended

by GASBS 63) 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 (AU-C 725) 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. SAS 122: *Clarification and Recodification*:

(1) This statement is effective for audits of financial statements for periods ending on or after December 15, 2012 (FY 13). SAS 112 contains:

(a) the *Preface to Codification of Statements on Auditing Standards, Principles Underlying an Audit Conducted in Accordance with Generally Accepted Auditing Standards*; and

(b) 39 additional clarified statements on auditing standards.

(2) SAS 122 recodified and supersedes all outstanding SASs through No. 121 except the following ones:

(a) SAS No. 51, *Reporting on Financial Statements Prepared for Use in Other Countries*;

(b) SAS No. 59, *The Auditor’s Consideration of an Entity’s Ability to Continue as a Going Concern*;

(c) SAS No. 65, *The Auditor’s Consideration of the Internal Audit Function in an Audit of Financial Statements*;

(d) SAS No. 87, *Restricting the Use of the Auditor’s Report*;

(e) SAS No. 117, *Compliance Audits*;

(f) SAS 118, *Other Information in Documents Containing Audited Financial Statements*;

(g) SAS 119, *Supplementary Information in Relation to the Financial Statements as a Whole*; and

(h) SAS 120, *Required Supplementary Information*.

(3) SAS 122 also withdrew SAS

25, *Association with Financial Statements*.

DD. SAS 123, *Omnibus Statement on Auditing Standards*: This statement amends SAS Nos. 117 and 118 to conform to SAS No. 122 and address other changes required due to the clarity project in the following AU-C Sections: 200, overall objectives; 230, audit documentation; 260, the auditor’s communication with those charged with governance; 705, modifications to the opinion; and 915, reports on application of requirements of an applicable financial reporting framework. The statement is effective for audits of financial statements for periods ending on or after December 15, 2012 (FY13). The amendments to SAS 117 will result in updated language in 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*.

EE. SAS 125, *Alert That Restricts the Use of the Auditor’s Written Communication*: This statement is effective for the auditor’s written communications issued on or after December 15, 2012 (FY13). It replaces the term “restricted use” with “intended use” in an “other-matter” paragraph when the auditor is required to, or decides to, include language that restricts the use of the auditor’s written communication in connection with an audit. Applicable types of written communications are reports, letters, presentations, or communications. Circumstances in which the auditor would “decide” to restrict the use of a communication are: when only a limited number of users would have adequate understanding of the criteria; when the criteria are available to only specified parties; or when the subject matter of the communication is a by-product of the engagement. See the applicable *AICPA Audit Guide* example language for this updated paragraph.

FF. SAS 126, *The Auditor’s Consideration of an Entity’s Ability to Continue as a Going Concern (Redrafted)*: This statement is effective for the audits of financial statements for periods ending on or after December 15, 2012 (FY13). The statement supersedes SAS No. 59, *The Auditor’s Consideration of an Entity’s Ability to Continue as a Going Concern*, as amended. This statement does not significantly change or expand SAS No. 59, as amended, but has made the format consistent with the other clarified SASs. The planned rewrite of this Statement for the purpose of convergence with *International Standards on Auditing 570, Going Concern*, has been postponed pending issuance of the related FASB accounting guidance.

GG. GASBS 60, *Accounting and Financial Reporting for Service Concession Arrangements*: This statement addresses financial reporting issues related

to service concession arrangements (SCAs), a type of public-private or public-public partnership. An SCA is an arrangement between a transferor (government) and an operator (governmental or nongovernmental entity) in which the transferor conveys to an operator the right and related obligation to provide services through the use of infrastructure or another public asset in exchange for significant consideration and the operator collects and is compensated by fees from third parties.

HH. *GASBS 61, The Financial Reporting Entity: Omnibus an Amendment of GASB statements No. 14 and No. 34*: This statement modifies certain requirements for inclusion of component units in the financial reporting entity. For organizations that previously were required to be included as a component unit because of meeting the fiscal dependency criterion, now a financial benefit or burden relationship also has to be present between the primary government and the organization for that organization to be included in the reporting entity as a component unit. This statement is effective for periods beginning after June 15, 2012 (FY13).

II. *GASBS 62, Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*: This statement makes available in a GASB statement all applicable accounting and financial reporting guidance previously available only in the FASB and AICPA pronouncements.

