

New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

Volume XXVIII - Issue 5 - March 14, 2017

COPYRIGHT © 2017
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XXVIII, Issue 5

March 14, 2017

Table of Contents

Notices of Rulemaking and Proposed Rules

Albuquerque-Bernalillo County Air Quality Control Board

Notice Of Correction Regarding April 12, 2017 Public Hearing To Consider Adoption Of Proposed State Plan For Control Of Certain Emissions From Existing Municipal Solid Waste Landfills And To Amend 20.11.63 Nmac, New Source Performance Standards For Stationary Sources 20.11.64 Nmac, Emission Standards For Hazardous Air Pollutants For Stationary Sources 20.11.71 Nmac, Municipal Solid Waste Landfills.....	194
---	-----

Game and Fish, Department of

State Game Commission Meeting And Rule Making Notice.....	195
---	-----

Public Regulation Commission

Notice Of Proposed Rulemaking.....	196
Notice Of Proposed Rulemaking.....	196

Regulation and Licensing Department

Nursing Home Administrators Board

Public Rule Hearing And Regular Board Meeting.....	197
--	-----

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

Agriculture, Department of

21.17.36 NMAC	A/E	Pecan Weevil Interior Quarantine.....	198
---------------	-----	---------------------------------------	-----

Auditor, Office of the

2.2.2 NMAC	R	Requirements For Contracting and Conducting Audits of Agencies.....	198
2.2.2 NMAC	N	Requirements For Contracting and Conducting Audits of Agencies.....	198

Educational Retirement Board

2.82.1 NMAC	A	Educational Retirement - General Provisions.....	239
2.82.8 NMAC	A	Investment Policies and Practices.....	239

Public Employees Retirement Association

2.80.200 NMAC	A	Organization and Operation of the Public Employees Retirement Board.....	240
---------------	---	--	-----

Public Regulation Commission

18.3.12 NMAC	R	Towing Services.....	242
18.3.15 NMAC	R	Fuel Surcharge For Wrecker Services Performing Non-Consensual Tows.....	242
18.3.12 NMAC	N	Towing Services.....	242
18.3.15 NMAC	N	Fuel Surcharge For Wrecker Services Performing Non-Consensual Tows.....	249
18.3.2 NMAC	A	Operating Authorities.....	250

Regulation and Licensing Department

Pharmacy, Board of

16.19.2 NMAC	A	Examinations.....	251
16.19.20 NMAC	A	Controlled Substances.....	252

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) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

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

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF CORRECTION REGARDING APRIL 12, 2017 PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED STATE PLAN FOR CONTROL OF CERTAIN EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS AND TO AMEND 20.11.63 NMAC, NEW SOURCE PERFORMANCE STANDARDS FOR STATIONARY SOURCES 20.11.64 NMAC, EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR STATIONARY SOURCES 20.11.71 NMAC, MUNICIPAL SOLID WASTE LANDFILLS

Previously published notice of the above referenced hearing contained erroneous information. The corrected information follows.

On February 28, 2017, notice was published via the Albuquerque Journal, New Mexico Register, and email list-serve of the April 12, 2017 rulemaking hearing of the Albuquerque - Bernalillo County Air Quality Control Board, regarding adoption of a state plan for municipal solid waste landfills and related amendments to air quality regulations.

Due to a typographical error, the February 28, 2017 published notice stated erroneously that written notices of intent to provide technical testimony at the hearing were due to the hearing clerk "by 5:00 p.m. on Tuesday, August 30, 2016."

The correct time and date for filing of notices of intent to present technical testimony at the hearing is by 5:00 p.m., Tuesday, March 28, 2017, in accordance with 20.11.82.20.A NMAC.

In addition, the heading of the February 28, 2017 notice erroneously cited the title of 20.11.64 NMAC as "*National Emissions Standards for Hazardous Air Pollutants for Stationary Sources*." The correct title of 20.11.64 NMAC is "*Emission Standards for Hazardous Air Pollutants for Stationary Sources*."

A corrected version of the full public notice appears below.

CORRECTED HEARING NOTICE

On Wednesday, April 12, 2017, 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, One Civic Plaza NW, Albuquerque, NM 87102. The hearing will address a petition for regulatory change from the City of Albuquerque, Environmental Health Department ("EHD"), proposing to take certain actions in response to rules promulgated by the U.S. Environmental Protection Agency ("EPA") affecting municipal solid waste landfills ("MSW landfills") as described below. Following the hearing, the Air Board at its regular monthly meeting the same evening is expected to consider adopting the regulatory actions and related submittals to EPA proposed in the EHD petition.

The agenda for the April 12, 2017 regular monthly meeting of the Air Board will be viewable at least 72 hours in advance of the meeting at <http://www.cabq.gov/airquality/air-quality-control-board/events/april-12-2017-air-quality-control-board-meeting>.

On August 29, 2016, the EPA issued two final rules affecting emissions of methane from MSW landfills. The first of these rules issued updated emission guidelines for existing

MSW landfills. This rule requires states to submit to EPA, by May 30, 2017, a plan under Section 111(d) of the Clean Air Act to implement the updated emission guidelines. The second EPA rule issued standards of performance for newly constructed, modified, or reconstructed MSW landfills.

The City of Albuquerque Environmental Health Department (EHD), Air Quality Program, has petitioned the Air Board, proposing regulatory changes that would address the federal rules for MSW landfills in the following ways:

- (1) EHD proposes to submit a state plan to EPA under Section 111(d) of the Clean Air Act, demonstrating compliance with requirements of the federal emission guidelines for existing MSW landfills, codified at 40 CFR Part 60, Subpart Cf.
- (2) EHD proposes to amend 20.11.71 NMAC, Municipal Solid Waste Landfills, to make the requirements for existing MSW landfills in 40 CFR Subpart Cf enforceable as state law.
- (3) EHD proposes to amend 20.11.63 NMAC, New Source Performance Standards for Stationary Sources, to incorporate by reference federal performance standards for new, modified, and reconstructed MSW landfills under Section 111 of the Clean Air Act, at 40 CFR Part 60, Subpart XXX. EHD's proposed amendments to this local regulation would also incorporate by reference Section 111 federal performance standards for other stationary sources of air pollution, in addition to MSW landfills, promulgated by EPA as of January 23, 2017.
- (4) EHD proposes to amend 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, in order to incorporate federal emission standards for hazardous air pollutants under Section 112 of the Clean Air Act.

These amendments would not relate to landfills but would align additional air quality standards with federal requirements, in accordance with past practice of updating 20.11.63 and 20.11.64 NMAC in tandem to assure uniform regulatory treatment of local stationary sources.

The Public Review Draft of the state plan for landfills and amended 20.11.63, 20.11.64, and 20.11.71 NMAC may be reviewed during regular business hours at the Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, NM 87102. Copies of the Public Review Draft may be obtained by contacting Andrew Daffern, Air Quality Control Board Liaison, at (505) 768-2601 or adaffern@cabq.gov. The Public Review Drafts of these documents and EHD's petition for regulatory change, AQCB Petition No. 2017-1, can also be found on the web site of EHD, Air Quality Program, at: <http://www.cabq.gov/airquality/air-quality-control-board/petitions>.

The hearing on the proposed regulatory change will be conducted in accordance with NMSA 1978 § 74-2-6; City of Albuquerque Joint Air Quality Control Board Ordinance, ROA § 9-5-1-6, Adoption of Regulations, Notice and Hearing; Bernalillo County Ordinance, Section 30-35, Adoption of Regulations, Notice and Hearings; and 20.11.82 NMAC, Rulemaking Procedures—Air Quality Control Board.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Interested persons may present technical or non-technical testimony.

Persons wishing to present technical testimony must file with the hearing clerk a written notice of intent (NOI) to do so by 5:00 p.m. on Tuesday, March 28, 2017. The contact information for the hearing clerk is:

Andrew Daffern, Air Quality Control Board Liaison, Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, New Mexico 87102. Andrew Daffern may be reached by phone at (505) 768-2601 or by email at adaffern@cabq.gov.

As required by 20.11.82.20 NMAC, the NOI 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) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) include the text of any recommended modifications to the proposed regulatory change;
- (5) list and attach an original and 15 copies of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and
- (6) be served on the petitioner, if the document is an NOI filed by any person other than the petitioner.

An NOI must also follow the filing and service requirements of 20.11.82.16 NMAC.

As provided by 20.11.82.22 NMAC, any member of the general public may present non-technical testimony at the hearing. No prior notification is required to present non-technical testimony. Any member of the public may also offer exhibits in connection with non-technical testimony, as long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file the written statement prior

to the hearing, or submit it at the hearing. Written statements submitted prior to the hearing may be directed to the hearing clerk, Andrew Daffern, at the above contact information.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the Albuquerque-Bernalillo County Air Quality Control Board Liaison as soon as possible before the meeting date at (505) 768-2601. Those in need of hearing assistance may call 711.

The City of Albuquerque does not discriminate on the bases of race, color, national origin, sex, age or disability. If you believe you have been discriminated against, you may submit a complaint at www.cabq.gov/humanrights/filing-a-complaint. You may also contact Gabe Campos at ODHR@cabq.gov or 505-768-4589.

GAME AND FISH, DEPARTMENT OF

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

On Wednesday, April 5, 2017, beginning at 9:00 a.m., at the Central Valley Co-Op, 1403 N 13th Street, Artesia, New Mexico, the State Game Commission will meet in public session to hear and consider action as appropriate on the following:
 Discussion with Senator Campos;
 Presentation by the State Land Office;
 Request for an Extension of Lease by New Mexico Forestry Division on Richards Property Located in Santa Fe, New Mexico; Revocations; Final Presentation of Recovery Plan for Gould's Turkey and Gila Monster;
 Draft Rule Presentation of Migratory Bird Rule for 2017-2018 Hunting Seasons; Update on Development of Shooting Ranges in New Mexico; Update on Governor's Special Auction Banquet Results; Update on the Construction of Albuquerque Office and the Santa Fe Warehouse

Complex; Proposed Amendments to the Aquatic Invasive Species Rule 19.30.14 NMAC; Legislative Update; and Closed Executive Session.

Copies of proposed rule changes and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 72 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 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 Department at 505-476-8000 if a summary or other type of accessible format is needed.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Regulation Commission (NMPRC or Commission) gives notice of its proposed adoption of amendment to Rule 17.7.3 NMAC pertaining to Integrated Resource Planning regulated by the Commission pursuant to the Efficient Use of Energy Act (EUEA), Section 62-17-1 NMSA 1978. Copies of the Order Initiating Proposed Rulemaking and Establishing Workshop Schedule containing additional information and filing instructions may be downloaded from the Proposed Rulemaking section of the Commission's website

at <http://www.nmprc.state.nm.us> under Case No. 17-00022-UT or by calling the Commission's Records Management Bureau at (505) 827-6968.

Written Initial Comments and written Response Comments shall be filed by the deadlines below with the Commission's Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written Initial Comments not later than April 19, 2017, and written Response Comments not later than May 1, 2017. Comments shall refer to Case No. 17-000xx-UT.

A public hearing will be held on May 31, 2017, beginning at 2:00 p.m. at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe. The purpose of the hearing is to **receive oral comments**. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, **any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission's discretion**. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken **at the hearing as this is a rulemaking proceeding**.

The record of this case will close fourteen (14) days after the public hearing held on May 31, 2017 (date of record closure is June 14, 2017).

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. If you are an individual

with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

Statutory Authority: New Mexico Constitution, Article XI, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978, the Efficient Use of Energy Act (EUEA), Section 62-17-1 NMSA 1978.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

The Public Regulation Commission gives notice that in case number 17-00033-UT it has initiated a **proposed rulemaking** promulgating revisions to the Commission's rules for the purpose of rewriting Part 540 of Title 17 of Chapter 9 of the New Mexico Administrative Code (17.9.540 NMAC *et seq.*) relating to the customer protest process relating to the review of rates proposed by Rural Electric Cooperatives.

Copies of the Order Establishing Rulemaking Docket and Issuing Notice of Proposed Rulemaking containing additional information, a copy of the proposed rule changes, and filing instructions may be downloaded from the Proposed Rulemaking section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 17-00033-UT or by calling the Commission's Records Management Bureau at (505) 827-6968 (Melanie Sandoval).

Written Initial Comments and written Response Comments shall be filed by the deadlines below with the NMPRC's Record's Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management

Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written comments shall be filed not later than **May 12, 2017** and written responses not later than **May 22, 2017**. Comments shall refer to Case No. 17-00033-UT.

A **public comment hearing** will be held in this matter on **May 31, 2017, beginning at 1:00 p.m. in Santa Fe** at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe, NM 87501.

The public comment hearing will be held in order to receive oral comments from interested individuals. Since commenters are afforded the opportunity to submit written comments and written responses to the Commission, **any individual who wants to provide oral comments at the public comment hearing shall be limited to five (5) minutes to express those comments, subject to enlargement of such time at the Commission's discretion.** Only oral comments, but no testimony or other evidence, shall be taken at the hearing because this docket is a rulemaking proceeding. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing.

Unless the Commission or presiding officer rules otherwise, the record in **this rulemaking shall close twenty (20) days after the conclusion of the public hearing** or on **June 20, 2017**.

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this

process, please contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

Constitutional and Statutory Authority: New Mexico Constitution, Section 2 of Article XI (1996); NMSA 1978, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978 (1998); Section 8-8-15 NMSA 1978; and Sections 62-3-1, et seq., NMSA 1978.

REGULATION AND LICENSING DEPARTMENT NURSING HOME ADMINISTRATORS BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Nursing Home Administrators Board will hold a Rule Hearing on Friday, April 21, 2017. Following the Rule Hearing the New Mexico Nursing Home Administrators Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Nursing Home Administrators Board Rule Hearing will begin at 10:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held in the main conference room, at the Regulation and Licensing Department, located at 5500 San Antonio Drive NE, Albuquerque, New Mexico.

The purpose of the rule hearing is to consider adopting amendments to the Board Rules in 16.13.5 NMAC: Application for Licensure by Reciprocity.

The Board may go into executive session pursuant to 10-15-1.H of the Open Meetings Act to discuss pending complaints and licensure issues. A final agenda for the board meeting will be available at the Board Office at least 72 hours prior to the meeting and can be obtained on the website at www.rld.state.nm.us.

Persons desiring to present their views on the proposed rules may write to

request draft copies from the Board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico, or call (505) 476-4622 after March 22, 2017 or from the Board's website: <http://www.rld.state.nm.us/boards/>.

In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than April 6, 2017. Persons wishing to present their comments at the hearing will need 10 copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

Gabriella Romero, Administrator
PO Box 25101, Santa Fe, NM 87504

End of Notices of Rulemaking and Proposed Rules

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

AGRICULTURE, DEPARTMENT OF	AUDITOR, OFFICE OF THE	3/14/2017]
<p>This is an amendment to 21.17.36 NMAC, Sections 6 and 9, effective 02/22/2017.</p>	<p>The Office of the State Auditor approved, at its 1/12/2017 hearing, to repeal its rule 2.2.2 NMAC, Requirements For Contracting And Conducting Audits of Agencies (filed 3/1/2016) and replace it with 2.2.2 NMAC Requirements For Contracting And Conducting Audits of Agencies, effective 3/14/2017.</p>	<p>2.2.2.5 EFFECTIVE DATE: March 14, 2017, unless a later date is cited at the end of a section. [2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 3/14/2017]</p>
<p>21.17.36.6 OBJECTIVE: The objective of Part 36 of Chapter 17 is to prevent further spread of pecan weevil to New Mexico counties not known to be infested based on the findings from the office of the director of the department of agriculture. The findings of the director include pecan weevil being initially identified in residential pecan trees in [Clovis and Roswell New Mexico in December 2016 and January 2017] <u>Clovis, Roswell and Lovington, New Mexico in December 2016 and early 2017.</u> The findings have also determined that there has been a significant increase in pecan weevil infested residential trees in Artesia and Hobbs, New Mexico, where eradication efforts are already underway. In order to protect the economic viability of New Mexico's pecan industry, it is necessary to restrict the movement of in-shell pecans out of the identified areas, in order to reduce the risk of exposing pecan trees in other pecan weevil free regions, orchards, and processing facilities in the state to pecan weevil. [21.17 36.6 NMAC - N/E, 1/27/2017; A/E, 2/22/2017]</p>	<p>AUDITOR, OFFICE OF THE</p> <p>TITLE 2 PUBLIC</p> <p>FINANCE</p> <p>CHAPTER 2 AUDITS OF GOVERNMENTAL ENTITIES</p> <p>PART 2 REQUIREMENTS FOR CONTRACTING AND CONDUCTING AUDITS OF AGENCIES</p>	<p>2.2.2.6 OBJECTIVE: The objective is to establish policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic audits of governmental agencies of the state of New Mexico. [2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 3/14/2017]</p>
<p>21.17.36.9 QUARANTINE AREAS: Quarantined area defined as the areas within the city limits of Artesia, Clovis, Hobbs, [and Roswell,] <u>Roswell and Lovington, New Mexico.</u> [21.17.36.9 NMAC - N/E, 1/27/2017; A/E, 2/22/2017]</p>	<p>2.2.2.1 ISSUING AGENCY: Office of the State Auditor. [2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 3/14/2017]</p> <p>2.2.2.2 SCOPE: Agencies as defined by the Audit Act and independent public accountants interested in contracting to perform audit services for those agencies. [2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 3/14/2017]</p> <p>2.2.2.3 STATUTORY AUTHORITY: Audit Act, 12-6-1 to 12-6-14 NMSA 1978. [2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 3/14/2017]</p> <p>2.2.2.4 DURATION: Permanent. [2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC,</p>	<p>2.2.2.7 DEFINITIONS:</p> <p>A. "AAG GAS" means AICPA Audit and Accounting Guide - Government Auditing Standards and Single Audits (latest edition).</p> <p>B. "AAG SLV" means AICPA Audit and Accounting Guide - State and Local Governments (latest edition).</p> <p>C. "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</p>

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.

D. “Audit” means both annual financial and compliance audits and agreed upon procedures, unless otherwise specified.

E. “Auditor” means independent public accountant.

F. “AICPA” means American institute of certified public accountants.

G. “AU-C” means U.S. auditing standards-AICPA (Clarified)

H. “AUP” means agreed upon procedures.

I. “CPA” means certified public accountant.

J. “CPE” means continuing professional education.

K. “DFA” means the New Mexico department of finance and administration.

L. “ERB” means the New Mexico education retirement board.

M. “FCD” means financial control division of the department of finance and administration.

N. “FDIC” means federal deposit insurance corporation.

O. “FDS” means financial data schedule.

P. “GAAP” means accounting principles generally accepted in the United States of America.

Q. “GAGAS” means the most recent revision of government auditing standards issued by the comptroller general of the United States (yellow book).

R. “GASB” means governmental accounting standards board.

S. “GAAS” means auditing standards generally accepted in the United States of America.

T. “GSD” means the New Mexico general services department.

U. “GRT” means gross receipts tax.

V. “HED” means the New Mexico higher education department.

W. “HUD” means United States (US) department of housing and urban development.

X. “IPA” means independent public accountant.

Y. “IRC” means internal revenue code.

Z. “LGD” means the local government division of department of finance and administration (DFA).

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

BB. “NCUSIF” means national credit union shares insurance fund.

CC. “NMAC” means New Mexico administrative code.

DD. “NMSA” means New Mexico statutes annotated.