JJ. *GASBS 63, Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*: This statement amends GASBS 34 to include deferred outflows of resources and deferred inflows of resources as elements of a financial statement along with assets and liabilities. Deferred outflows of resources is consumption of net assets by the government that is applicable to a future reporting period. Deferred inflows of resources is acquisition of net assets by the government that is applicable to a future reporting period. This statement also renames net assets as "net position." Net position is to be displayed in three components: net investment in capital assets; restricted (distinguishing between major categories of restrictions); and unrestricted. The statement is effective for financial statements for periods beginning after December 15, 2011 (FY13).

[2.2.2.10 NMAC - N, 2.2.2.10 NMAC, 2-28-13]

2.2.2.11 THE ACCOUNTABILITY IN GOVERNMENT ACT:

A. This section applies to agencies that have performance measures associated with their budgets. The purpose of the Accountability in Government Act

(Sections 6-3A-1 to 6-3A-9 NMSA 1978) is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

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

C. The auditor's responsibilities for performing procedures and reporting on supplemental information (SI) are provided in *AU-C Section 725, Supplementary Information in Relation to the Financial Statements as a Whole*. The auditor should apply the procedures required by *AU-C 725* to the agency's performance data included in the schedule in order to determine whether it is fairly stated, in all material respects, in relation to the financial statements as a whole.

D. The IPA should include this schedule in the related reporting in the other-matter paragraph pursuant to *AU-C 725.09*, regarding whether such information is fairly stated in all material respects in relation to the financial statements as a whole.

[2.2.2.11 NMAC - Rp, 2.2.2.11 NMAC, 2-28-13]

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 60 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, unless the December 15 falls on a weekend, then next business day. 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 <http://www.nmdfa.state.nm.us/FinancialControl.aspx>.

(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 position/fund balance:

(a) Pursuant to GASBS 63.8 the government-wide statement of net position and the proprietary fund statement of net position should show net position as: (i) net investment in capital assets; (ii) restricted (distinguishing between major categories of restrictions); and (iii) unrestricted. Pursuant to GASBS 63.10, "Restricted component of net position consists of restricted assets reduced by liabilities and deferred inflows of resources related to those assets. Generally, a liability relates to restricted assets if the asset results from a resource flow that also results in the recognition of a liability or if the liability will be liquidated with the restricted assets reported." Pursuant to GASBS 63.11, "The unrestricted component of net position is the net amount of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the determination of net investment in capital assets or the restricted component of net position."

(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).

(c) The statement of fiduciary net position (fiduciary fund financial statement) should show net position as "held in trust for ..." (GASBS 34 Paragraph 108 as amended by GASBS 63).

(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 Sections 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> "resource information."

(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 13). 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 45 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 (2011) Paragraphs 4.18, 2.24 and 2.25.

(11) Budgetary basis for state agencies: Per the General Appropriation

Act Laws, 2012, Chapter 19, Section 3, item M, "For the purpose of administering the General Appropriation Act of 2012 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 Subsection C of Section 9 of the General Appropriation Act of 2012, 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 "forms."

(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 requirements 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 in the statement of net position and the balance sheet, not as cash or cash equivalents. The notes to the financial statements should contain the following disclosures for the SGFIP as required by GASBS 40:

(a) An explanation that credit

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

(b) Interest rate risk: (i) an explanation that interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment; (ii) disclosure required by GASBS 40 Paragraph 15, of the agency's SGFIP investment fair value as of the end of the fiscal year, and the maturities of the SGFIP for the fiscal year (per DFA or STO; and (iii) a statement that the agency does not have an investment policy that limits investment interest rate risk.

(c) The disclosure should also refer the reader to the separate audit report for the 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 resource information tab, memos and notices link, and comprehensive annual financial report.

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, as amended 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 (AU-C 725) opinion on the financial data schedule (FDS). The public housing authority must electronically submit a final approved FDS based on the audited financial statements no later than nine months after the public housing authority'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 (AU-C 725) 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. The IPA shall follow applicable guidance at AU-C 402 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 Paragraphs 6.17 and 13.38 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 \$250,000, 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 chartered by a school district and each charter school chartered by 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 position is required for pension trust funds, investment trust funds, and private-purpose trust funds. However, agency funds have no net position and will be excluded from this presentation (GASBS 34 Paragraph 110 as amended by GASBS 63). 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 (AU-C 725) opinion in the independent auditor's report.