EE. “Office” or “OSA” means the New Mexico office of the state auditor.

FF. “OMB” means the United States office of management and budget.

GG. “PED” means the New Mexico public education department.

HH. “PERA” means the New Mexico public employee retirement association.

II. “PHA” means public housing authority.

JJ. “REAC” means real estate assessment center.

KK. “REC” means regional education cooperative.

LL. “RSI” means required supplementary information.

MM. “SAS” means the AICPA’s statement on auditing standards.

NN. “SHARE” means statewide human resources accounting and management reporting system.

OO. “SI” means supplementary information.

PP. “State auditor” may refer to either the elected state

auditor of the state of New Mexico, or personnel of his office designated by him.

QQ. “STO” means state treasurer’s office.

RR. “Tier” is established based on the amount of each local public body’s annual revenue, pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.16 NMAC.

SS. “UFRS” means uniform financial reporting standards.

TT. “Uniform guidance” Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

UU. “U.S. GAO” means the United States government accountability office. [2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3/14/2017]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. Firm profiles: For an IPA to be included on the state auditor’s list of approved firms, an IPA shall submit a firm profile online annually on January 5th or on the next business day, in accordance with the guidelines set forth herein. The OSA shall review each firm profile for compliance with the requirements set forth in this rule. IPAs shall 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 OSA, and who have complied with all the requirements of this rule, including but not limited to:

(1) Subsection A of 2.2.2.14 NMAC, continuing professional education requirements for all staff that the firm will use on any New Mexico governmental engagements;

(2) listed professional service contracts the firm entered into;

(3) for IPAs who have audited agencies under

this rule in the past, they shall have previously complied with: 2.2.2.9 NMAC, Report Due Dates, including notifying the state auditor regarding late audit reports and 2.2.2.13 NMAC, Review of Audit Reports and Audit Documentation.

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. The state auditor's list of approved firms shall be reviewed and updated on an annual basis. An IPA on the list of approved firms is approved to perform government audits until the list of approved firms is published for the following year; provided that the OSA may restrict firms at any time for failure to submit firm profile updates timely. An IPA that is included on the state auditor's list of approved firms for the first time shall be subject to an OSA quality control review of the IPA's working papers. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date). The state auditor shall 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 OSA. The OSA shall inform all IPAs whose firm profiles were submitted by the due date whether they are on the list of approved firms and 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.

C. 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;

(4) the IPA has been restricted in the past and has not demonstrated improvement (this includes submitting excessively deficient audit reports or having excessively deficient workpapers);

(5) the IPA made false statements in their firm profile or any other official communication with the OSA that were misleading enough to merit disqualification; or

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

D. Restriction:

(1) IPAs may be placed on restriction based on the OSA's review of the firm profile and deficiency considerations as described below. Restriction may take the form of limiting either the type of engagement or the number of audit contracts, or both, that the IPA may hold. The OSA may impose a corrective action plan associated with the restriction. The restriction remains in place until the OSA notifies the IPA that the restriction has been modified or removed. The deficiency considerations include, but are not necessarily limited to:

(a) failure to submit reports in accordance with report due dates provided in Subsection A of 2.2.2.9 NMAC, or the terms of their individual agency contract(s);

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

(c) failure to comply with this rule;

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

(e) poor quality working papers as

determined by the OSA;

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

(g) failure to contract through the OSA for New Mexico governmental audits or agreed upon procedures engagements;

(h) failure to inform agency in prior years that the IPA is restricted;

(i) failure to comply with the confidentiality requirements of this rule;

(j) failure to invite the state auditor or his designee to engagement entrance conferences, progress meetings or exit conferences after receipt of related notification from the OSA;

(k) failure to comply with OSA referrals or requests in a timely manner;

(l) suspension or debarment by the U.S. General Services Administration;

(m) false statements in the IPA's firm profile or any other official communication with the OSA;

(n) failure to cooperate timely with requests from successor IPAs, such as reviewing workpapers; or

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

(2) The OSA shall notify any IPA that it proposes to place under restriction. If the proposed restriction includes a limitation on the number of engagements that an IPA is eligible to hold, the IPA shall not submit proposals or bids to new 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 a proposed contract.

(4) If an agency or local public body submits an unsigned contract to the OSA for an IPA that was ineligible to perform that contract due to its restriction, the OSA shall reject the unsigned contract.

E. Procedures for imposition of restrictions:

(1) The state auditor may place an IPA under restriction in accordance with Subsection D of 2.2.2.8 NMAC.

(a) The state auditor or his designee shall cause written notice of the restriction to be sent by email and 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 nature of the restriction;
- (ii) the conditions of the restriction;
- (iii) the reasons for the restriction;
- (iv) the action to place the IPA on restriction is brought pursuant to 12-6-3.A NMSA 1978 and these regulations;
- (v) the IPA may request, in writing, reconsideration of the proposed contract restriction which shall be received by the OSA within 15 calendar days from the day the IPA receives the letter of restriction; and
- (vi) the e-mail 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 OSA'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 OSA'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 restriction(s) if the OSA does not receive a written request for reconsideration within 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 the time an IPA has to submit a request for reconsideration.

(2) The OSA 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 OSA shall make a determination within 15 calendar days from the date of the personal meeting. The OSA may uphold, modify or withdraw its 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 email and certified mail, return receipt requested.

F. Procedures to obtain professional services from an IPA: Concurrent with publication of the list of approved firms, the OSA shall authorize agencies to select an IPA to perform their audit or agreed-upon procedures engagement. Agencies are prohibited from beginning the process of procuring IPA services until they receive the OSA authorization. Agencies that wish to begin the IPA procurement process prior to receiving OSA authorization may request an exception, however any such exceptions granted by OSA are subject to changes in the final audit rule applicable to the audit and changes in restrictions to, or disqualifications of, IPAs. The notification shall inform the agency that it shall consult its prospective IPA to determine whether the prospective IPA has been restricted by the OSA as

to the type of engagement or number of contracts it is eligible to perform. Agencies that may be eligible for the tiered system shall complete the evaluation described in Subsection B of 2.2.2.16 NMAC. Agencies that receive and expend federal awards shall follow the uniform guidance procurement requirements from 2 CFR 200.317 to 200.326 and 200.509, and shall also incorporate applicable guidance from the following requirements. Agencies shall comply with the following procedures to obtain professional services from an IPA for an audit or agreed-upon procedures engagement.

(1) Upon receipt of written authorization from the OSA to proceed, and at no time before then unless OSA has granted an exception, the agency shall identify all elements or services to be solicited pursuant to this rule and conduct a procurement that includes each applicable element of the annual financial audit or agreed upon procedures engagement.

(2) Quotations or proposals for annual financial audits shall contain each of the following elements:

- (a) financial statement audit;
- (b) federal single audit (if applicable);
- (c) financial statement preparation so long as the IPA has considered any threat to independence and mitigated it;
- (d) other non-audit 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).

(3) The agency is encouraged to request multiple year proposals for audit and AUP services (not to exceed three years), however the term of the contract shall be for one year only. The parties shall enter a new audit contract each year. The agency is responsible for procuring

IPA services in accordance with all applicable laws and regulations which may include, but are not limited to, the State Procurement Code (Chapter 13, Article 1 NMSA 1978) or equivalent home rule procurement provisions; GSD Rule, 1.4.1 NMAC, Procurement Code Regulations, if applicable; DFA Rule, 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services; Uniform Guidance; and Section 13-1-191.1 NMSA 1978 relating to campaign contribution disclosure forms. In the event that either of the parties to the contract elects not to contract for all of the years contemplated by a multiple year proposal, or the state auditor disapproves the contract, the agency shall use the procedures described above to procure services from a different IPA.

(4) If the agency is a component of a primary government, the agency's procurement for audit services shall include the AU-C 600 (group audits) requirements for the IPA to communicate and cooperate with the group engagement partner and team, and the primary government. This requirement applies to agencies and universities that are part of the statewide CAFR, other component units of the statewide CAFR and other component units of any primary government that use a different audit firm from the primary government's audit firm. Costs for the IPA to cooperate with the group engagement partner and team, and the primary government, caused by the requirements of AU-C 600 (group audit) may not be charged in addition to the cost of the engagement, as the OSA views this in the same manner as compliance with any other applicable standard.

(5) Agencies are encouraged to include representatives of the offices of separately elected officials such as county treasurers, and component units such as charter schools and housing authorities, in the IPA selection process. As part of their evaluation process, the OSA

recommends that agencies consider the following when selecting an IPA:

(a) responsiveness to the request for proposal (the firm's integrity, record of past performance, financial and technical resources);

(b) relevant experience, availability of staff with professional qualifications and technical abilities;

(c) results of the firm's peer and external quality control reviews; and

(d) weighting the price criteria less than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee.

Upon the OSA's request, the agency shall make accessible to the OSA all of the IPA procurement and selection documentation.

(6) After selecting an IPA, each agency shall enter the appropriate requested information online on the OSA-connect website (www.osa-app.org). In order to do this, the agency shall register on OSA-Connect and obtain a user-specified password. The agency's user shall then use OSA-Connect to enter information necessary for the contract and for the OSA's evaluation of the IPA selection. After the agency enters the information, the OSA-Connect system generates a draft contract containing the information entered. The agency shall submit to the OSA for approval a copy of the unsigned draft contract by following the instructions on OSA-Connect. Note that the IPA recommendation form no longer exists as a separate document, because OSA-Connect gathers and delivers to the OSA the information historically submitted on the IPA recommendation form.

(7) The OSA shall notify the agency as to the OSA's approval or rejection of the selected IPA and contract. The OSA's review of audit contracts does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is

responsible for its own compliance with applicable procurement laws, regulations or policies. After the agency receives notification of approval of the selected IPA and contract from the OSA, the agency is responsible for getting the contract signed and sent to any oversight agencies, including DFA, for approval (if applicable). The OSA shall not physically sign the contract. After the agency obtains all the required signature and approvals of the contract, the agency shall submit an electronic portable document format (PDF) copy of the final signed contract to the OSA by electronic mail to: reports@osa.state.nm.us.

(8) The agency shall deliver the unsigned contract generated by OSA-Connect to the OSA by the due date shown below. In the event that the due date falls on a weekend or holiday, the due date shall be the next business day. If the unsigned contract is not submitted to the state auditor by these due dates, the IPA may, according to professional judgment, include a finding of non-compliance with Subsection F of 2.2.2.8 NMAC in the audit report or agreed-upon procedures report.

(a) Regional education cooperatives, cooperative educational services, independent housing authorities, hospitals and special hospital districts: April 15;

(b) school districts, counties, and higher education: May 1;

(c) incorporated counties (of which Los Alamos is the only one), local workforce investment boards and local public bodies that do not qualify for the tiered system: May 15;

(d) councils of governments, district courts, district attorneys, state agencies and the state of New Mexico CAFR: June 1;

(e) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC: July 1;

(f)

agencies with a fiscal year end other than June 30 shall use a due date 30 days before the end of the fiscal year; and

(g)

component units that are being separately audited: on the primary government's due date.

(h)

Charter schools that are chartered by the PED and agencies that are subject to oversight by the HED have the additional requirement of submitting their audit contract to PED or HED for approval (12-6-14 NMSA 1978).

(i)

In the event the agency's unsigned contract is submitted to the OSA, but is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a contract with a different IPA using OSA-Connect. This process shall continue until the state auditor approves an unsigned contract. During this process, whenever an unsigned contract is not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days after the date of the disapproval and shall include documentation in support of its IPA selection. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(9) The

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

(10) If the

agency fails to submit an unsigned contract by the due date set forth in this rule, or, if no due date is applicable, within 60 days of notification from the state auditor to engage an IPA, the state auditor may conduct the audit or 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 1978.

(11) In selecting

an IPA for an agency pursuant to Subsection F of 2.2.2.8 NMAC 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 IPA shall be drawn from the list of approved IPAs maintained by the state auditor;

(b)

an IPA subject to restriction pursuant to Subsection D 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.

(12) The

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

(a)

whether 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;

(d)

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

(e)

whether the agency has failed to timely submit its e-mailed draft unsigned contract copy in accordance with the audit rule on one or more occasions;

(f)

whether the agency has failed to timely submit its annual financial audit report in accordance with the audit rule due dates on one or more occasions.

(13) 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 shall be selected for each government agency subject to the discretion of the state auditor.

(14) Upon

selection of an IPA to audit a government agency subject to the discretion of the state auditor, the state auditor shall notify the agency in writing regarding 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, or the applicable due date in this rule has passed, and the agency failed to deliver its draft contract in accordance with this subsection;

(c)

pursuant to Section 12-6-14.A NMSA 1978, 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 1978, 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 shall immediately take appropriate measures to procure the services of the selected IPA.

G. State auditor

approval/disapproval of unsigned contract: The state auditor shall use discretion and may not approve:

(1) An

unsigned audit contract or an unsigned agreed upon procedures professional services contract 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)

failure to meet the auditor rotation requirements as follows:

(i)

the IPA is prohibited from conducting the agency audit or agreed upon procedures engagement for a period of two years because the IPA already conducted those services for that agency for a period of six consecutive years; provided however, that any IPA that was previously allowed to contract with the same agency for 12 consecutive years, and has completed the first six years or more, and has completed the second year of a three-year multi-year proposal may continue to contract with that agency for the remaining one year of that three-year multi-year proposal (after FY 2017 no exceptions related to multi-year proposals will apply to this rotation requirement);

(ii)

if firm A purchases the stock or assets of firm B, or if firm B merges into firm A with firm A being the surviving firm, firm A shall not be affected for purposes of the auditor rotation requirement; the auditor rotation clock shall continue to run without interruption for firm B's

audit contracts, despite the fact that such audit contracts may be issued by firm A after the purchase or merger. Because of the impact of firm purchases and mergers on IPA independence the OSA may evaluate historical mergers when applying this section;

(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;

(h)

the agency giving too much consideration to the price of the IPA's response to the request for bids or request for proposals in relation to other evaluation criteria;

(i)

newness of the IPA to the state auditor's list of approved firm; or

(j)

any other reason determined by the state auditor to be in the best interest of the state of New Mexico.

(2) Audit

contracts or agreed-upon procedures contracts 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 non-audit 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 non-audit services under a separate contract for services that may be disallowed by GAGAS independence standards;

(f)

failed to respond, in a timely and acceptable manner, to an OSA audit or agreed upon procedures report review or working paper review;

(g)

impaired independence during an engagement;

(h)

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

(i)

not adhered to external quality control review standards as defined by GAGAS and 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 OSA letter releasing the agreed upon procedures report was received from the OSA;

(l)

failed to submit a completed signed original contingency subcontractor form, if required;

(m)

failed to submit a completed firm profile as required by Subsection A of 2.2.2.8 NMAC or failed to include all staff in the firm profile who would be working on the firm's engagements;

(n)

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

(o)

failed to respond to communications from the OSA 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 a contract.

(3) An audit

or agreed-upon procedures contract for an IPA received by the OSA which the state auditor decides to perform

himself with or without 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 to be performed by an IPA.

H. Audit contract requirements: The agency shall use the appropriate audit or agreed upon procedures engagement contract form provided by the OSA through the OSA-Connect website at www.osa-app.org. The OSA may provide audit or agreed-upon procedures engagement contract forms to the agency via facsimile or U.S. mail if specifically requested by the agency. Only contract forms provided by the state auditor shall be accepted and shall:

(1) be completed and submitted in its unsigned form by the due date indicated at Subsection F of 2.2.2.8 NMAC;

(2) for all agencies whose contracts are approved through the DFA's contracts review bureau, have the IPA's combined reporting system (CRS) number verified by the taxation and revenue department (TRD) after approval by the state auditor; and

(3) in the compensation section of the contract, include the dollar amount that applies to each element of the contracted procedures that shall be performed;

(4) if the agency requires the IPA to provide additional services outside the scope of work described in the standard audit or agreed upon procedures contract form provided through the OSA-Connect website, the additional services shall be described in detail in the "other provisions section" of the contract; if the additional services required by the "other provisions" section of the contract cause a significant change in the scope of the audit, then the contract amendment provisions of Subsection N of 2.2.2.8 NMAC shall apply.

I. Professional liability insurance: The IPA shall maintain professional liability

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

J. Breach of contract: 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 New Mexico governmental agencies.

K. 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 NMSA 1978, and GAGAS Paragraph 3.76 shall submit with the firm profile, a completed contingency subcontractor form that is dated to be effective until the date the next firm profile shall be submitted. The form shall indicate which IPA on the state auditor's current list of approved IPA's shall 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 OSA shall not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on an audit, then the IPA shall 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. Subcontractors are subject to an independence analysis, which may include the IPA rotation requirements of Subsection G of 2.2.2.8 NMAC. "Technical Review Contracts" are considered subcontracting and are subject to the requirements of this section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.

L. IPA independence: IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of Government Auditing Standards, December 2011 revision, issued by the US-GAO (GAGAS 3.02-3.59).

(1) An IPA who performs the agency's annual financial audit shall not enter into any special audit or non-audit service contract with the respective agency without the prior written approval of the state auditor. The exception to this requirement is an engagement that costs one thousand dollars (\$1,000) and less (exclusive of gross receipts tax) for client assistance with responses to IRS and other regulators. Requests for approval of professional service contracts shall be submitted to the OSA with the original version of the signed agreement. The OSA shall review the requests and respond to the agency and the IPA within 30 calendar days of receipt. The following documentation shall be submitted to the OSA for review and approval.

(a) The professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed by the IPA.

(b) For non-audit services, include the auditor's documentation of:

(i) whether management has the ability to effectively oversee the non-audit

service pursuant to GAGAS 3.34;

(ii)

the documented assurance from the entity that management shall assume all management responsibilities, oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, 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 non-audit services, the services to be performed, audited entity's acceptance of its responsibilities, the auditor's responsibilities, and any limitations of the non-audit 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.

(c)

Upon completion of the non-audit services, the IPA shall provide the state auditor with a copy of any report submitted to the agency. Such reports are not subject to OSA review and release procedures unless 2.2.2.15 NMAC requires such review and release procedures.

(2) An IPA

may not enter into any type of fraud-related engagement (this includes waste and abuse related engagements) with a New Mexico governmental agency without first obtaining the prior written approval of the state auditor. This requirement applies both when the IPA is the annual auditor approved by OSA and when the IPA is not the agency's annual auditor. See 2.2.2.15 NMAC for the requirements to submit such reports to the OSA for review and release. If the proposed engagement is not related to fraud, waste or abuse and is therefore

not subject to 2.2.2.15 NMAC, then prior written approval by the state auditor is not required when the IPA is not the agency's annual auditor. However, a copy of the contract that is unrelated to fraud and a copy of any report resulting from such a contract shall be submitted to the OSA when requested by the OSA.

(3)

The state auditor shall not approve any contract for an agency's annual auditor to perform non-audit services that are management responsibilities as provided in GAGAS 3.36. Nor shall the state auditor approve any contract for an agency's annual auditor to perform services that always impair the auditor's independence pursuant to GAGAS 3.50, 3.53, 3.54, 3.56, 3.57, and 3.58.

M. Progress

Payments: The state auditor shall approve progress and final payments for the annual audit contract as follows:

(1) 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) 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 seventy percent 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 shall monitor audit progress and make progress payments only up to the percentage that the audit is completed. If requested by the state auditor, the agency or the IPA shall provide a copy of the approved invoices and progress billing(s). Progress payments of seventy percent to ninety percent 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 payments on the component unit audit(s) shall be included within the primary government's request for progress payment approval. In this situation, the OSA shall not process separate progress payment approvals submitted by the component unit.