(f) Capital expenditures by the New Mexico 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, that is effective for financial statements for periods beginning after June 15, 2012 (FY13). 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 (NMPISA): 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 30 receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Section 7-38-81(C) NMSA 1978, property taxes that have been delinquent for more than ten years, together with any

penalties and interest, are presumed to have been paid. The second schedule titled "county treasurer's property tax schedule" must show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. Property taxes levied in January 2012 are budgeted for the fiscal year July 1, 2012 through June 30, 2013. 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, 2013 | |
|--|-------------------|
| 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, 2013 | (4,330,993) |
| Property taxes receivable, end of year | <u>\$ 773,821</u> |
| Property taxes receivable by years: | |
| 2004-2012 | 226,344 |
| 2013 | 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 (AU-C 725) opinion does not meet this requirement. See Section 14.52 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 15 budget submission to HED. The only differences that should exist between the HED budget submission and the financial statement budget comparisons are: (a) adjustments made by the institution after September 15; and (b) 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 fund balance (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 \$250,000, 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 position 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 and GASBS 61 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 position;

(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 New Mexico 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, 2-28-13]

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 AU-C 230.16. The documentation must be either all hardcopy or all electronic. Office reviews of audit and AUP working papers include the review of firm documentation 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 AU-C 203.14.

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 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; or

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

D. Results of review: 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. If the firm disagrees with any comments, the firm shall provide references to professional standards supporting the firm's disagreement.

E. Revisions to audit report: Revisions to the audit reports resulting from reviews conducted by the federal inspector generals and the state auditor shall 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, 2-28-13]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing professional education: U.S. GAO *Government Auditing Standards, 2011 Revision* (GAGAS), Section 3.76 states "Auditors performing work in accordance with GAGAS, including planning, directing, performing audit procedures, or reporting on an audit in accordance with GAGAS, should maintain their professional competence through continuing professional education (CPE). Therefore, each auditor performing work in accordance with GAGAS should complete, every two years, at least 24 hours of CPE that directly relates to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. Auditors who are involved in any amount of planning, directly, or reporting on GAGAS audits and auditors who are not involved in those activities but charge 20 percent or more of their time annually to GAGAS audits should also obtain at least an additional 56 hours of CPE (for a total of 80 hours of CPE in every two-year period) that enhances the auditor's professional proficiency to perform audits. Auditors required to take the total 80 hours of CPE should complete at least 20 hours of CPE in each year of the two-year period. Auditors hired or initially assigned to GAGAS audits after the beginning of an audit organization's two-year CPE period should complete a prorated number of CPE hours." 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 3.82 states "each audit organization performing audits in accordance with GAGAS must: establish and maintain 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 performed by reviewers independent of the audit organization being reviewed at least once every 3 years." Required elements of each audit organization's system of quality control are described at GAGAS 3.83 to 3.96. Section 3.96 states "The audit organization should obtain an external peer review at least once every 3 years that is 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;

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

(c) if applicable, the detailed description of the findings, conclusions and recommendations related to deficiencies or significant deficiencies required by (GAGAS 3.103;

(d) auditor’s response to deficiencies or significant deficiencies (if applicable);

(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) 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 requirements of GAGAS 3.96 to 3.107s.

(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 or she 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 in order to perform a peer review in New Mexico.

(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 peer review rating, 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, 2-28-13]

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 G 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 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 R 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 and 2.2.2.15 NMAC. All reports for special audits, performance audits or attestation engagements related to financial fraud, waste or abuse in government undertaken pursuant to 2.2.2.15 NMAC, 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 following elements:

(a) the condition or description of the situation that exists, including the extent of the condition, like the number of instances the condition was found out of the number of samples tested and the amount of dollars involved compared to the amount of dollars tested;

(b) the criteria of the policy or procedure, law, regulation, ordinance, contract, or grant agreement excerpt that illustrates what is expected;

(c) the cause of the condition, if it

can be determined;

(d) the effect or impact of the condition; and

(e) the IPA's recommendation addressing each condition and cause.

(5) Upon completion of the report, the IPA shall deliver the organized and bound report to the state auditor. 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 the PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, 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 in the letter.

(6) 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.

(7) 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 4.30 to 4.32 and GAGAS 4.40 to 4.44.

(8) 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. 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. The primary government cannot exclude the component units in this process. All applicable component units and the primary government should be included in one request for progress payment approval. The office will not process separate progress payment approvals submitted by the component units.

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. All reports for special audits, performance audits or attestation engagements related to financial fraud, waste or abuse in government undertaken pursuant to 2.2.2.15 NMAC, 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 following elements:

(a) the condition or description of the situation that exists, including the extent of the condition, like the number of instances the condition was found out of the number of samples tested and the amount of dollars involved compared to the amount of dollars tested;

(b) the criteria of the policy or procedure, law, regulation, ordinance, contract, or grant agreement excerpt that illustrates what is expected;

(c) the cause of the condition, if it can be determined;

(d) the effect or impact of the condition; and

(e) the IPA's recommendation addressing each condition and cause; 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.

(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 described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, 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 4.30 to 4.32 and GAGAS 4.40 to 4.44.

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 2-28-13]

2.2.2.16 ANNUAL 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 (3) and (4) 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 Paragraph 6 of Subsection G of Section 2.2.2.8 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.

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 an IPA recommendation form and contract due date of one day after the end of the fiscal year. If a completed IPA recommendation form and AUP contract are not delivered to the state auditor by the applicable deadline, the IPA must include a finding of noncompliance with Paragraph (7) of Subsection D of Section 2.2.2.16 in the AUP report.

(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) if applicable, a copy of the firm's current peer review with a rating of at least pass with deficiencies. A peer review rating of less than "pass with deficiencies" (under the 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.**

(f) If the local public body fails to submit an IPA recommendation by the

deadline, the office shall send a letter to the local public body reminding the local public body that pursuant to Section 12-6-14 NMSA 1978, the state auditor may select an IPA to perform the AUP engagement if the local public body has not submitted a recommendation within 60 days of the date of the notification letter sent by the state auditor to the local public body with instructions to procure an AUP contract for the fiscal year specified.

(g) The office may select an IPA for the local public body pursuant to Section 12-6-14 NMSA 1978 and shall inform the local public body of the selection in writing.

E. The state auditor shall consider and approve or disapprove the IPA recommendation and related agreed upon procedures contract pursuant to Subsection H 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 R 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. The IPA will provide an electronic copy of the dated signed engagement letter to the office within 30 days of execution. Failure to submit the copy of the engagement letter could result in a contract restriction. See Paragraph (4) of Subsection R 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 ensures that progress payments made do not exceed the percentage that the AUP engagement is completed. 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. 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. If the due date falls on a weekend or holiday the audit report should be postmarked by the following workday. 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. This notification shall consist of a letter with official signatures, not an email. However, a scanned version of the official letter sent via email that contains the required signatures is acceptable. 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 described at Paragraph (3) of Subsection C of 2.2.2.9 NMSA, 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 pursuant to Subsections E and F of 2.2.2.8 NMAC; or

(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 accountancy board for possible licensure action.

K. IPA independence: IPA's that perform agreed upon procedure engagements under the tiered system must maintain independence in mind and appearance, 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 IPA should follow the requirements set forth at Paragraph (1) of Subsection M of 2.2.2.8 NMAC.

(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, 2-28-13]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2013

| Volume XXIV | Submittal Deadline | Publication Date |
|-----------------|--------------------|------------------|
| Issue Number 1 | January 2 | January 15 |
| Issue Number 2 | January 16 | January 31 |
| Issue Number 3 | February 1 | February 14 |
| Issue Number 4 | February 15 | February 28 |
| Issue Number 5 | March 1 | March 15 |
| Issue Number 6 | March 18 | March 29 |
| Issue Number 7 | April 1 | April 15 |
| Issue Number 8 | April 16 | April 30 |
| Issue Number 9 | May 1 | May 15 |
| Issue Number 10 | May 16 | May 31 |
| Issue Number 11 | June 3 | June 14 |
| Issue Number 12 | June 17 | June 28 |
| Issue Number 13 | July 1 | July 15 |
| Issue Number 14 | July 16 | July 31 |
| Issue Number 15 | August 1 | August 15 |
| Issue Number 16 | August 16 | August 30 |
| Issue Number 17 | September 3 | September 16 |
| Issue Number 18 | September 17 | September 30 |
| Issue Number 19 | October 1 | October 15 |
| Issue Number 20 | October 16 | October 31 |
| Issue Number 21 | November 1 | November 14 |
| Issue Number 22 | November 15 | November 27 |
| Issue Number 23 | December 2 | December 13 |
| Issue Number 24 | December 16 | December 30 |

The *New Mexico Register* is the official publication for all notices of rule making, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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

For further information, call (505) 476-7907.