(4)

The state auditor may limit progress payments allowed 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 to only the first fifty percent of the total fee.

(5) 12-6-

14 NMSA 1978 (contract audits) provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has determined, 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. In no circumstance may the total billed by the IPA under the audit contract exceed the total contract amount, as amended if applicable. Further, as the compensation section of the contract shall include the dollar amount that applies to each element of the contracted procedures that shall be performed, if certain procedures, such as a single audit, are determined to be unnecessary and are not performed, the IPA may not bill the agency for these services. 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 12-6-14 NMSA 1978 and this rule and shall 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 state auditor's list of approved auditors.

N. Contract

amendments requirements:

(1) Contract

amendments to contracts for audit services, agreed upon procedures services, or non-audit services may be submitted to the OSA regarding

executed contracts. Contracts may not be amended after they expire. Any amendments to contracts shall be made on the contract amendment form available at www.saonm.org. The OSA's review of audit contracts and amendments does not include evaluation of compliance with the state procurement code or other applicable requirements. Although the parties may amend the delivery dates in a contract, audit report regulatory due dates cannot be modified by amendment. The OSA's review of audit contract amendments does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies.

(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; and

(b) how the work to be performed relates to the scope of work outlined in the original contract.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee increases shall only be approved for extraordinary circumstances, reasons determined by the state auditor to be in the best interest of the state of New Mexico, 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 shall 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 the addition of special procedures required by this rule, a regulatory body or a local,

state or federal grantor. Contract amendments shall not be approved to perform additional procedures to achieve an unqualified opinion. The state auditor shall also consider the auditor independence requirements of Subsection L of 2.2.2.8 NMAC when reviewing contract amendments for approval. Requests for contract amendments shall be submitted to the OSA with the original version of the signed contract amendment. The OSA shall review the requests and respond to the agency and the IPA within 30 calendar days of receipt.

(4) If a proposed contract amendment is rejected for lack of adequate information, the IPA and agency may submit a corrected version for reconsideration.

O. Termination of audit contract requirements:

(1) 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 the OSA (consistent with the October 6, 1993, stipulated order *Vigil v. King*, No. SF 92-1487(C)). The notice of termination of the contract shall be in writing.

(2) If the agency or IPA terminate the audit or agreed upon procedures engagement contract pursuant to the termination paragraph of the contract, the OSA shall be notified of the termination immediately. The party sending out the termination notification letter shall simultaneously send a copy of the termination notification letter to the OSA with an appropriate cover letter, addressed to the state auditor.

(a) The agency is responsible for procuring the services of a new IPA in accordance with all applicable laws and regulations, and this rule.

(b) The unsigned contract for the newly procured IPA shall be submitted to the OSA within 30 calendar days of the date of the termination notification letter.

(c) As indicated in Subsection A of 2.2.2.9 NMAC, the state auditor shall not grant extensions of time to the established regulatory due dates.

(d) If the IPA does not expect to deliver the engagement report by the regulatory due date, the IPA shall submit a written notification letter to the state auditor and oversight agency as required by Subsection A of 2.2.2.9 NMAC or Subsection G of 2.2.2.16 NMAC.

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC 3/14/2017]

2.2.2.9 REPORT DUE DATES:

A. Report due dates:
The IPA 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 postmarked by the due date. IPAs and agencies are encouraged to perform interim work as necessary and appropriate to meet the following due dates.

(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) higher education, state agencies not specifically named elsewhere in this subsection, district courts, district attorneys, the New Mexico finance authority, the New Mexico lottery authority, and other agencies with June 30 fiscal year-ends that are reported as component units in the state of New Mexico comprehensive annual financial report: November 1;

(d) school districts and the state of New Mexico component appropriation funds (state general fund): November 15;

(e) the PED and the three post-employment benefit agencies (PERA,

ERB and the retiree health care authority): the Wednesday before Thanksgiving day;

(f) counties, incorporated counties (of which Los Alamos is the only one), workforce investment boards, councils of governments, and the New Mexico mortgage finance authority: December 1;

(g) local public bodies including municipalities: December 15;

(h) the state of New Mexico comprehensive annual financial report (CAFR): December 31;

(i) the ERB, PERA and retiree health care authority schedules of employer allocations reports and related employer guides required by Subsections Z and DD of 2.2.2.10 NMAC: June 15;

(j) agencies with a fiscal year-end other than June 30 shall submit the audit report no later than *five months after the fiscal year-end*;

(k) regarding component unit reports (e.g., housing authorities, charter schools, hospitals, foundations, etc.), all separate audit reports prepared by an auditor that is different from the primary government's auditor, are *due fifteen days before the primary government's audit report is due*, unless some other applicable due date requires the report to be submitted earlier;

(l) any agency that requires its report to be released by December 31st for any reason (bonding, GFOA, etc.): the earlier of its agency due date or December 1; and

(m) late audit or agreed upon procedures reports of any agency (not performed in the current reporting period): not more than six months after the date the contract was executed.

(2) If an audit report is not delivered on time to the state auditor, the auditor shall include this instance of non-compliance 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 may also be reported as a significant deficiency or material weakness in the operation the agency's internal controls over financial reporting pursuant to AU-C 265.

(3) An organized bound hard copy of the report shall be submitted for review by the OSA with the following: copy of the signed management representation letter and a copy of the completed state auditor report review guide (available at www.saonm.org). A report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. All separate reports prepared for component units shall also be submitted to the OSA for review, along with a copy of the management representation letter, and a completed report review guide for each separate audit report. A separate component unit report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the audit report is due the following business day by 5:00 p.m. If the report is mailed to the state auditor, it shall 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 business day.

(4) AU-C 700.41 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. AU-C 580.20 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 be submitted after the applicable due date provided in Subsection A of 2.2.2.9 NMAC, the auditor shall notify the state auditor in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. A copy of the letter shall be sent to the legislative finance committee and any applicable oversight agency: PED, FCD, LGD, or HED. There shall be a separate notification for each late audit report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by a duly authorized representative of the agency. If the IPA is going to miss the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the audit report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the due date, and then rejected by the OSA, making the report late when resubmitted. Reports resubmitted to the OSA with changes of the IPA's opinion after the report due date shall be considered late and a late audit finding shall be included in the audit report.

B. Delivery and release of the audit report:

(1) All audit reports (and all separate reports of component units, if applicable) shall be organized, bound and paginated. The OSA does not accept facsimile or e-mailed versions of the audit reports for initial 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 shall be considered received by the due date. Unfinished or excessively deficient reports shall

not satisfy this requirement; such reports shall be rejected and returned to the IPA and the OSA may take action in accordance with Subsection C of 2.2.2.13 NMAC. When the OSA rejects and returns a substandard audit report to the IPA, the OSA shall consider the audit report late if the corrected report is not resubmitted by the due date. The IPA shall also report a finding for the late audit report in the audit report. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be “corrected rejected report” followed by the agency name and fiscal year.

(2)

Before initial submission, the IPA shall review the report using the appropriate report review guide available on the OSA’s website. The report review guide shall reference applicable page numbers in the audit report. The audit manager or person responsible for the IPA’s quality control system shall either complete the report review guide or sign off as having reviewed it. All questions in the guide shall be answered, and the reviewer shall sign and date the last page of the guide. If the review guide is not accurately completed or incomplete, the report shall not be accepted.

(3)

IPAs are encouraged to deliver completed audit reports before the due date. The OSA shall 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 Subsection A of 2.2.2.13 NMAC, and any OSA comments have been addressed by the IPA, the OSA shall indicate to the IPA that the report is ready to print. After the OSA issues the “*ok to print*” communication for the audit report, the OSA shall authorize the IPA to submit the corrected report with the following items to the OSA within five business days; an electronic searchable version of the audit report labeled “final”, in PDF format, an electronic excel version

of the summary of findings report, an electronic excel version of the vendor schedule, and an electronic excel version of the completed fund balance form (all available at www.saonm.org). The OSA shall not release the report until the searchable electronic version of the report and the electronic excel versions of the summary of findings report, the vendor schedule and the fund balance form that meet the following criteria are received by the OSA. The electronic file containing the final audit report shall:

(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 megabyte (MB) per file submitted (contact the OSA to request an exception if necessary);

(d)

have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the OSA is not prevented from opening, viewing, or printing the file;

(e)

not contain any embedded scripts 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 shall be deleted by the OSA);

(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 dots per inch (DPI) (lower DPI makes the file hard to read and higher DPI makes the file too large);

(k)

have a name that starts with “final version,” followed by the name of the agency and the fiscal year; and

(l)

be searchable.

(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 shall 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.

(5)

After the release of a report, the OSA shall provide DFA and the legislative finance committee with notification that the report is available on the OSA website.

(6)

If an audit report is reissued pursuant to AU-C 560, subsequent events and subsequently discovered facts, or AAG-GAS 13.29-.30 for uniform guidance compliance reports, the reissued audit report shall be submitted to the OSA with a cover letter addressed to the state auditor. The cover letter shall explain that:

(a)

the attached report is a “reissued” report;

(b)

the circumstances that caused the reissuance; and

(c)

a summary of the changes that appear in the reissued report. The OSA shall subject the reissued report to the report review process and upon completion of that report review process, shall issue a “release letter.” The contents of the reissued audit report are subject to the confidentiality requirements described in Subsection M of 2.2.2.10 NMAC. Agency management and the IPA are responsible for ensuring that the latest version of the report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies

regarding the updated report on the OSA website.

(7) If changes to a released audit report are submitted to the OSA, and the changes do not rise to the level of requiring a reissued report, the IPA shall submit a cover letter addressed to the agency, with a copy to the state auditor, which includes the following minimum elements:

(a) a statement that the changes did not rise to the level of requiring a reissued report;

(b) a description of the circumstances that caused the resubmitted updated report; and

(c) a summary of the changes that appear in the resubmitted updated report compared to the prior released report. Agency management and the IPA are responsible for ensuring that the latest version of the resubmitted report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

C. Required status reports: For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, and has therefore been designated as “at risk” due to late reports, the state auditor requires the agency to submit written status reports to the OSA on each March 15, June 15, September 15, and December 15 that the agency is not in compliance with this rule. Status reports are not required for agencies that are included on the “at risk” list solely due to an adverse or disclaimed independent auditor’s opinion. 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. If the agency has a contract with an IPA to conduct the audit or perform the agreed upon procedures engagement, the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit or perform agreed upon

procedures engagements for agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken in to account during the IPA Firm Profile evaluation process. At a minimum, the quarterly written status report shall include:

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

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

(3) 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 report. [2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 3/14/2017]

2.2.2.10 GENERAL 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) The primary government shall 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, 39 and 61 (as amended). The flowchart at GASBS 61.68 may be useful in making this determination. The primary government shall notify all other agencies determined to be component units by September 15, 2017. Failure to meet this due date results in a compliance finding. All agencies that meet the criteria to be a component unit of the primary government shall be included with the audited financial statements of the primary government by discrete presentation unless otherwise

approved by the state auditor. An exemption shall be requested by the primary government, 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 shall include a detailed explanation, conclusion and supporting documentation justifying the request for blended component unit presentation. Documentation of the state auditor’s approval of the blended component unit presentation shall accompany the bound hard copy of the report submitted to OSA for review. Component units are reported using the government financial reporting format if they have one or more of the characteristics described at AAG-SLV 1.01. If a component unit does not qualify to be reported using the governmental format, that fact shall 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 shall 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 statements due to materiality, that fact shall also be disclosed in the notes. However, if the primary government is a state agency, department, board, public institution of higher education, public post-secondary educational institution, county, municipality or public school district, 6-5A-1 NMSA 1978 requires all 501(c)3 component unit organizations with a gross annual income in excess of \$250,000 to be audited annually. This statutory requirement does not set a universal materiality threshold for purposes of the performing audits subject to this rule.

(c) The state auditor requires 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, and the statewide CAFR). Requests for exemption from this requirement shall be submitted in writing by the primary government 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 shall be met:

(i) the IPAs of the primary government and all component units shall consider and comply with the requirements of AU-C 600;

(ii) the group engagement partner shall agree that the group engagement team will be able to obtain sufficient appropriate audit evidence through the use of the group engagement team's work or use of the work of the component auditors (AU-C 600.15);

(iii) the component unit auditor selected shall appear on the OSA list of approved IPAs;

(iv) all bid and auditor selection processes shall comply with the requirements of this rule;

(v) the OSA standard contract form shall be used by both the primary government and the component unit;

(vi) the primary government, the primary engagement partner, management of the component unit, and the component unit auditor shall all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable due dates;

(vii) all component unit findings shall be disclosed in the primary government's audit report (except the statewide CAFR which shall include only component unit findings that are significant to the state as a whole); and

(viii) any separately issued component unit financial statements and associated auditors' reports shall be submitted to the state auditor by the due date in Subsection A of 2.2.2.9 NMAC for the review process described in

Subsection A of 2.2.2.13 NMAC.

(d) With the exception of the statewide CAFR, the following SI pertaining to component units for which separately issued financial statements are not available shall be audited and opined on as illustrated in AAG-SLV 15.103 example A-15: financial statements for each of the component unit's major funds, combining and individual fund financial statements for all of the component unit's non-major funds, and budgetary comparison statements for the component unit's general fund and major special revenue funds that have legally adopted annual budgets (AAG-SLV 3.22).

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

(a) The level of planning materiality described at AAG-SLV 4.72-4.73 and exhibit 4.1 shall be used. Planning materiality for component units is at the individual component unit level.

(b) The scope of the audit includes the following statements and disclosures which the auditor shall audit and give an opinion on. The basic financial statements (as defined by GASB and displayed in AAG-SLV exhibit 4.1) consisting of:

(i) the governmental activities, the business-type activities, and the aggregate discretely presented component units;

(ii) each major fund and the aggregate remaining fund information;

(iii) budgetary comparison statements for the general fund and major special revenue funds that have legally adopted annual budgets (when budget information is available on the same fund structure basis as the GAAP fund structure, the state auditor requires that the budgetary comparison statements be included as part of the basic financial statements consistent with GASBS 34 fn. 53, as amended,

and AAG-SLV 11.13); and

(iv) the related notes to the financial statements.

(c) The auditor shall audit the following RSI, if applicable, and include it in the auditor's opinion (AAG-SLV 15.62 and 15.65): budgetary comparison statements for the general fund and major special revenue funds 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 (GASBS 41).

(d) The auditor shall apply procedures and report in the auditor's report on the following RSI (if applicable) pursuant to AU-C 730:

(i) management's discussion and analysis (GASBS 34.8-11);

(ii) RSI data required by GASBS 67 and 68 for defined benefit pension plans;

(iii) RSI schedules required by GASBS 43 and 74 for postemployment benefit plans other than pension plans;

(iv) RSI schedules required by GASBS 45 and 75 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and

(v) infrastructure modified approach schedules derived from asset management systems (GASBS 34.132-133).

(e) The audit engagement and audit contract compensation include an AU-C 725 opinion on the SI schedules presented in the audit report. The auditor shall subject the information on the SI schedules to the procedures required by AU-C 725. The auditor shall report on the remaining SI in an other-matter paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725. With the exception of the statewide CAFR, the following SI schedules are required to be

included in the AU-C 725 opinion if the schedules are applicable to the agency:

- (i) primary government combining and individual fund financial statements for all non-major funds (GASBS 34.383);
- (ii) the schedule of expenditures of federal awards required by uniform guidance;
- (iii) the schedule of pledged collateral required by Subsection P of 2.2.2.10 NMAC;
- (iv) the schedule of changes in assets and liabilities for agency funds required by Subsection X of 2.2.2.10 NMAC;
- (v) the financial data schedule (FDS) of housing authorities pursuant to Subsection B of 2.2.2.12 NMAC;
- (vi) the school district schedule of cash reconciliation required by Subsection C of 2.2.2.12 NMAC. In addition, the school district schedule of cash reconciliation SI shall be subjected to audit procedures that ensure the cash per the schedule reconciles to the PED reports as required by Subsection C of 2.2.2.12 NMAC; and
- (vii) any other SI schedule required by this rule.

(f)

The agency shall prepare a schedule of vendors using the form and instructions available on www.saonm.org, for *procurements* exceeding sixty thousand dollars (\$60,000) (excluding gross receipts tax) that occurred during the audited fiscal year, that includes the following information: request for bid or request for proposal number; type of procurement, for example, request for proposal (RFP), sole source, etc.; the names and physical addresses of all vendors that responded to requests for bids or requests for proposals during the fiscal year; whether each vendor received the award; dollar amount of the awarded contract; dollar amount of any contract amendment during the fiscal year that caused a previously

awarded contract to exceed sixty thousand dollars (\$60,000) (excluding gross receipts tax); whether each responding vendor was an in-state vendor or an out-of-state vendor (based on the statutory definition); if the vendor was in-state and chose the veterans' preference instead of the in-state preference (this is n/a for federal funds); and a short description of the scope of work. The schedule shall include all contracts totaling over sixty thousand dollars (\$60,000) (excluding gross receipts tax) regardless of whether related expenditures exceeded sixty thousand dollars (\$60,000) during the fiscal year and regardless of procurement method. Exclude information on a multi-year procurement that occurred in a prior year unless there was a contract amendment during the current fiscal year that caused the previously existing contract to exceed sixty thousand dollars (\$60,000) for the first time. Exclude procurements that agencies performed based on statewide pricing agreements obtained by general services department (GSD) or cooperative educational services from the schedule. However, agencies like GSD and cooperative educational services that perform procurement services for other agencies that result in price agreements shall disclose all their procurements in their vendor schedules in their own audit reports, including procurements that resulted in price agreements. The IPA shall submit an electronic excel version of the vendor schedule using the form provided by the OSA with the final PDF version of the audit report as required by Subsection B of 2.2.2.9 NMAC.

B. Governmental auditing, accounting and financial reporting standards:

The audits shall be conducted in accordance with:

- (1) the most recent revision of GAGAS issued by the United States government accountability office;
- (2) U.S. auditing standards-AICPA (clarified) effective for periods ending on or

after December 15, 2012;

(3) uniform administrative requirements, cost principles, and audit requirements for federal awards (uniform guidance);

(4) AICPA audit and accounting guide, government auditing standards and single audits, (AAG-GAS) latest edition;

(5) AICPA audit and accounting guide, state and local governments (AAG-SLV) latest edition; and

(6) 2.2.2 NMAC, requirements for contracting and conducting audits of agencies, latest edition.

C. Financial statements and notes to the financial statements:

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. IPAs shall follow interpretations, technical bulletins, and 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 OSA requires that the statement of revenues, expenditures, and changes in fund balance - governmental funds include classifications for intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

D. Requirements for 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 imposed in Subsection A of 2.2.2.9 NMAC.

(3) If there are differences between the financial statements and the books, the IPA shall 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, including documenting independence safeguards as required by GAGAS 3.59, the fact that the auditor prepared the financial statements shall be disclosed on the exit conference page of the audit report. If the IPA prepared the financial statements, the auditor shall determine whether an audit finding shall be reported in accordance with AU-C 265.

E. Audit documentation requirements:

(1) The IPA's audit documentation shall 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 due date indicated in the request.

(3) The audit documentation of a predecessor IPA shall be made available to a successor IPA in accordance with AU-C 510.07 and 510.A3 to 510.A11, and the predecessor auditor's contract. Any photocopy costs incurred shall 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; or

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

F. Auditor communication requirements:

(1) The IPA shall comply with the requirements for auditor communication with those charged with governance as set forth in AU-C 260 and GAGAS 4.03 and 4.04.

(2) After the agency and IPA 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 copy of the signed letter as part of the audit documentation. In addition to meeting the requirements of the AICPA professional standards and the GAGAS requirements, the engagement letter shall state that the engagement shall be performed in accordance with 2.2.2 NMAC.

(3) 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 Subsection N of 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

(4) A separate engagement letter and list of client prepared documents is required for each fiscal year audited. The IPA shall provide a copy of the engagement letter and list of client prepared documents immediately upon request from the state auditor.

(5) The IPA shall conduct an audit entrance conference with the agency. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(6) All communications with management and the agency's oversight officials during the audit, regarding any instances of non-compliance or internal control weaknesses, shall be made in writing. The auditor shall obtain and report the views of responsible officials of the audited agency concerning the audit findings, pursuant to GAGAS 4.33. Any violation of law or good accounting practice, including instances of non-compliance or internal control weaknesses, shall be reported as audit findings per Section 12-6-5 NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

G. Reverting or non-reverting funds: Legislation can designate a fund as reverting or non-reverting. The IPA shall review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation shall be reverted and to whom. The law may also indicate the due date for the required reversion. Appropriate

audit procedures shall be performed to evaluate 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 shall fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements shall disclose the specific legislation that makes a fund or appropriation non-reverting and any minimum balance required. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements shall 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 department of finance and administration (DFA) white papers “calculating reversions to the state general fund,” and “basis of accounting-modified accrual and the budgetary basis.” The statewide CAFR is exempt from this requirement.

H. Referrals: The Audit Act (NMSA 1978, Sections 12-6-1 et seq.) states that “the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor’s office designated by the state auditor or independent auditors approved by the state auditor.” (12-6-3 NMSA 1978). Further, audits of New Mexico governmental agencies “shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.” (12-6-3 NMSA 1978). In an effort to ensure that the finances of state and local governments are thoroughly examined, OSA may provide IPAs with written communications to inform the IPA that OSA received information that suggests elevated risk in specific areas relevant to a particular agency’s annual financial and compliance audit. These communications shall be referred to as “referrals.” Referrals may relate to any topic relevant to the scope of the annual financial and compliance audit. IPAs shall take

the circumstances described in OSA referral communications into account in their risk assessment and perform such procedures as, in the IPA’s professional judgment, are necessary to determine what further action, if any, in the form of additional disclosure, findings and recommendations are appropriate in connection with the annual audit of the Agency. After the conclusion of fieldwork but prior to submitting the draft annual audit report to the OSA for review, IPAs shall provide written confirmation to the OSA that the IPA took appropriate action in response to the referral. This written confirmation shall respond to all aspects of the referral and list any findings associated with the subject matter of the referral. IPAs shall retain adequate documentation in the audit workpapers to support the written confirmation to OSA that the IPA took appropriate action in response to the referral. As outlined in 2.2.2.13 NMAC the OSA may review IPA workpapers associated with the annual audit of any agency. OSA workpaper review procedures shall include examining the IPA documentation associated with referrals. Insufficient or inadequate documentation may result in deficiencies noted in the workpaper review letter and may negatively impact the IPA during the subsequent firm profile review process. In accordance with Subsection D of 2.2.2.8 NMAC IPAs may be placed on restriction if an IPA refuses to comply with OSA referrals in a timely manner.

I. State auditor workpaper requirement: The state auditor requires that audit workpapers include a written audit program for fund balance and net position that includes tests for proper classification of fund balance pursuant to GASBS 54 and proper classification of net position pursuant to GASBS 34.34-.37 (as amended) and GASBS 46.4-.5 (as amended).

J. State compliance audit requirements: An IPA shall identify significant state statutes, rules and regulations applicable to the agency under audit and perform tests

of compliance. In designing tests of compliance, IPAs may reference AU-C 250 relating to consideration of laws and regulations in an audit of financial statements and AU-C 620 relating to using the work of an auditor’s specialist. As discussed in AU-C 250.A23, in situations where management or those charged with governance of the agency, or the agency’s in-house or external legal counsel, do not provide sufficient information to satisfy the IPA that the agency is in compliance with an applicable requirement, the IPA may consider it appropriate to consult the IPA’s own legal counsel. AU-C 620.06 and 620.A1 discuss the use of an auditor’s specialist in situations where expertise in a field other than accounting or auditing is necessary to obtain sufficient, appropriate audit evidence, such as the interpretation of contracts, laws and regulations. In addition to the significant state statutes, rules and regulations identified by the IPA, compliance with the following shall be tested if applicable (with the exception of the statewide CAFR audit):

(1)

Procurement Code, 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency’s chief procurement officer, pursuant to 13-1-95.2 NMSA 1978, and Procurement Code Regulations, 1.4.1 NMAC, or home rule equivalent.

(2) Per Diem

and Mileage Act, 10-8-1 to 10-8-8 NMSA 1978, and Regulations Governing the Per Diem and Mileage Act, 2.42.2 NMAC.

(3) Public

Money Act, 6-10-1 to 6-10-63 NMSA 1978, including the requirements that county and municipal treasurers deposit money in their respective counties, and that the agency receive a joint safe keeping receipt for pledged collateral.

(4) Public

School Finance Act, 22-8-1 to 22-8-48 NMSA 1978.

(5) Investment

of Public Money Act, Sections 6-8-1 to 6-8-25 NMSA 1978.

(6) Public Employees Retirement Act, 10-11-1 to 10-11-142 NMSA 1978. IPAs shall test to ensure one hundred percent of payroll is reported to PERA. PERA membership is mandatory, unless membership is specifically excluded pursuant to Section 10-11-3.B NMSA 1978.

(7) Educational Retirement Act, 22-11-1 to 22-11-55 NMSA 1978.

(8) Sale of Public Property Act, 13-6-1 to 13-6-8 NMSA 1978.

(9) Anti-Donation Clause, Article IX, Section 14, New Mexico Constitution.

(10) Special, Deficiency, and Supplemental Appropriations (appropriation laws applicable for the year under audit).

(11) State agency budget compliance with 6-3-1 to 6-3-25 NMSA 1978, and local government compliance with 6-6-1 to 6-6-19 NMSA 1978.

(12) Lease purchase agreements, Article IX, Sections 8 and 11, New Mexico Constitution; 6-6-11 to 6-6-12 NMSA 1978; *Montano v. Gabaldon*, 108 NM 94, 766 P.2d 1328, 1989).

(13) Accounting and Control of Fixed Assets of State Government, 2.20.1.1 to 2.20.1.18 NMAC, (updated for GASBS 34 as applicable).

(14) Requirements for Contracting and Conducting Audits of Agencies, 2.2.2 NMAC.

(15) Article IX of the state constitution limits on indebtedness.

(16) Any law, regulation, directive or policy relating to an agency's use of gasoline credit cards, telephone credit cards, procurement cards, and other agency-issued credit cards.

(17) Retiree Health Care Act, 10-7C-1 to 10-7C-19 NMSA 1978. IPAs shall test to ensure one hundred percent of payroll is reported to NMRHCA. NMRHCA employer and employee contributions are set forth in Section 10-7C-15

NMSA 1978.

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

(19) School Personnel Act, 22-10A-1 to 22-10A-39 NMSA 1978.

(20) School Athletics Equity Act, 22-31-1 to 22-31-6 NMSA 1978. IPAs shall test whether the district has submitted the required school-district-level reports, but no auditing of the reports or the data therein is required.

K. Federal requirements: IPAs shall conduct their audits in accordance with the requirements of the following government pronouncements and shall test federal compliance audit requirements as applicable:

(1) government auditing standards (GAGAS) issued by the United States government accountability office, most recent revision;

(2) uniform administrative requirements, cost principles, and audit requirements for federal awards;

(3) compliance supplement, latest edition;

(4) catalog of federal domestic assistance (CFDA), latest edition; and

(5) internal revenue service (IRS) employee income tax requirements. IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits, available online, provides detailed information regarding the taxability of fringe benefits.

L. Audit finding requirements:

(1) Communicating findings: IPAs shall communicate findings in accordance with generally accepted auditing standards and the requirements of GAGAS 4.23. All finding reference numbers shall follow a standard format with the four digit audit year, a hyphen and a three digit sequence number (e.g. 2013-001, 2013-002... 2013-999). All prior year findings shall include the finding number used under historical numbering systems in

brackets, following the standardized finding reference number, to enable the report user to see what year the finding originated. Finding reference numbers for single audit findings reported on the data collection form shall match those reported in the schedule of findings and questioned costs and the applicable auditor's report. Depending on the IPA's classification of the finding, the finding reference number shall be followed by one of the following descriptions: "material weakness"; "significant deficiency"; "material non-compliance"; "other non-compliance"; or "findings that do not rise to the level of a significant deficiency."

(a) IPAs shall evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses in accordance with AU-C 260.

(b) Findings that meet the requirements described in AAG-GAS 4.12 shall be included 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. AAG-GAS 13.35 table 13-2 provides guidance on whether a finding shall be included in the schedule of findings and questioned costs.

(c) Section 12-6-5 NMSA 1978 requires that "each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination." When auditors detect violations law or good accounting practices that shall be reported per 12-6-5 NMSA 1978, but that do not rise to the level of significant deficiencies or material weaknesses, such findings are considered to warrant the attention of those charged with governance due to the statutory reporting requirement. The auditor shall communicate such violations in the "compliance and other matters" paragraph 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. Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings labeled "Section 12-6-5 NMSA 1978 findings". This schedule shall be placed in the back of the audit report following the financial statement audit and federal award findings. Per AAG-GAS 13.47 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.

(d)

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

(i)

condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified, and *for repeat findings, management's progress or lack of progress towards implementing the prior year planned corrective actions*);

(ii)

criteria (identifies the required or desired state or what is expected from the program or operation; cites 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 serves as a basis for the recommendation);

(v)

recommendation addressing each

condition and cause; and

(vi)

agency response (the agency's comments about the finding, *including specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline*).

(2) Prior year

findings:

(a)

IPAs shall comply with the requirements of GAGAS Section 4.05 relating to findings and recommendations from previous audits and attestation engagements. In addition, IPAs shall report the status of *all* prior-year findings and *all* findings from special audits performed under the oversight of the state auditor in the current year audit report and whether the finding has been resolved or repeated in the current year. All findings from special audits performed under the oversight of the state auditor shall be included in the findings of the annual financial and compliance audits of the related fiscal year.

(b)

Uniform guidance regarding single audit prior year findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, *the auditee* shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The corrective action plan and summary schedule of prior audit findings shall include findings relating to the financial statements which shall be reported in accordance with GAGAS. The summary schedule of prior year findings and the corrective action plan shall be included in the reporting package submitted to the federal audit clearinghouse (AAG-GAS 13.47 fn 36). The auditor shall follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance

with the uniform guidance, and report, as a current-year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding (AAG-GAS 13.50).

(3) Current-

year audit findings: Written audit findings shall be prepared and submitted to management of the agency 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. The agency shall prepare "planned corrective actions" as required by GAGAS 4.33. The agency shall respond, in writing, to the IPA's audit findings within 10 business days. Lack of agency responses within the 10 business days does not warrant a delay of the audit report. The agency's responses to the audit findings and the "planned corrective actions" shall be included in the finding after the recommendation. If the IPA disagrees with the management's comments in response to a finding, they may explain in the report their reasons for disagreement, after the agency's response (GAGAS 4.38). 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."

(4)

If appropriate in the auditor's professional judgment, failure to submit the completed audit contract to the OSA by the due date at Subsection F of 2.2.2.8 NMAC may be reported as a current year compliance finding.

(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, waste, or abuse, and the contract was not approved by the state auditor, the IPA shall report

a finding of non-compliance with Subsection L of 2.2.2.8 NMAC.

(6) If an agency subject to the procurement code failed to meet the requirement to have a certified chief procurement officer during the fiscal year, the IPA shall report a finding of non-compliance with 1.4.1.94 NMAC.

(7) Component unit audit findings shall be reported in the primary government's financial audit report. This is not required for the statewide CAFR unless a finding of a legally separate component unit is significant to the state as a whole.

(8) Except as discussed in Subsections A and E of 2.2.2.12 NMAC, release of any portion of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation of 12-6-5 NMSA 1978 and requires a compliance finding in the audit report.

(9) In the event that an agency response to a finding indicates in any way that the OSA is the cause of the finding, the OSA may require that a written response from the OSA be included in the report, below the other responses to that finding.

M. Exit conference and related confidentiality issues:

(1) The IPA shall 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. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences. If component unit representatives cannot attend the combined exit conference, a separate exit conference shall be held with the component unit's governing authority and top management. Unless the cost

of the audit is five thousand dollars (\$5,000) or less (excluding GRT), the exit conference shall be held in person; a telephone or webcam exit conference shall not meet this requirement. If extraordinary circumstances exist that 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 seven days prior to the scheduled exit conference. The written request for the exemption shall 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 if the cost of the audit is greater than five thousand dollars (\$5,000). The date of the exit conference(s) and the names and titles of personnel attending shall be stated in the last page of the audit report.

(2) The IPA, with the agency's cooperation, 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 following elements: management's discussion and analysis (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 uniform guidance.

(3) Agency personnel and the agency's IPA shall not release information to the public relating to the audit until the audit report is released by the OSA, and has become a public record.

(4) Once the audit report is officially released to the agency by the state auditor (by a release 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. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

(5) 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 Conduct ET Section 1.700.001 and related interpretations and guidance, and GAGAS 4.30-32 and GAGAS 4.40-.44.

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

(1) IPAs shall comply with the requirements of GAGAS 4.06-.09 relating to fraud, noncompliance with provisions of laws, regulations, contracts and grant agreements, and abuse. Relating to contracts and grant agreements, IPAs shall 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. Concerning abuse, if an IPA becomes aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, the IPA shall apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives.

(2) Pursuant to 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. The state auditor may cause the financial affairs and transactions of the agency to be audited in whole or in part pursuant to 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 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) In accordance with 12-6-6 NMSA 1978, 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.

O. Special revenue funds authority: The authority for creation of special revenue funds and any minimum balance required shall be shown in the audit report (i.e., cite the statute number, code of federal regulation, executive order, resolution number, or other specific authority) on the divider page before the combining financial statements or in the notes to the financial statements. This requirement does not apply to the statewide CAFR.

P. Public monies:

(1) 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 shall be authorized by legislation (MAPS FIN 11.4).

(2) If the agency has investments in securities

and derivative instruments, the IPA shall comply with the requirements of AU-C 501.04-.10. If the IPA elects to use the work of an auditor's specialist to meet the requirements of AU-C 501, the requirements of AU-C 620 shall also be met.

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

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council, etc.);

(b) account name;

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

(i) types of deposit accounts include non-interest bearing checking, interest bearing checking, savings, money market accounts, certificates of deposit, etc.;

(ii) types of investment accounts include state treasurer general fund investment pool (SGFIP), state treasurer local government investment pool (LGIP), U.S. treasury bills, securities of U.S. agencies such as Fannie Mae (FNMA), Freddie Mac (FHLMC), government national mortgage association (GNMA), Sallie Mae, small business administration (SBA), federal housing administration (FHA), etc.

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

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

(f) for state agencies only, statewide human resources accounting and management reporting system (SHARE) fund number. In auditing the balance of a state agency's

investment in the SGFIP, the IPA shall review the individual state agency's cash reconciliation procedures and determine whether those procedures would reduce the agency's risk of misstatement in the investment in SGFIP, and whether the agency is actually performing those procedures. The IPA shall also take into consideration the complexity of the types of cash transactions that the state agency enters into and whether the agency processes its deposits and payments through SHARE. The IPA shall use professional judgment to determine each state agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA. The state auditor requires the IPAs auditing cash of state agencies to obtain a confirmation of cash at the individual agency level from STO.

(4) Pledged collateral:

(a) All audit reports shall disclose applicable collateral requirements in the notes to the financial statements. In addition, there shall be a supplementary schedule or note to the financial statements that discloses the collateral pledged by each depository for public funds. The schedule or note shall disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, committee on uniform security identification procedures (CUSIP) number, fair market value and maturity date.

(b) Pursuant to 6-10-17 NMSA 1978, the pledged collateral for deposits in banks and savings and loan associations shall have an aggregate value equal to one-half of the amount of public money held by the depository. If this requirement is not met the audit report shall include a finding. 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 administration (NCUA) in accordance with 6-10-16 NMSA 1978. Collateral requirements shall be calculated separately for each bank and disclosed in the notes.

(c)

All applicable GASB 40 disclosure requirements relating to deposit and investment risk shall be met. In accordance with GASBS 40.8, relating to custodial credit risk, the notes to the financial statements shall disclose the dollar amount of deposits subject to custodial credit risk, and the type of risk the deposits are exposed to. To determine compliance with the fifty percent pledged collateral requirement of 6-10-17 NMSA 1978, the disclosure shall include the dollar amount of each of the following for each financial institution: fifty percent pledged collateral requirement per statute, total pledged collateral, uninsured and uncollateralized.

(d)

Repurchase agreements shall be secured by pledged collateral having a market value of at least one hundred two percent of the contract per Section 6-10-10.H NMSA 1978. To determine compliance with the one hundred two percent pledged collateral requirement of 6-10-10 NMSA 1978, the disclosure shall include the dollar amount of each of the following for each repurchase agreement: one hundred two percent pledged collateral requirement per statute, total pledged collateral.

(e)

Per Section 6-10-16.A NMSA 1978, "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 financial industry regulatory authority (known as FINRA), and are rated "BAA" or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank."

(f)

Securities shall be accepted as security at market value pursuant to Section 6-10-16.C NMSA 1978.

(g)

State agency investments in 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 shall refer the reader to the state treasurer's separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments.

(h)

If an agency has other "authorized" bank accounts, pledged collateral information shall 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 shall 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, STO's collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(5) Agencies

that have investments in the state treasurer's local government investment pool shall disclose the information required by GASBS 79 in the notes to their financial statements. Agencies with questions about the content of these required note disclosures may contact STO (<http://www.nmsto.gov>) for assistance.

Q. 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 used 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 used to balance the budget (or fund balance on the cash basis).

(2)

The differences between the budgetary basis and GAAP basis revenues and expenditures shall be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation shall be included on the statement itself or in the notes to the financial statements. If the required budgetary comparison is presented as RSI, the reconciliation to GAAP basis shall appear in either a separate schedule or in the notes to the RSI (AAG-SLV 11.14). The notes to the financial statements shall 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 for school districts is at the function level. The legal level of budgetary control for state agencies is explained at Subsection A of 2.2.2.12 NMAC. For additional information regarding the legal level of budgetary control the IPA may contact the applicable oversight agency (DFA, HED, or PED).

(3) Budgetary

comparisons shall show the original and final appropriated budget (same as final budget approved 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)

If the budget structure for the general fund and major special revenue funds is similar enough to the GAAP fund structure to provide the necessary information, the basic financial statements shall include budgetary comparison statements those funds.

(b)

Budgetary comparisons for the general fund and major special

revenue funds shall be presented as RSI 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 (GASBS 41.03 and .10). When budgetary comparisons have to be presented as 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 15.65 and AAG-SLV example A-15 for additional information regarding the requirements when opining on RSI.

R. Appropriations:
(1) Budget

related findings:

(a) If actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact shall 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 used to balance the budget), that fact shall be reported in a finding. This type of finding shall be confirmed with the agency’s budget oversight entity (if applicable).

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

(a) Special, deficiency, specific, and capital outlay appropriations funded by severance tax bonds or general obligation bonds of the state shall be disclosed in the notes to the financial statements. The original appropriation, the appropriation period, expenditures to date,

outstanding encumbrances and unencumbered balances shall be shown in a supplementary schedule or in a note to the financial statements. The accounting treatment of any unexpended balances shall be fully explained in the supplementary schedule or in a note to the financial statements. This is a special requirement of the state auditor and it does not apply to the statewide CAFR audit.

(b)

The accounting treatment of any unexpended balances shall be fully explained in the supplementary schedule or in a note to the financial statements regarding the special appropriations.

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

Audits performed under this rule shall 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. IPAs and agencies are encouraged to reference the U.S. GAOs’ *Standards for Internal Control in the Federal Government*, known as the “Green Book”, which may be adopted by state, local, and quasi-governmental entities as a framework for an internal control system.

T. Required auditor’s reports:

(1) The AICPA provides examples of independent auditor’s reports in the appendix to chapter 4 of AAG GAS and appendix A to chapter 15 of AAG SLV. Guidance is provided in footnote 3 to appendix A to chapter 15 of AAG SLV regarding wording used when opining on budgetary statements on the GAAP basis. IPAs conducting audits under this rule shall follow the AICPA report examples. All independent auditor’s reports shall 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. This statement shall be modified in

accordance with GAGAS 2.24b if some GAGAS requirements were not followed. Reports for single audits of fiscal years beginning on or after December 26, 2014 shall have references to OMB Circular A-133 replaced with references to Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 200.110(b), AAG GAS 4.88 Example 4-1).

(2) The AICPA provides examples of the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards in the appendix to chapter 4 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(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) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency shall be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Subsection F of 2.2.2.10 NMAC regarding this issue.

(3) The AICPA provides examples of the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance in the appendix to chapter 13 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(4) The state auditor requires the financial statements, RSI, SI, and other information required by this rule, and the following reports to be

included under one report cover: the independent auditor's report; 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; and the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance. If applicable, the independent auditor's report shall include the AU-C 725 opinion on SI, the schedule of expenditures of federal awards and the HUD financial data schedule (required by HUD guidelines on reporting and attestation requirements of uniform financial reporting standards). The report shall also contain a table of contents and an official roster. The IPA may submit a written request for an *exemption* from the "one report cover" requirement, but shall receive prior written approval from the state auditor in order to present any of the above information under a separate cover.

U. Disposition of property: Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least 30 days prior to any disposition of property included on the agency inventory list described at Subsection W 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 shall be sent to the state auditor.

V. Joint powers agreements:

(1) All joint powers agreements (JPA) shall be listed in a supplementary schedule in the audit report. The statewide CAFR schedule shall include JPAs that are significant to the state as a whole. The schedule shall include the following information for each JPA: participants; party responsible for operations; description; beginning and ending dates of the JPA; total estimated amount of project and

portion applicable to the agency; amount the agency contributed in the current fiscal year; audit responsibility; fiscal agent if applicable; and name of government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under joint powers agreements, see the GASB Codification Section J50.113.

W. Capital asset inventory:

(1) The Audit Act (12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment that cost over five thousand dollars (\$5,000). All agencies shall maintain a capitalization policy that complies with the law. Older assets that were capitalized and added to the inventory listing under previous lower capitalization thresholds shall remain on the listing until they are disposed of.

(2) Agencies shall conduct an annual physical inventory of movable chattels and equipment on the inventory list at the end of each fiscal year in accordance with the requirements of 12-6-10 NMSA 1978. The agency shall certify the correctness of the inventory after the physical inventory. This certification shall be provided to the agency's auditors. The IPA shall audit the inventory listing for correctness and compliance with the requirements of the Audit Act.

X. Schedule of changes in assets and liabilities for agency funds:

Agency funds are excluded from the statement of changes in fiduciary net position (GASBS 34.110 as amended by GASBS 63) because they have no "net position." It is a requirement of the state auditor that a schedule of changes in assets and liabilities for agency funds be included as SI for all agencies that have agency funds, except school districts which are subject to different requirements. The schedule shall show additions and deductions for each agency fund. The schedule should appear toward the end of the table of

contents and requires an AU-C 725 opinion in the independent auditor's report. The requirements for school districts regarding the presentation of the statement of changes in assets and liabilities for agency funds are detailed in Subsection C of 2.2.2.12 NMAC.

Y. Tax increment development districts: Pursuant to 5-15-9.C 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. 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 shall apply the criteria of GASBS 14, 39 and 61 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 shall contract separately for an audit separate from the audit of the municipality or county that approved it.

Z. GASBS 68, accounting and financial reporting for pensions:

(1) PERA and ERB shall each prepare schedules of employer allocations as of June 30, 2016 and June 30, 2017. The state auditor requires the following:

(a) Prior to distribution of the schedule

of employer allocations, PERA and ERB shall obtain audits of their respective schedules. These audits shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(b)

Pursuant to AU-C 805.16, the PERA and ERB auditors shall each issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit).

(c)

PERA and ERB shall each obtain at least one concurring review of their respective schedules of employer allocations by an outside IPA firm (different from the firm performing the AU-C 805 audit). The firm selected to perform the concurring review is subject to OSA approval.

(d)

The AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(e)

As soon as the AU-C 805 reports become public record, PERA and ERB shall make the information available to their participant employers.

(f)

PERA and ERB shall each prepare an employer guide that illustrates the correct use of their respective schedule of employer allocations report by their participant employers. The guides shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The 2016 employer guides shall be made available to the participant employers by June 30, 2017. The 2017 employer

guides shall be made available to the participant employers by June 30, 2018.

(2)

Regarding whether the pension liability shall be included in the stand-alone financial statements of funds, see implementation guide-GASB statement 68, question and answer 122, which says, "except for blended component units, which are discussed in questions 34 and 35, statement 68 does not establish specific requirements for allocation of the employer's proportionate share of the collective net pension liability or other pension-related measures to individual funds. However, for proprietary and fiduciary funds, consideration shall be given to NCGA statement 1, paragraph 42, as amended, which requires that long-term liabilities that are "directly related to and expected to be paid from" those funds be reported in the statement of net position or statement of fiduciary net position, respectively." Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico based on the above guidance, shall include note disclosure referring the reader to the statewide CAFR for the state's net pension liability and other pension-related information. The stand-alone report for the New Mexico component appropriation funds shall include note disclosure of the net pension liability for all the state agencies of the state of New Mexico.

AA. Federal Single

Audit: OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations has been replaced by Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (uniform guidance). The standards set forth in Subpart F - Audit Requirements, became effective December 26, 2013, and apply to audits of fiscal years beginning on or after December 26, 2014 (calendar-year-end December 31, 2015 and

FY16 audits).

BB. GASBS 77:

GASB Statement 77, tax abatement disclosures, is effective for reporting periods beginning after December 15, 2015 (FY17 for agencies with a June 30 fiscal year end). Unaudited, but final, GASBS 77 disclosure information in the format prescribed below shall be provided to any agency whose tax revenues are affected by the reporting agency's tax abatement agreements no later than September 15, 2017. Failure to meet this due date results in a compliance finding. This due date does not apply if the reporting agency does not have any tax abatement agreements that reduce the tax revenues of another agency. In addition to the requirements of GASBS 77, the state auditor requires:

(1) Disclosure

information for tax abatements shall be provided individually and may not be aggregated.

(2) Agencies

shall disclose information about individual tax abatement agreements and present individually all tax abatement agreements without regard to the value or a quantitative threshold.

(3) All tax

abatement agreements entered into by an agency's component unit(s) shall be disclosed in the same manner as the tax abatement agreements of the primary government.

(4) Agencies

shall disclose the name of any parent company or companies of the parties to a tax abatement agreement.

(5) Agencies

that make a GASBS 77 disclosure shall use the template GASBS 77 disclosure spreadsheet available on the OSA website and submit that electronic file with the final version of the audit report. Agencies that do not need to make a GASBS 77 disclosure do not need to submit the electronic spreadsheet.

(6) Agencies

shall disclose all other commitments made in connection with a tax abatement agreement. Agencies and IPAs shall consider whether any such commitment creates an actual

or contingent liability for financial reporting purposes.

(7) If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for that determination.

CC. New standards that become effective in FY17 for agencies with a June 30 fiscal year end are:

(1) Some provisions of GASBS 73, accounting and financial reporting for pensions and related assets that are not within the scope of GASBS statement 68, and amendments to certain provisions of GASBS statements 67 and 68;

(2) GASBS 74, financial reporting for postemployment benefit plans other than pension plans;

(3) GASBS 77, tax abatement disclosures, see Subsection BB of 2.2.2.10 NMAC for additional information relating to GASBS 77;

(4) GASBS 78, pensions provided through certain multiple-employer defined benefit pension plans;

(5) Some provisions of GASBS 79, certain external investment pools and pool participants;

(6) GASBS 80, blending requirements for certain component units - an amendment of GASB Statement No. 14;

(7) GASBS 82, pension issues – an amendment of GASB Statements No. 67, No. 68, and No. 73;

(8) Implementation Guide No. 2016-1, implementation guidance update - 2016.

DD. GASBS 75, accounting and financial reporting for postemployment benefits other than pensions: The Retiree Health Care Authority (RHCA) shall prepare a schedule of employer allocations as of June 30, 2017. The state auditor requires the following:

(1) Prior to distribution of the schedule of employer allocations, RHCA shall

obtain an audit of the schedule. This audit shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(2) Pursuant to AU-C 805.16, the RHCA auditors shall issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit).

(3) RHCA shall each obtain at least one concurring review of the schedule of employer allocations by an outside IPA firm (different from the firm performing the AU-C 805 audit). The firm selected to perform the concurring review is subject to OSA approval.

(4) The AU-C 805 audit and resulting separate report on the RHCA schedule of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(5) As soon as the AU-C 805 reports become public record, RHCA shall make the information available to its participant employers.

(6) RHCA shall prepare an employer guide that illustrates the correct use of the schedule of employer allocations report by its participant employers. The guide shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The 2017 employer guide shall be made available to the participant employers by June 30, 2018.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 3/14/2017]

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 an oversight agency such as the legislative finance committee, DFA, HED or PED, and preparation guidelines are issued by the oversight agency.

C. The auditor's responsibilities for performing procedures and reporting on SI are provided in AU-C Section 725, supplementary information in relation to the financial statements as a whole. The auditor shall 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 shall 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, 3/14/2017]

2.2.2.12 SPECIFIC CRITERIA: The specific criteria described in this section shall be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, OSA recommends that IPAs review the NMSA and NMAC while planning governmental audits.

A. Pertaining to audits of state agencies:	major categories of restrictions) as defined by GASBS 63.10; and	Appropriate unit code/appropriate unit description
(1) Due dates for agency audits: audit reports of agencies under the oversight of DFA FCD are due to OSA in accordance with the requirements of 12-6-3.D NMSA 1978 and Subsection A of 2.2.2.9 NMAC.	(iii) unrestricted as defined by GASBS 63.11.	200 personal services & employee benefits
(2) All the individual SHARE funds shall be reported in the financial statements, either within the basic financial statements or as SI.	(b) Governmental fund financial statement fund balances shall be reported in accordance with GASBS 54.	300 contractual services
(3) Accounts payable at year-end and reversion calculation: 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 shall be reported for the respective amount due in both the government-wide financial statements and the fund financial statements. 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 are paid out of the budget of the following fiscal year. An agency's reversions are calculated using the <i>budgetary basis expenditures</i> 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 results in a negative fund balance in the modified accrual basis financial statements of a reverting fund.	(5) Book of record:	400 other
	(a) The state maintains the centralized accounting system SHARE. The SHARE data and reports are the original book of record that the auditor is auditing. Each fiscal year, the agency shall record all audit adjusting journal entries in SHARE. The financial information in SHARE shall agree to the agency's audited financial statements, with the exception of accounts payable as explained in Subsection A of 2.2.2.12 NMAC. If the agency maintains a separate accounting system, it shall be reconciled with the SHARE system and all applicable adjustments shall be recorded in SHARE in the month in which the transactions occurred. DFA FCD provides guidance to agencies, which IPAs shall review, regarding policy and procedure requirements. These documents are available on the DFA FCD website and include:	500 other financing uses
	(i) the manual of model accounting practices (MAPs);	600 non-budgeted
	(ii) various white papers, yearly closing instructions; and	(c) Revenue categories of appropriations to state agencies are listed below. The budgetary comparison statements for state agencies shall 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.
	(iii) various accounting guideline memos.	(i) state general fund;
	(b) The statement of revenues and expenditures in the audit report shall be presented in accordance with GAAP, by function or program classification and object code. However, the budgetary comparison statements shall be presented using the level of appropriation reflected in the final approved budget. The SHARE chart of accounts reflects the following appropriation unit levels:	(ii) other state funds;
		(iii) internal service funds/inter-agency transfers; or
		(iv) federal funds.
		(d) For more detail about the SHARE chart of accounts see the DFA website.
(4) Net position/fund balance:		(6) Reversions to state general fund:
(a) Pursuant to GASBS 63.8 the government-wide statement of net position and the proprietary fund statement of net position show net position as:		(a) All reversions to the state general fund shall be identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - FY 16). The gross amount of the appropriation and the gross amount of the reversion shall be shown separately.
(i) net investment in capital assets as defined by GASBS 63.9;		(b) 6-5-10.A NMSA 1978 states "all unreserved undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30 to the general fund. The division may adjust the reversion within forty-five days of release of the audit report for that fiscal year." Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.
(ii) restricted (distinguishing between		(7)

Nonreciprocal (not payments for materials or services rendered) interfund (internal) activity includes;

(a)

transfers; and

(b)

reimbursements (GASBS 34.410):

(i)

intra-agency transfers between funds within the agency shall offset (i.e. balance). Reasons for intra-agency transfers shall be fully explained in the notes to the financial statements. In the separate audit reports of state agencies, transfers between their internal funds are shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements;

(ii)

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) shall be segregated from intra-agency transfers and 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 shall be shown. The schedule shall 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)

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 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 are reclassified as transfers (GASBS 34.318);

(ii)

all resource flows between a discretely presented component unit of the state and other funds of the state shall 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 34.318);

(d)

All transfers to and from SHARE fund 853, the state general fund appropriation account, shall 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 are not reported as inter-fund activity in the financial statements.

(8) General

services department capital projects: in general, 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 shall capitalize those assets based on actual amounts expended in accordance with GSD instructions issued in 2.20.1.10 NMAC.

(9) State-

owned motor vehicle inventory: successful management of state-owned vehicles pursuant to the Transportation Services Act (15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and

verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(10)

Independent auditor's report: The independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Sec. 11 shall include an emphasis of matter paragraph referencing the summary of significant accounting principles disclosure regarding the reporting agency. The emphasis of matter paragraph shall indicate that the financial statements are not intended to present the financial position and changes in financial position of the primary government, the state of New Mexico, but just the financial position and the changes in financial position of the department. The emphasis of matter paragraph shall follow the example provided in AAG SLV 15.103 example A-17.

(11) Budgetary

basis for state agencies: the state 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 the statutory deadline shall be paid out of the next year's budget. If an agency needs to recognize additional accounts payable amounts that were not accrued by the statutory deadline, then the budgetary statements and the fund financial statements require a reconciliation of expenditures, as discussed at Subsection Q of 2.2.2.10 NMAC. All transactions are recorded in the state's book of record, 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 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 12 months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the related budgets also lapse and encumbrances can no longer be charged to those budgets. The legal level of budgetary control shall be disclosed in the notes to the financial statements. Per Section 9 of Subsection C of the General Appropriation Act of 2016, 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 is the appropriation program level (A-Code, P-Code, and Z-Code). A-Codes pertain to capital outlay appropriations (general obligation/severance tax or state general fund). P-Codes pertain to program/operating funds. Z-Codes pertain to special appropriations. The IPA shall compare total expenditures for each program to the program's approved final budget to evaluate compliance.

(12) Budgetary comparisons of state agencies shall show the original and final appropriated budget (same as final budget approved by DFA), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts. If a state agency presents budgetary comparisons by fund, the appropriation program code(s) (A-Code, P-Code, and Z-Code) shall be reported on the budgetary comparison schedule.

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

(a) STO administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO does not report in its departmental financial statements bonds payable that are obligations of the state of New Mexico. These payables and the related bond face amounts (proceeds) are reported in the state's CAFR. The note disclosures associated with STO's departmental

financial statements shall explain that, 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. Additionally, the note disclosures associated with STO's departmental financial statements shall refer the reader to detailed SI in the STO audit report and the statewide CAFR. The STO departmental financial statements shall include SI regarding the state of New Mexico bond obligations. The SI schedules shall show;

- (i)** 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 34.119;
- (ii)** the details of debt service requirements to maturity, as required by GASBS 38.10; and
- (iii)** any violations of bond covenants and related actions taken to address violations of bond covenants, as required by GASBS 38.9 and 12-6-5 NMSA 1978.

(b) DFA has provided accounting and reporting guidance for state agencies that receive or administer special capital outlay appropriations from the state legislature that are financed by bond proceeds. DFA's guidance is available in the "FYI 2008 Audit Forum 9/30/08" section of DFA's website at <http://www.nmdfa.state.nm.us/Forums.aspx>. In the notes to the financial statements, agencies 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 also disclose the specific revenue recognition policy for these appropriations. Each agency's IPA shall audit the agency's financial statement presentation of this capital outlay project information and any related budgetary comparisons, to ensure that they are presented in

accordance with accounting principles that are generally accepted in the United States.

(14) Amounts "due from other state agencies" and "due to other state agencies": if a state agency reports amounts "due from" or "due to" other state agencies the notes shall 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.

(15) Investments in the state general fund investment pool (SGFIP): these balances are presented as cash and cash equivalents in the statements of net position and the balance sheets of the participant agencies, with the exception of the component appropriation funds (state general fund). The notes to the financial statements of the component appropriation funds shall contain GASBS 40 disclosures for the SGFIP. This disclosure may refer the reader to the separate audit report for STO for additional information regarding the SGFIP.

(16) Format for the statement of activities: state agencies that have more than one program or function shall use the financial statement format presented in GASBS 34, Illustrations B-1 through B-4. The simplified statement of activities (GASBS 34, Illustration B-5) may not be used for agencies that have multiple programs or functions. GASBS 34.41 requires governments to report direct expenses for each function.

(17) Oversight duties of DFA FCD: on October 3, 2008, the state controller and the state auditor distributed a letter to agencies regarding FCD's request for agencies' draft financial statements for the preparation of the CAFR for the state. Agencies were concerned about violating 12-6-5 NMSA 1978. However, Section 6-5-2.1.S NMSA 1978 states that FCD shall "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. After some consideration and discussion of the conflicting statutes, the state controller and the state auditor concluded that “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 FCD in order that FCD may compile the CAFR. However, the agency may only release that information to FCD and not to the public. The agency’s audit report also is not public record unless released in accordance with Section 12-6-5 NMSA 1978.” The unaudited draft financial statements submitted to DFA shall exclude the opinions and findings. The entire letter is available at: <http://www.nmdfa.state.nm.us/uploads/FileLinks/293b21bdbc044c04bd0dbc6de01def7e/DFA-FCD%20Oversight%20Letter.pdf>.

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, and housing authorities created by intergovernmental agreements between cities and counties that are authorized to exercise all powers under the Municipal Housing Law, 3-45-1 et seq. NMSA 1978.

(2) The financial statements of a housing authority that is a department, program or component unit of a primary government shall 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. In the event that a primary government determines that a housing authority is a department or program of, rather than a component unit of, the primary government, a request

for exemption from the discrete presentation requirement shall be submitted to the state auditor, by the primary government. The request for exemption shall include evidence that the housing authority is not a separate legal entity from the primary government and that the corporate powers of the housing authority are held by the primary government. Evidence included in the request shall address these issues:

- (a) the housing authority is not a corporation registered with the secretary of state;
- (b) there was never a resolution or ordinance making the housing authority a public body corporate; and
- (c) the housing authority was authorized under 3-45-1 et seq. NMSA 1978.

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

(3) Audits of public housing authorities that are departments of a local government shall be conducted by the same IPA that performs the audit of the local government. Separate audit contracts shall not be approved.

(a) Local governments are encouraged to include representatives from public housing authorities that are departments of the local government 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 separate entrance and exit conferences with housing authority’s management and a member of the governing board. The OSA has the authority

to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference.

(4) The following information relates to housing authorities that are component units of a local government.

(a) The housing authority shall account for financial activity in proprietary funds.

(b) At the public housing authority’s discretion, the agency 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” (12-6-3.E NMSA 1978). Statute further stipulates in 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) Audit reports of separate audits of component unit housing authorities shall be released by the state auditor separately from the primary government’s report under a separate release letter to the housing authority.

(5) Public housing authorities and their IPAs shall follow the requirements of *guidelines on reporting and attestation requirements of uniform financial reporting standards* (UFRS), which is available on the U.S. department of housing and urban development’s website under a search for UFRS. Additional administrative issues related to audits of public housing authorities follow.

(a)

Housing authority audit contracts include the cost of the audit firm's AU-C 725 opinion on the financial data schedule (FDS). The preparation and submission cost for this HUD requirement shall be included in the audit contract. The public housing authority shall 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 IPA shall:

- (i) electronically report on the comparison of the electronic FDS submission in the REAC staging database through the use of an identification (ID) and password;
- (ii) include a hard copy of the FDS in the audit report;
- (iii) render an AU-C 725 opinion on the FDS; and
- (iv) explain in the notes any material differences between the FDS and the financial statements.

(b)

The IPA shall consider whether any fee accountant used by the housing authority is a service organization and, if applicable, follow the requirements of 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's schedule of expenditures of federal awards, 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's federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards. See AAG GAS 6.15 for more

information.

C. Pertaining to audits of school districts:

(1) In the event that a state-chartered charter school subject to oversight by PED is not subject to the requirement to use the same auditor as PED, that charter school is reminded that their audit contract shall be submitted to PED for approval. Charter schools shall ensure that sufficient time is allowed for PED review refer to Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Regional education cooperative (REC) audits:

(a) A separate financial and compliance audit is required on activities of RECs. The IPA shall provide copies of the REC report to the participating school districts and PED once the report has been released by the state auditor.

(b)

Audits of RECs shall include tests for compliance with 6.23.3 NMAC.

(c)

Any 'on-behalf' payments for fringe benefits and salaries made by RECs for employees of school districts shall be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with GASB Cod. Sec. N50.131.

(d)

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 shall provide the adjusting entries to the REC to reconcile cash per the financial statements to cash per the REC accounting records. If cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report,

the IPA shall issue a finding which explains that the PED reports do not reconcile to the REC accounting records.

(3) School district audits shall address the following issues:

(a)

Audits of school districts shall include tests for compliance with 6.20.2 NMAC and PED's manual of procedures for public schools accounting and budgeting (PSAB), with specific emphasis on 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 PED. This schedule shall account for cash in the same categories used by the district in its monthly cash reports to PED. Subsection D of 6.20.2.13 NMAC states that school districts shall use the "cash basis of accounting for budgeting and reporting". The financial statements are prepared on the accrual basis of accounting. 6.20.2.13.E NMAC states that "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." If there are difference between the school district records and the PED report amounts, other than those explained by the adjusting entries, the IPA shall issue a finding which explains that the PED reports do not reconcile to the school district records.

(c)

Any joint ventures or other entities created by a school district are agencies subject to the Audit Act.

(d)

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 are excluded from this presentation (GASBS 34.110 as amended by GASBS 63). 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 SI in the audit report for each school district and each charter school. The schedules shall show the changes (both additions and deductions) in the agency funds summarized by school or for each activity. The schedule requires an AU-C 725 opinion in the independent auditor's report.

(e)

Relating to capital expenditures by the New Mexico public school facilities authority (PSFA), school districts shall review capital expenditures made by PSFA for repairs and building construction projects of the school district. School districts shall also determine the amount of capital expenditures that shall be added to the capital assets of the school district and account for those additions properly. The IPA shall test the school district capital asset additions for proper inclusion of these expenditures.

(f)

Functions of the general fund: school district audit reports shall include individual fund financial statements and budgetary comparisons for the following functions of the general fund: operational, transportation, instructional materials and teacherage (if applicable).

(4) Pertaining to charter schools:

(a)

A charter school is a conversion school or start-up school within a school district authorized by the local school board or 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 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 (as amended by GASBS 39 and 61) shall be applied to determine whether a charter school is a component unit of the chartering entity (the district or PED). The chartering agency (primary government) shall make the determination whether the charter school is a component unit of the primary government.

(c)

No charter school that has been determined to be a component unit may be omitted from the financial statements of the primary government based on materiality. All charter schools that are component units shall be included in the basic financial statements using one of the presentation methods described in GASBS 34.126, as amended.

D. Pertaining

to audits of counties: Tax roll reconciliation county governments: Audit reports for counties shall 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 Subsection C of Section 7-38-81 NMSA 1978, property taxes that have been delinquent for more than 10 years, together with any penalties and interest, are presumed to have been paid. The second schedule titled "county treasurer's property tax schedule" shall 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. If the county does not have a system set

up to gather and report the necessary information for the property tax schedule, the IPA shall issue a finding.

E. Pertaining to audits of educational institutions:

(1)

Educational institutions are reminded that audit contracts shall be submitted to HED for approval. Refer to Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Budgetary

comparisons: the legal level of budgetary control per 5.3.4.10 NMAC shall be disclosed in the notes to the financial statements. The state auditor requires that every educational institution's audit report include budgetary comparisons as SI. The budgetary comparisons shall be audited and an auditor's opinion shall be rendered. An AU-C 725 opinion does not meet this requirement. The budgetary comparisons shall show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column. The IPA shall confirm the final adjusted and approved budget with HED. The IPA shall 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 budgetary comparisons are adjustments made by the institution after September 15 and audit adjustments. If the HED budget submission does not tie to the financial statement budgetary comparison, taking into account only those differences, then the IPA shall write a related finding. A reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements shall be disclosed at the bottom of the budgetary comparisons 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 shall include revenues and expenses. HED approved the following categories which shall be used for the budgetary

comparisons.

(a)

Unrestricted and Restricted - All Operations (schedule 1): beginning fund balance/net position; 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 & restricted revenues; unrestricted and restricted expenditures; instruction; academic support; student services; institutional support; operation and maintenance of plant; student social & cultural activities; research; public service; internal services; student aid, grants & stipends; auxiliary services; intercollegiate athletics; independent operations; capital outlay; renewal & replacement; retirement of indebtedness; total unrestricted & restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(b)

Unrestricted Instruction & General (schedule 2); beginning fund balance/net position; 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 & permanent fund; private gifts; sales and services; other; total unrestricted revenues; unrestricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total unrestricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(c)

Restricted Instruction & General (schedule 3); beginning fund balance/net position; 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 & permanent fund; private gifts; sales and services; other; total restricted revenues; restricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(3)

Educational institutions shall present their financial statements using the business type activities model.

(4)

Compensated absence liability is reported as follows: the statement of net position reflects the current portion of compensated absences under current liabilities and the long-term portion of compensated absences under noncurrent liabilities.

(5)

Component unit issues: educational institutions shall comply with the requirements of Subsection A of 2.2.2.10 NMAC. Additionally:

(a)

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; and

(b)

there is no level of materiality for reporting findings of component units that do not receive public funds. All component unit findings shall be disclosed in the primary government's audit report.

(6)

Management discussion and analysis (MD&A): The MD&A of educational institutions shall include analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results. The analysis shall include any currently known reasons for those variations that are expected to have a

significant effect on future services or liquidity.

(7)

Educational institutions established by Section 11 of Article XII of the New Mexico state constitution shall provide the department of finance and administration's financial control division with a draft copy of their financial statements excluding opinions and findings, pursuant to Subsection A of 2.2.2.12 NMAC.

F. Pertaining to

audits of hospitals: hospitals subject to this rule shall prepare *indigent care cost and funding reports* and *calculations of cost of providing indigent care worksheets* in accordance with the *definitions for indigent care cost and funding components* and the applicable financial assistance policies for the three-year period ending June 30, 2017. IPAs performing audits of hospitals shall perform the procedures described below.

(1) On the

indigent care cost and funding reports:

(a)

recalculate the mathematical accuracy;

(b)

compare funding amounts associated with Legislative appropriations to the amounts listed in the corresponding New Mexico Appropriations Act;

(c)

compare amounts listed under 'funding for indigent care' to supporting detail;

(d)

compare amounts listed under 'cost of providing indigent care' to the *calculations of cost of providing indigent care worksheets*;

(e)

compare the amounts listed under 'patients receiving indigent care services' to supporting detail.

(2) On the

calculations of cost of providing indigent care worksheets: Compare amounts listed under each line item to supporting detail by patient account.

(3) Select a

sample of the supporting detail by patient account associated with the

calculations of cost of providing indigent care worksheets and perform the following procedures on the sampled items:

(a)

obtain documentation supporting management's determination that the patient qualified for indigent care and compare with the policies in effect during the three-year period ending June 30, 2017;

(b)

compare the total charges on the patient's account to the supporting detail;

(c)

note if a co-pay was required from the patient in accordance with the policies. Obtain information from management as to whether any required payment was received. If a payment was received, compare it to the supporting detail provided for the 'funding for indigent care' on the *indigent care cost and funding reports*;

(d)

for 'direct costs paid to other providers on behalf of patients qualifying for indigent care', compare the costs to supporting invoices;

(e)

obtain supporting information with respect to each percentage listed under 'ratio of cost to charges'. Compare the support to the calculation of the percentage and recalculate the mathematical accuracy of the percentage.

[2.2.2.12 NMAC, Rp, 2.2.2.12 NMAC, 3/14/2017]

2.2.2.13 REVIEW OF AUDIT REPORTS AND AUDIT DOCUMENTATION:

A. Statutory

requirement to review audit reports: 12-6-14.B NMSA 1978

requires the state auditor or personnel of his office designated by him examine all reports of audits of agencies made pursuant to contract. All audits performed under contracts approved by the state auditor are subject to review. The OSA shall 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 OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. As discussed in Subsection B of 2.2.2.9 NMAC, audit reports reissued by the agency and IPA, pursuant to AU-C 560, are also subject to OSA review procedures.

B. Comprehensive

reviews: Released audit reports are subject to a comprehensive report and audit documentation review by the state auditor. The IPA's audit documentation shall be assembled in one complete file or one complete set of files in one location, whether the documentation is hardcopy or electronic. The documentation shall be either all hardcopy or all electronic. OSA reviews of audit and AUP working papers include inspection of firm documentation related to compliance with governmental auditing, accounting and financial reporting standards, rules and other requirements issued by GASB, AICPA, GAO, and the OSA.

C. Consequences of

deficiencies: If during the course of its review of an audit report or the related audit documentation, the OSA finds significant deficiencies that warrant a determination that the audit was not made in accordance with the provisions of the contract or applicable standards and requirements, any or all of the following action(s) may be taken;

(1) the IPA

may be required by OSA to correct the deficiencies in the report or audit documentation, and reissue the audit report to the agency and any others receiving copies;

(2) for future

audit reports, for some or all audit contracts, the IPA may be required to submit working papers with the audit reports for review by the OSA prior to the release of the report; or

(3) the IPA

may be referred to the New Mexico public accountancy board for possible licensure action.

D. Results of work

paper reviews: After the review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond in writing to all review comments when directed. If the firm disagrees with any comments, the firm shall provide references to professional standards supporting the firm's disagreement. Failure to respond shall be noted during the firm profile review process.

[2.2.2.13 NMAC - Rp, 2.2.2.13 NMAC, 3/14/2017]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing

professional education: IPAs shall ensure that all members of their staff comply with the CPE requirements of the most recent revision of GAGAS. Accordingly, each auditor performing work in accordance with GAGAS shall 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 agency operates. Auditors who are involved in planning, directing, or reporting on GAGAS audits and auditors who are not involved in those activities but charge twenty percent or more of their time annually to GAGAS audits shall also obtain at least an additional 56 hours of CPE that enhances the auditor's professional proficiency to perform audits.

B. Peer review

requirements: IPAs shall comply with the requirements of GAGAS Sections 3.82 to 3.107 relating to quality control and assurance and external peer review.

(1) Per

AICPA PR Section 100 standards for performing and reporting on peer reviews, a firm's due date for its initial peer review is 18 months from the date the firm enrolled in the peer view 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) The IPA firm profile submission to the state auditor shall include copies of the following peer review documentation:

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

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

(c) if applicable, the auditor's response to deficiencies or significant deficiencies;

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

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

(6) A peer review rating of "failed" on the auditor's peer review shall disqualify the IPA from performing New Mexico governmental audits.

(7) During the procurement process IPAs shall provide a copy of their most recent external peer review report to the agency with their bid proposal or offer. Any subsequent peer review reports received during the period of the contract shall also be provided to the agency.

(8) The peer review shall meet the requirements of GAGAS 3.96 to 3.107.

(9) The New Mexico public accountancy board's substantial equivalency provision has been replaced with mobility pursuant to the 1999 Public Accountancy Act (61-28B NMSA 1978). If a CPA is performing any type of attest work subject to this rule, his firm shall maintain a New Mexico firm permit.

(10) The peer reviewer shall 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 OSA.

C. State auditor quality control reviews: The state auditor performs its own quality control review of IPA audit reports and working papers. An IPA that is included on the state auditor's list of approved firms for the first time shall be subject to an OSA quality control review of the IPA's working papers. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date). 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 shall 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, 3/14/2017]

2.2.2.15 SPECIAL AUDITS, ATTESTATION ENGAGEMENTS, PERFORMANCE AUDITS AND FORENSIC AUDITS:

A. Fraud, waste or abuse in government reported by agencies, IPAs or members of the public:

(1) Definition of fraud: Fraud includes, but is not limited to, fraudulent financial reporting, misappropriation of assets, corruption, and use of public funds for activities prohibited by the constitution or laws of the state of New Mexico. Fraudulent financial reporting means intentional misstatements or omissions of amounts or disclosures in the financial statements to deceive financial statement users, which may include intentional alteration of accounting records, misrepresentation of transactions, or intentional misapplication of accounting

principles. Misappropriation of assets means theft of an agency's assets, including theft of property, embezzlement of receipts, or fraudulent payments. Corruption means bribery and other illegal acts. (GAO-14-704G federal internal control standards paragraph 8.02).

(2) Definitions of waste and abuse: Waste is the act of using or expending resources carelessly, extravagantly, or to no purpose. Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary operational practice given the facts and circumstances. This includes the misuse of authority or position for personal gain or for the benefit of another. Waste and abuse do not necessarily involve fraud or illegal acts. However, they may be an indication of potential fraud or illegal acts and may still impact the achievement of defined objectives. (GAO-14-704G federal internal control standards paragraph 8.03).

(3) Reports of fraud, waste & abuse: Pursuant to the authority set forth 12-6-3 NMSA 1978, the state auditor may conduct initial fact-finding procedures in connection with reports of financial fraud, waste and abuse in government made by agencies, IPAs or members of the public. Reports may be made telephonically or in writing through the fraud hotline or website established by the state auditor 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 state auditor's website at www.saonm.org. Reports received or created by the state auditor 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.

(4)

Confidential sources: The identity of a person making a report directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor'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.

(5)

Confidentiality of files: A report alleging financial fraud, waste, or abuse in government that is made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, any resulting special audit, performance audit, attestation engagement or forensic audit, and all records and files related thereto are confidential audit documentation and may not be disclosed prior to the release of an audit report, except to an independent auditor, performance audit team or forensic audit team in connection with a special audit, performance audit, attestation engagement, forensic audit or other existing or potential engagement regarding the financial affairs or transactions of an agency.

B. Special audit or attestation examinations, performance audits and forensic audits:

(1)

Designation: Pursuant to Section 12-6-3 NMSA 1978, in addition to the annual audit, 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 designate an agency for special audit, attestation engagement, performance audit or forensic audit 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. For purposes of this rule, the term "special audit, attestation engagement, performance audit or forensic audit" includes, without limitation, agreed-upon procedures, consulting, and contract close-out

(results-based award) engagements that address financial fraud, waste or abuse in government. The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the audit subject matter, the scope and any procedures required, the AICPA professional standards that apply, and for a performance audit, performance aspects to be included and the potential findings and reporting elements that the auditors expect to develop. Pursuant to Section 200.503 of Uniform Guidance, if a single audit was previously performed, the special audit, attestation engagement, performance audit or forensic audit shall be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors. The attestation and performance audit engagements may be conducted pursuant to government auditing standards if so specified by the OSA.

(2) Costs: All

reasonable costs of special audits, attestation engagements, forensic audits, or single-entity performance audits conducted pursuant to this section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. The state auditor, in its sole discretion, may apportion among the entities audited some or all of the reasonable costs of a multi-entity performance audit.

(3) Who

performs the engagement: The state auditor may perform the special audit, attestation engagement, performance audit or forensic audit, alone or with other professionals selected by the state auditor. Alternatively, the state auditor may require the engagement to be performed by an IPA or a team that may be comprised of any of the following: independent public accountants; individuals with masters degrees or doctorates in a relevant field such as business, public administration, public policy, finance, or economics; individuals with their juris doctorate; CFE-certified fraud examiners; CFF-certified forensic

auditors; CIA-certified internal auditors; or other specialists. If the state auditor designates an agency for an engagement to be conducted by an IPA or professional team, the agency shall:

(a)

upon receipt of notification to proceed from the state auditor, identify all elements or services to be solicited, obtain the state auditor's written approval of the proposed scope of work, and request quotations or proposals for each applicable element of the engagement;

(b)

follow all applicable procurement requirements which may include, but are not limited to, Uniform Guidance, Procurement Code (13-1 NMSA 1978), or equivalent home rule procurement provisions when selecting an IPA or team to perform the engagement;

(c)

submit the following information to the state auditor by the due date specified by the state auditor:

(i)

a completed recommendation form for special audits, attestation engagements, performance audits or forensic audits (the form) provided at www.osanm.org, which 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 in the format prescribed by the OSA, provided at www.osanm.org, with all required signatures on the contract.

(d)

If the agency fails to select an IPA and submit the recommendation form and signed contract to OSA by the due date specified by the state auditor, or, if none within 60 days of notification of designation from the state auditor, the state auditor may conduct the audit or select the IPA for that agency in accordance with the process described at Subsection F of 2.2.2.8 NMAC.

(4) Errors:

Recommendation forms and contracts that are submitted to the OSA

with errors or omissions shall be rejected by the state auditor. The state auditor shall return the rejected recommendation form and contract to the agency indicating the reason(s) for the rejection.

(5)

Recommendation rejections: In the event the agency's recommendation is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for rejection, to the agency, at which time the agency shall promptly submit a different recommendation. This process shall 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 calendar 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 shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(6) Contract

Amendments: Any proposed contract amendments shall be processed in accordance with Subsection N of 2.2.2.8 NMAC.

(7) Access

to records and documents: For any special audit, attestation engagement, performance audit or forensic audit, the state auditor and any engaged professionals shall have available to them all documents necessary to conduct the special audit, attestation engagement, performance audit or forensic audit. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for a special audit, attestation engagement, performance audit or forensic audit, 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.

(8) Entrance,

progress and exit conferences: The IPA or other professional shall hold an entrance conference and an exit conference with the agency, unless the IPA or other professional has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption. The OSA has the authority to notify the agency or IPA or other professional that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA or other professional and the agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting. The state auditor may also require the IPA or other professional to submit its audit plan to the state auditor for review and approval.

(9) Required

reporting: All reports for special audits, attestation engagements, performance audits, or forensic audits related to financial fraud, waste or abuse in government undertaken pursuant to Section 2.2.2.15 NMAC (regardless of whether they are conducted pursuant to AICPA standards for consulting services or for attestation engagements) shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, pursuant to Section 12-6-5 NMSA 1978. Each finding shall comply with the requirements of Subsection L of 2.2.2.10 NMAC.

(10) Report

review: The state auditor shall review reports of any special audit, attestation engagement, performance audit or forensic audit made pursuant to this section for compliance with the professional services contract and this rule. Upon completion of the report, the IPA or other professional shall deliver the organized and bound report to the state auditor with a copy of any signed management representation letter. Unfinished or

excessively deficient reports shall be rejected by the state auditor. If the report is rejected the firm shall submit an electronic version of the corrected rejected report for state auditor review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The IPA or other professional shall respond to all review comments as directed by the state auditor.

(11) Report

release: After OSA's review of the report for compliance with the professional services contract and this rule, the state auditor shall 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 Subsection B of 2.2.2.9 NMAC, shall be delivered to the state auditor within five business days. The state auditor shall not release the report until all the required documents are received by the state auditor. The state auditor shall 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. Agency and local public body personnel shall not release information to the public relating to the special audit, attestation engagement, performance audit or forensic audit engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. Except for the exception under Subsection B of 2.2.2.15 NMAC, at all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall not disclose to the public confidential information about the auditee or about the engagement. Confidential information is information that is not generally known to the public through common means of providing public information like the news media and internet.

(12) Disclosure

by professionals: The IPA or other

professional shall not disclose confidential information provided to them by the state auditor unless otherwise specified by the state auditor. Disclosure of confidential information by the IPA or other professional may result in legal action by the state auditor, or in the case of an IPA, restriction pursuant to Subsection D of 2.2.2.8 NMAC.

(13) Payment:

Progress payments up to (but not including) ninety percent 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 of ninety percent and above may be made by the agency only after the state auditor has stated in a letter to the agency that the report has been released by the state auditor.

C. Agency-initiated special audits, attestation engagements, performance audits and forensic audits:

(1)

Applicability: With the exception of agencies that are authorized by statute to conduct performance audits and forensic audits, this section applies to all instances in which an agency enters into a professional services contract for a special audit, attestation engagement, performance audit, or forensic audit relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the engagement pursuant to Subsection B of 2.2.2.15 NMAC. For purposes of this rule, the term “special audit, attestation engagement, performance audit or forensic audit” includes, without limitation, agreed-upon procedures, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste or abuse in government.

(2)

Contracting: An agency, IPA or other professional shall not enter into a professional services contract for a special audit, attestation engagement, performance audit, or forensic

audit 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 shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA or other professional, unless the agency or IPA or other professional applies to the state auditor for an exemption and the state auditor grants the exemption. When contracting with an IPA or other professional, the agency shall contract only with an IPA or other professional that has been approved by the state auditor to conduct such work. The state auditor may, in its sole discretion, require a non-IPA professional to submit proof of qualifications, a firm profile or equivalent documentation prior to approving the contract. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed, and shall follow any template that the state auditor may provide.

(3)

Applicability of other rules: The provisions outlined in Subsection B of 2.2.2.15 NMAC apply to agency-initiated special audits, attestation engagements, performance audits and forensic audits.

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 3/14/2017]

2.2.2.16 ANNUAL FINANCIAL PROCEDURES REQUIRED FOR LOCAL PUBLIC BODIES WITH ANNUAL REVENUES LESS THAN FIVE HUNDRED THOUSAND DOLLARS (\$500,000) (TIERED SYSTEM):

A. Annual revenue determines type of financial reporting:

All local public bodies shall comply with the requirements of Section 6-6-3 NMSA 1978.

Pursuant to Section 12-6-3 NMSA 1978, the annual revenue of a local public body determines the type of financial reporting a local public body shall submit to the OSA. 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. For the purpose of 2.2.2.16 NMAC “capital outlay” is funding provided through appropriations of the New Mexico legislature.

B. Determination of revenue and services: Annually, following the procedures described in Subsection F of 2.2.2.8 NMAC, the state auditor shall provide local public bodies written authorization to obtain 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 (tiers):

(1) if a

local public body’s annual revenue is less than ten thousand dollars (\$10,000) and the local public body did not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, then the local public body is exempt 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 ten thousand dollars (\$10,000) or more but less than fifty thousand dollars (\$50,000), then the local public body is exempt from submitting a financial report 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 fifty thousand dollars (\$50,000), and the local public body expended at least fifty percent 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

audit contract for a tier 3 agreed upon procedures engagement;

(4) if a local public body's annual revenue is greater than fifty thousand dollars (\$50,000) but less than two hundred-fifty thousand dollars (\$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 audit contract for a tier 4 agreed upon procedures engagement;

(5) if a local public body's annual revenue is greater than fifty thousand dollars (\$50,000) but less than two hundred-fifty thousand dollars (\$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 audit contract for a tier 5 agreed upon procedures engagement;

(6) if a local public body's annual revenue is two hundred-fifty thousand dollars (\$250,000) or greater, but less than five hundred thousand dollars (\$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 audit contract for a tier 6 agreed upon procedures engagement;

(7) if a local public body's annual revenue is five hundred thousand dollars (\$500,000) or more, this 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 this rule;

(8) not-withstanding the annual revenue of a local public body, if the local public body expended seven hundred-fifty thousand dollars (\$750,000) or more of federal funds subject to a federal single audit during the fiscal year then the local public body shall procure a single audit.

C. Exemption from financial reporting: A local public

body that is exempt from financial reporting to the state auditor pursuant to Subsection B of 2.2.2.16 NMAC shall submit written certification to LGD and the state auditor. The certification shall be provided on the form made by the state auditor, available on the state auditor's website at www.saonm.org or through OSA-Connect. 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 fifty percent of or the remainder of a single capital outlay award.

D. Procurement of IPA services: A local public body required to obtain an agreed-upon procedures engagement shall procure the services of an IPA in accordance with Subsection F of 2.2.2.8 NMAC.

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

(1) The IPA shall provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. See Subsection F of 2.2.2.10 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 except for the activation of a contingency subcontractor form in the event the IPA is unable to complete the engagement.

(3) The IPA shall hold an entrance conference and an exit conference with the local public body unless the IPA has submitted a written request to the OSA for an exemption from this requirement and has obtained written approval of the exemption from the OSA. Unless the cost of the AUP is five thousand dollars (\$5,000) (excluding GRT) or less, the exit conference shall be held in person; a telephone or webcam exit conference shall not meet this requirement. The OSA has the authority to notify the

agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(4) The IPA shall submit the report to the OSA for review in accordance with the procedures described at Subsection B of 2.2.2.9 NMAC. Before submitting the report to OSA for review, the IPA shall review the report using the AUP report review guide available on the OSA's website at www.saonm.org. The report shall be submitted to the OSA for review with the completed AUP report review guide. After the report has been reviewed by the OSA, an electronic excel version of the summary of findings form (available at www.saonm.org) shall be submitted to the OSA with the final report. Once the audit report is officially released to the agency by the state auditor (by a release 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. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

F. Progress payments:

(1) Progress payments up to ninety percent 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 of work completed by the IPA. If requested by the state auditor,

the local public body shall provide the OSA a copy of the approved progress billing(s).

(2) Final payments from ninety percent to one hundred percent may be made by the local public body only after the state auditor has stated in a letter to the local public body that the agreed-upon procedures report has been released by the state auditor and the engagement and management representation letter have been received by the state auditor.

G. Report due dates, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end that qualify for the tiered system, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 shall submit the agreed-upon procedures report or certification no later than five months after the fiscal year-end. Late agreed-upon procedures reports (not the current reporting period) are due not more than six months after the date the contract was executed. An organized bound hard copy of the report shall be submitted to the OSA. Agreed-upon procedures reports submitted via fax or email shall 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 OSA is closed due to inclement weather, the report is due the following business day by 5:00 pm. If the report is mailed to the state auditor, it shall 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 business day.

(2) As soon as the IPA becomes aware that circumstances exist that will make the local public body's agreed-upon procedures report be submitted after the applicable due date, the auditor shall notify the state auditor and oversight agency of the situation in writing. This notification shall consist

of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. There shall be a separate notification for each late agreed-upon procedures report. The notification shall 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 shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the agreed-upon procedures report will be submitted after the report due date. A copy of the letter shall be sent to the LGD, if LGD oversees the local public body. The late report notification letter is not required if the report was submitted to the OSA for review by the deadline, and then rejected by the OSA, making the report late when resubmitted.

(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 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 professional standards and 2.2.2 NMAC regarding the release of any information relating to the agreed-upon procedures engagement.

H. Findings: All agreed upon procedures engagements shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, consistent with 12-6-5 NMSA 1978. The findings shall include the required content listed at Subsection L of 2.2.2.10 NMAC.

I. Review of agreed-upon procedures reports and related workpapers: Agreed-upon procedures reports shall be reviewed by the OSA for compliance with professional standards and

the professional services contract. Noncompliant reports shall be rejected and not considered received. Such reports shall be returned to the firm and a copy of the rejection letter shall be sent to the local public body. If the OSA rejects and returns an agreed upon procedures report to the firm, the report shall be corrected and resubmitted to the OSA by the due date, or the firm shall include a finding for non-compliance with the due date. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The OSA encourages early submission of reports to avoid findings for late reports. After its review of the agreed-upon procedures report for compliance with professional standards and the professional services contract, the OSA shall authorize the IPA to print and submit the final report. The required number of hardcopies of the final report as specified in the professional services contract, an electronic excel version of the findings summary form and an electronic version of the agreed upon procedures report, in PDF format as described at Subsection B of 2.2.2.9 NMAC, shall all be delivered to the OSA within five business days. The OSA shall not release the agreed-upon procedures report until the electronic version of the report is received by the OSA. The OSA shall 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 OSA for comprehensive report and workpaper reviews. After such a comprehensive report and workpaper review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond to all review comments as directed. If during the course of its review, the OSA finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with

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) the IPA may be required to correct the deficiencies in the report or audit documentation, and reissue the agreed upon procedures report to the agency and any others receiving copies;

(2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of 2.2.2.8 NMAC;

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

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

J. IPA Independence:

IPA's that perform agreed-upon procedure engagements under 2.2.2.16 NMAC shall maintain independence in fact and appearance, in all matters relating to the engagement. An IPA who performs the local public body's annual agreed-upon procedures engagement shall not enter into any special audit or non-attest service contracts with that local public body without the prior written approval of the state auditor. To obtain this approval, the IPA shall follow the requirements set forth in Subsection L of 2.2.2.8 NMAC. [2.2.2.16 NMAC, Rp, 2.2.2.16, 3/14/2017]

HISTORY of 2.2.2 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5/14/1971; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5/27/1971; SA Rule

No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the State of New Mexico, filed 6/1/1972; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6/1/1972; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2/28/1974; SA Rule No. 74-2, Rotation of Assignments, filed 2/28/1974; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11/3/1978; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5/28/1980; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12/17/1982; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4/10/1984; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1/28/1985; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgements and Compensated Absences, filed 4/16/1980; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6/12/1985; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6/17/1985; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6/17/1985; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1/20/1986; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3/20/1986; SA Rule No. 86-3, Professional Services Contracts, filed 7/9/1986; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/13/1987; SA Rule 87-2, Approval of Audit Contracts, filed 4/2/1987; SA Rule 87-3, Audit Requirements for

Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8/14/1987; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/10/1988; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/10/1989; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/1/1990; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5/7/1990; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/13/1991; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/6/1992; SA Rule 93-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/25/1993; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/25/1994; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5/16/1994; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/16/1995; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4/2/1996.

History of Repealed Material:

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/30/2001. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/29/2002. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 4/30/2003. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/31/2004. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 5/13/2005. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of

Entities - Repealed, 3/16/2006.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 4/16/2007.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 4/15/2008.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/27/2009.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/12/2010.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/28/2011.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/15/2012.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/28/2013.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/28/2014.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/16/2015.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/15/2016.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/14/2017.

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.1 NMAC, Section 14, effective 03-14-2017.

2.82.1.14 INVESTMENT COMMITTEE: The investments of the retirement fund shall be under the immediate direction of an investment committee composed of the chairman of the board, and [three] two members of the board appointed by the chairman and approved by the board, for terms of one year. [The appointments by the] The chairman shall [take place] appoint two members to the investment committee at the board's regular October meeting each year. In the event of a vacancy on the committee, the chairman

[may] shall appoint a member of the board to serve for the remaining portion of the one year term. The appointment shall become effective immediately; provided, however, that it shall be subject to the approval by the board at its first meeting occurring after said appointment. The actions of the committee shall be subject to applicable statutes governing investment of the educational retirement fund, and the administrative rules and policies adopted by the board relating to investments of the fund.
 [2.82.1.14 NMAC - Rp, 2.82.1.13 NMAC, 11-15-12; A, 12-30-13; A, 03-14-17]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.8 NMAC, Section 8, effective 03/14/2017.

2.82.8.8 INVESTMENT COMMITTEE:

A. The investment committee shall be composed as set forth in 2.82.1.14 NMAC.

B. The investment committee shall meet regularly each calendar quarter with additional meetings as required. The committee shall elect a chairman annually who shall call special meetings and preside at all meetings. [Three members of] A simple majority of the board members currently serving on the committee shall constitute a quorum.

C. The investment committee shall have the following responsibilities:

(1) to review all actions taken by the investment division in the management of the fund and recommend to the board specific action with regard to the continuation or change in the investment practices of the investment vision;

(2) to review on a continuing basis the investment philosophy and investment guidelines of the fund, make policy recommendations to the board and

generally oversee the investment activities of the fund;

(3) to recommend the employment of the services of an investment advisory firm to assist and advise the board in the management of the fund;

(4) to recommend the employment of the services of investment management firm(s) to manage a portion of the assets of the fund, either through separately managed accounts or through individual, common or collective trust funds;

(5) to establish asset allocation guidelines, which shall define asset allocation targets and ranges, and to annually review/modify these guidelines; as set forth in the ERB investment objectives and guidelines which shall be approved by the investment committee and recommended for board approval.

D. The investment committee may at any time withdraw the authority of the investment division to execute orders on behalf of the fund. Authority cannot be denied retroactively.

E. Investment committee members may attend and participate in any regular or special investment committee meeting by telephone or other electronic device only if:

(1) the member cannot attend the meeting due to an emergency or unforeseen circumstance;

(2) the member's voice can clearly be heard by everyone in attendance of the meetings and the member clearly identifies himself before speaking or participating in a vote;

(3) the member has not attended regular meetings electronically more than four times in a rolling twelve month period;

(4) no more than two members who otherwise qualify for participation under this section may do so at the same meeting; and

(5) the member otherwise complies with the

Open Meetings Act.
[6-30-99; 2.82.8.8 NMAC - Rn, 2
NMAC 82.8.8, 1-30-2004; A, 3-14-
2008; A, 12-30-2013; A, 3-14-2017]

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

**This is an amendment to 2.80.200
NMAC, Sections 60, 70 and 80
effective 3/14/17.**

2.80.200.60 ELECTION OF RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of retired board member. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

B. Any retired member who is receiving a disability or normal retirement pension under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act is eligible for election to a retired board member position.

C. Nominating petitions shall be signed only by retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act. To be eligible, a candidate must have a minimum of 50 nominations. A valid nomination shall include a signature, legible printing of the retiree's name, and one of the following:

- (1) the last four digits of the retiree's social security number;
- (2) the retiree's date of birth;
- (3) the

retiree's PERA identification number. A nomination that does not include at least one of these elements may not be counted. A retired member may sign more than one nominating petition for different candidates. The five candidates with the highest number of nominations shall be included on the ballot and the other or others shall be eliminated. The names of the five retired members receiving the highest number of nominations shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

D. In the event any nominee is unable or unwilling to accept a nomination, that nominee's name shall be removed from the ballot and the resulting vacancy on the ballot shall not be filled. If the inability or unwillingness to accept a nomination occurs after the ballots have been printed the election committee shall treat all votes cast for that nominee as void.

E. If only one retiree is nominated for a retired board member position, the election shall be cancelled and that retiree shall automatically be declared the winner for the retired board member position pursuant to 2.80.200.80 NMAC.

F. Only retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible to participate in the election of retired board members.

G. The campaign contribution limit of \$25.00 contained in Section 10-11-130.1(B) NMSA 1978 (2000) shall apply to each four year term retired board member election.

[2.80.200.60 NMAC - Rp,
2.80.200.60 NMAC, 12/30/15; A,
3/14/17]

2.80.200.70 ELECTION OF NON-RETIRED BOARD MEMBERS:

A. During the January

monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election.

These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of non-retired board member. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

(1) Candidates nominated for any non-retired board member position shall be vested members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act.

(2) Only state members, including members under the Judicial Retirement Act or the Magistrate Retirement Act, may nominate candidates for state board member positions. Only county members may nominate candidates for the county board member position. Only non-county municipal members may nominate candidates for the remaining municipal board member positions.

(3) To be eligible, a candidate must have a minimum of 150 valid nominations of non-retired PERA members from the candidate's membership group on his or her nominating petition. A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and one of the following:

- (a)** the last four digits of the member's social security number;
- (b)** the member's date of birth; or
- (c)** the member's PERA identification number. A nomination that does not include at least one of these elements may not be counted. A member may sign more than one nominating petition for different candidates.

(4) The five candidates with the highest number of nominations for each non-retired

position shall be included on the ballot and the other or others shall be eliminated. The names of the five non-retired members receiving the highest number of nominations for a position shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

(5) In the event any nominee is unable or unwilling to accept the nomination, his or her name shall be removed from the ballot and the vacancy on the ballot shall not be filled. If such a vacancy occurs after the ballots have been printed, the election committee shall treat all votes cast for that candidate as void.

(6) If only one member is nominated for a non-retired board member position, the election shall be cancelled and that member shall automatically be declared the winner for the non-retired board member position pursuant to 2.80.200.80 NMAC.

(7) All members of record of the membership group for which the election is held shall be eligible to receive a ballot as provided in Subparagraph (a) of Paragraph (8) below, except that only county members shall vote in elections for the county member position, and shall not be eligible to vote in elections for non-county municipal positions. The applicable membership group for any member who is no longer a currently employed, contributing employee of an affiliated public employer shall be determined as of the last date on which the member was a currently employed, contributing employee of an affiliated public employer.

(8) For purposes of the election of non-retired board members, "member of record" shall mean the following:

(a) all persons listed in PERA electronic membership history records as members, including members

covered under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act, no more than 60 days prior to the date of mailing ballots;

(b) all persons who have filed with PERA a valid application for membership form 60 days or more prior to the date of mailing ballots;

(c) while members of record shall qualify to receive a ballot, in the case of those new members listed in Subparagraph (b) of Paragraph (8) of Subsection A of 2.80.200.70 NMAC, a written request for a ballot must be made to PERA.

(9) For purposes of the election of non-retired board members:

(a) ballots shall be mailed to all non-county municipal members of record in the case of an election of a non-county municipal board position;

(b) ballots shall be mailed to all county municipal members of record in the case of an election of the county municipal board position; and

(c) ballots shall be mailed to all state members of record in the case of an election of a state board position.

B. The campaign contribution limit of \$25.00 contained in Section 10-11-130.1(B) NMSA 1978 (2000) shall apply to each four year term non-retired board member election. [2.80.200.70 NMAC - Rp, 2.80.200.70 NMAC, 12/30/15; A, 3/14/17]

2.80.200.80 ELECTIONS: The call of the annual meeting and secret election ballots shall be mailed at least 30 days prior to the annual meeting of the association. ~~[Ballots shall be held by the United States post office in a locked box until]~~ Mailed ballots shall be returned to a designated United States post office locked box and picked up by the election committee or an independent contractor hired by PERA to assist with the election. To be counted, ballots must be ~~[in the]~~

returned to the designated United States post office locked box by 12:00 noon on the date set by the association. The call of the annual meeting and secret election ballots may also be made available at least 30 days prior to the annual meeting of the association online via a secure website maintained by an independent contractor hired by PERA to assist with the election or by another method specified in the resolution adopted by the board each January. To be counted, online ballots or votes cast by another approved method must be received by 12:00 noon on the date set by the association. An independent contractor hired by PERA to assist with the election shall assign unique identifiers to members to prevent voting more than one ballot per eligible member.

A. Each ballot shall contain an affirmation of the member's eligibility to vote.

B. Ballots shall be self-proving and shall be counted by the election committee or an independent contractor hired by PERA to assist with the election. The candidate receiving the greatest number of votes shall be declared the winner for each position. In the event of a tie, the election committee shall select by lottery or similar method the name of the winner. The election committee or an independent contractor hired by PERA to assist with the election shall report the results of the election to the membership at the annual meeting.

C. Members whose ballots have not been delivered to them may request and receive another ballot if the original ballot is returned by the United States post office undelivered to PERA or an independent contractor hired by PERA to assist with the election prior to the close of the election. Members whose ballots have been mutilated or spoiled may request and receive another ballot when, prior to the close of the election, the original mailed ballot is returned by the member to PERA or an independent contractor hired by PERA to assist with the election. In addition, PERA or an independent contractor hired by

PERA to assist with the election may assign unique identifiers to members and issue replacement ballots using procedures to prevent voting more than one ballot per eligible member.

D. If the election committee or an independent contractor hired by PERA to assist with the election recommends for good cause that the results of the election be invalidated, and the board adopts such recommendation, a new election shall be held as soon as possible thereafter and the annual meeting at which the election results are announced shall be continued until completion of the new election.

E. Insignificant departures from the requirements set forth in these regulations pertaining to the conduct of elections shall not invalidate the election unless the results of the election are proven to have been substantially affected.

F. A member shall be considered to be "qualified" for office pursuant to Section 10-11-130(D) NMSA 1978 when the board has accepted the election results and the newly-elected member has been sworn into office.
[2.80.200.80 NMAC - Rp, 2.80.200.80 NMAC, 12/30/15; A, 3/14/17]

PUBLIC REGULATION COMMISSION

The Public Regulation Commission approved, at its 6/22/2016 hearing, to repeal its rule 18.3.12 NMAC, Towing Services (filed 1/28/2015) and replace it with 18.3.12 NMAC, Towing Services, effective 3/14/2017.

The Public Regulation Commission approved, at its 01/04/17 hearing, to repeal its rule 18.3.15 NMAC, Fuel Surcharge for Wrecker Services Performing Non-Consensual Tows (filed 05/1/2008), effective 03/14/2017.

PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS

PART 12 TOWING SERVICES

18.3.12.1 ISSUING

AGENCY: New Mexico Public Regulation Commission (NMPRC).
[18.3.12.1 NMAC - Rp, 18.3.12.1 NMAC, 3/14/2017]

18.3.12.2 SCOPE: This rule applies to all towing services providing non-consensual tows and all repossession services using towing equipment and is in addition to all other applicable requirements of these rules.

[18.3.12.2 NMAC - Rp, 18.3.12.2 NMAC, 3/14/2017]

18.3.12.3 STATUTORY

AUTHORITY: Sections 8-8-4 and 65-2A-4 NMSA 1978.
[18.3.12.3 NMAC - Rp, 18.3.12.3 NMAC, 3/14/2017]

18.3.12.4 DURATION:

Permanent.
[18.3.12.4 NMAC - Rp, 18.3.12.4 NMAC, 3/14/2017]

18.3.12.5 EFFECTIVE

DATE: March 14, 2017, unless a later date is cited at the end of a section.
[18.3.12.5 NMAC - Rp, 18.3.12.5 NMAC, 3/14/2017]

18.3.12.6 OBJECTIVE: The purpose of this rule is to establish requirements for towing services subject to the limitations and policy of 49 U.S.C. 14501. The clearing of public highways and roads is a matter of public safety, which cannot be reasonably accomplished by state and local law enforcement officials, unless uniform maximum rates for service are required for tows requested or directed by

law enforcement or other safety officials. Public safety also requires secure storage yards for vehicles and reasonable access to towed vehicles, and particularly requires reasonably rapid access to operable vehicles that have been towed as the result of trespass tows, which may unexpectedly deprive members of the public of transportation as well as the personal items stored in their vehicle. Reasonable proximity of the carrier's office and books and records is required for efficient and effective inspections of safety and financial responsibility requirements, as well as the public's ability to retrieve towed vehicles.

[18.3.12.6 NMAC - Rp, 18.3.12.6 NMAC, 3/14/2017]

18.3.12.7 DEFINITIONS:

In addition to the definitions in Section 65-2A-3 NMSA 1978 and 18.3.1.7 NMAC, as used in this rule:

A. MVD means the motor vehicle division of the New Mexico taxation and revenue department;

B. consensual tow means a motor vehicle tow which has not been directed or requested by a law enforcement official, and for which actual consent has been obtained by the towing service from the owner or operator of the vehicle prior to the tow;

C. nonconsensual tow has the meaning given in Subsection JJ of Section 65-2A-3 NMSA 1978 for purposes of this rule, regardless of whether the owner or operator of the towed vehicle has consented to a tow requested or directed by a law enforcement official;

D. normal business hours means any eight hours between the hours of 8:00 a.m. to 5:00 p.m. excluding one hour lunch on every weekday excluding state recognized holidays;

E. owner of a motor vehicle means a person who holds legal title to a motor vehicle or a person legally entitled to possession of the motor vehicle;

F. proof of ownership means a certificate of title, evidence

of current registration of a motor vehicle or other legal documentation of ownership including but not limited to the vehicle owner's delegation of the power of attorney, assignment of agent by notarized letter, or a report from MVD or other reliable source identifying the current registered owner, and sufficient other documentation to identify an individual as the person described in the documents or as the person's agent;

G. **public directive tow** means any nonconsensual motor vehicle tow performed at the direction or request of a law enforcement official, including tows assigned by law enforcement agencies through a rotational call system, regardless of whether the owner or operator of the towed vehicle ever consented to the tow;

H. **storage** means the safekeeping of motor vehicles entrusted to the custody of a towing service;

I. **trespass tow** means the nonconsensual tow of a motor vehicle which is illegally parked on property other than a public roadway, for which actual consent has been obtained by the towing service from the owner or lessee of the private property or the owner's or lessee's agent prior to the tow and for which actual consent has not been obtained by the towing service from the owner or operator of the vehicle prior to the tow, but does not include a motor vehicle tow performed at the request or direction of a law enforcement official;

J. **unclaimed motor vehicle** means a vehicle that has been placed in a storage or impound lot to which no owner or lienholder of record has asserted a valid claim after required attempts to contact the owner and lienholder have been made. [18.3.12.7 NMAC - Rp, 18.3.12.7 NMAC, 3/14/2017]

18.3.12.8 MINIMUM EQUIPMENT STANDARDS: A towing service shall use only those winches and towing equipment that have been produced and constructed

by a manufacturer of such equipment that regularly produces winches and towing equipment of guaranteed quality.

[18.3.12.8 NMAC - Rp, 18.3.12.8 NMAC, 3/14/2017]

18.3.12.9

CLASSIFICATION OF TOWING

EQUIPMENT: The standards for each class of towing service shall be determined solely by the manufacturer's specifications for the capabilities of tow and vehicle carrier trucks and towing equipment.

A. Class A - operating authority for towing up to 8,000 pounds;

B. Class B - operating authority for towing between 8,001 and 12,000 pounds;

C. Class C - operating authority for towing between 12,001 and 25,000 pounds;

D. Class D - operating authority for towing 25,001 pounds and over.

[18.3.12.9 NMAC - Rp, 18.3.12.9 NMAC, 3/14/2017]

18.3.12.10 CLASS A

TOWING EQUIPMENT: A class A towing service shall maintain equipment adequate to transport motor vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall not exceed 8,000 pounds.

A. Tow truck specifications.

(1) GVW rating of not less than 10,000 pounds;
(2) Minimum of 60" cab to axle length;
(3) Automatic or manual transmission;
(4) Dual rear wheels.

B. Towing equipment specifications.

(1) Lifting capacity of not less than four tons;
(2) Winching capacity of not less than four tons, single line pull;
(3) 3/8" cable for winch;
(4) Tow bar,

cradle, sling attachment, under reach, or roll-back vehicle carrier.

C. Vehicle carrier truck specifications.

(1) GVW of not less than 10,000 pounds;
(2) Minimum of 96" cab to axle length;
(3) Dual rear wheels;
(4) Automatic or manual transmission.

D. Vehicle carrier bed specifications.

(1) Minimum of 17' of length;
(2) Winching capacity of not less than four tons;
(3) 3/8" cable for winch.

[18.3.12.10 NMAC - Rp, 18.3.12.10 NMAC, 3/14/2017]

18.3.12.11 CLASS B

TOWING EQUIPMENT: A class B towing service shall maintain equipment adequate to transport passenger cars, trailers, semi-trailers, trucks and truck-tractors, provided that the total gross weight of vehicle, special equipment, special bodies and lading shall exceed 8,001 pounds, but shall not exceed 12,000 pounds. Unless otherwise specifically restricted by its operating authority, a class B towing service may also render class A service but must charge the tariffed rates for class A service when it does so and must use class B equipment.

A. Tow truck specifications.

(1) GVW rating of not less than 11,000 pounds;
(2) Minimum of 60" cab to axle length;
(3) Dual rear wheels;
(4) Automatic or manual transmission.

B. Towing equipment specifications.

(1) Lifting capacity of not less than eight tons;
(2) Winching capacity of not less than eight tons;
(3) 3/8" cable for winch;

(4) Tow bar, cradle, or sling attachment, under reach, or roll-back vehicle carrier.

C. Vehicle carrier truck specifications.

(1) GVW of not less than 14,000 pounds;
(2) Minimum of 108" cab to axle length;
(3) Dual rear wheels;
(4) Automatic or manual transmission.

D. Vehicle carrier bed specifications.

(1) Minimum of 17' of length;
(2) Winching capacity of not less than four tons;
(3) 3/8" cable for winch.

[18.3.12.11 NMAC - Rp, 18.3.12.11 NMAC, 3/14/2017]

18.3.12.12 CLASS C TOWING EQUIPMENT: A class C towing service shall maintain equipment adequate to transport trailers, semi-trailers, trucks, truck-tractors and other vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall exceed 12,001 pounds, but shall not exceed 25,000 pounds. Unless otherwise specifically restricted by its operating authority, a class C towing service may also render class A or class B service but must charge the tariffed rates for class A or class B service when it does so and must use class C equipment.

A. Tow truck specifications.

(1) GVW rating of not less than 25,000 pounds;
(2) Dual rear wheels;
(3) Automatic or manual transmission;
(4) Full air brakes, constructed so as to lock power wheels upon air failure.

B. Towing equipment specifications.

(1) Lifting capacity of not less than 10 tons;
(2) Combined winching capacity of not less than 10

tons;

(3) 7/16" cable for winch;

(4) Tow bar, cradle or sling attachment, under reach, or roll-back vehicle carrier.

C. Use of lowboy. A towing service may use a tractor to tow a trailer when the trailer is part of a damaged or disabled unit. A towing service may use a lowboy when a tractor, trailer, or other class C vehicle cannot be towed by a tractor. A towing service may transport the contents of a damaged or disabled unit by means of a carrier or trailer when appropriate.

[18.3.12.12 NMAC - Rp, 18.3.12.12 NMAC, 3/14/2017]

18.3.12.13 CLASS D TOWING EQUIPMENT: A class D towing service shall maintain equipment adequate to transport trailers, semi-trailers, trucks, truck-tractors and other vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall exceed 25,001 pounds. Unless otherwise specifically restricted by its operating authority, a class D towing service may also render class A, class B, or class C service but must charge the tariffed rates for class A or class B or class C service when it does so and must use class D equipment.

A. Tow truck specifications.

(1) Gross Vehicle Weight (GVW) rating of not less than 49,000 pounds;
(2) Manual transmission;
(3) Dual axle (tandem) rear wheels;
(4) Minimum of 120" cab to axle length;
(5) Full air brakes constructed so as to lock power wheels upon air failure.

B. Towing equipment specifications.

(1) Lifting capacity of not less than 25 tons;
(2) Combined winching capacity of not less than 25 tons;

(3) 5/8" cable for winch;

(4) Tow bar, cradle or sling attachment, under reach or roll-back vehicle carrier.

C. Use of lowboy. A towing service may use a tractor to tow a trailer when the trailer is part of a damaged or disabled unit. A towing service may use a lowboy when a tractor, trailer, or other class D vehicle cannot be towed by a tractor. A towing service may transport the contents of a damaged or disabled unit by means of a carrier or trailer when appropriate.

[18.3.12.13 NMAC - Rp, 18.3.12.13 NMAC, 3/14/2017]

18.3.12.14 AUTHORIZATION AND PROCEDURE FOR MOVING MOTOR VEHICLES:

A. A towing service shall only perform the following tows:

(1) **By consent.** A warranted towing service may perform a consensual tow pursuant to the procedures specified in this rule and other applicable rules.

(2) **By directive.** A warranted towing service may perform a motor vehicle tow explicitly ordered by a law enforcement officer. In the event of a tow explicitly ordered by a law enforcement official, the towing service shall attempt to first obtain written authorization from a law enforcement officer and a written inventory of the contents of the vehicle. If the towing service is unable to first obtain a written authorization and inventory from a law enforcement officer, the towing service shall obtain the name of the officer ordering the tow, the agency that employs the officer, and any other identifying employment information, such as badge number, and shall perform its own inventory of the contents of the vehicle.

(3) **Necessary for public safety.** A warranted towing service may perform a motor vehicle tow necessary for public safety, but only for the distance necessary to remove the hazard to other motor vehicles using the

highway and only where:

(a) no law enforcement officer is available within a period of three or more hours; and

(b) the accident or abandonment has occurred at a point on the highway which may be dangerous to other motor vehicles using the highway and it is not possible to detour other motor vehicles around the damaged or disabled motor vehicle.

(4) **Trespass tows.** No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle illegally parked on property other than a public roadway without having first obtained written authorization from the owner or lessee of the property, or the owner's or lessee's agent. Written authorization shall include the name and signature of the owner or lessee of the property or the name and signature of the property owner's or lessee's agent if different, the location of the private property, the amount of time the motor vehicle has been on the property, a description of the vehicle, the date and time the towing service removed the vehicle from the property, and a statement by the owner, lessee or agent that the vehicle is illegally parked.

(a) Before towing a motor vehicle that is illegally parked on private property, the towing service shall take a digital photograph or photographs of the motor vehicle showing its position on the private property.

(b) No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle illegally parked on commercial property or at an apartment unless the property contains visible signs notifying the public that illegally parked motor vehicles may be towed. The visible signs shall specify the exact time periods (starting and ending hours) when the vehicle is determined to be "illegally parked" on commercial property or at an apartment house. Before towing a

motor vehicle that is illegally parked on private commercial property or at an apartment, the towing service shall take a digital photograph or photographs of the signage notifying the public that illegally parked motor vehicles may be towed.

B. Additional requirements. When towing motor vehicles, a towing service shall:

(1) ensure that at least two wheels of the motor vehicle, front or rear, are clear of the highway;

(2) use a cradle or bar to provide a rigid space between the motor vehicle and the tow truck; and

(3) use a cradle or rigid bar without lifting the front or rear wheels if the total gross weight of the motor vehicle, including lading, exceeds 10,000 pounds.

C. Prohibitions. A towing service shall not:

(1) pay or refund, directly or indirectly, any remuneration or anything of value to a private property owner or agent for the ability to perform nonconsensual tows on the private property;

(2) transport a motor vehicle of any type by pushing;

(3) transport a disabled motor vehicle on a dolly or other wheeled auxiliary device, except when the auxiliary device is specifically designed for, and used only for, the towing of disabled motor vehicles;

(4) use a wheeled auxiliary device unless it is necessary to prevent further mechanical damage to the motor vehicle being moved; or

(5) use a wheeled auxiliary device unless the nature of the existing damage prohibits moving the motor vehicle in any other way.

[18.3.12.14 NMAC - Rp, 18.3.12.14 NMAC, 3/14/2017; A, 3/14/2017]

18.3.12.15 SECUREMENT: A towing service shall secure every towed motor vehicle to the towing vehicle in accordance with 49 CFR 393, Subpart F, Coupling Devices

and Towing Methods, and Subpart I, Protection Against Shifting and Falling Cargo.
[18.3.12.15 NMAC - Rp, 18.3.12.15 NMAC, 3/14/2017]

18.3.12.16 USE OF DOLLY OR SUPPLEMENTARY WHEELS:

A. A towing service shall not use a wheeled auxiliary device when such use could jeopardize the safety of the public.

B. Only class A and class B towing services may use dollies or supplementary wheels and then only when necessary.

C. Class C and class D towing services may use converter dollies when necessary to transport class C or class D motor vehicles.

D. A towing service may use a dolly when both ends of the motor vehicle to be towed are damaged or it is necessary to prevent further damage.

[18.3.12.16 NMAC - Rp, 18.3.12.16 NMAC, 3/14/2017]

18.3.12.17 DISCONNECTION OF DRIVELINE: A towing service may disconnect or remove the driveline from a motor vehicle to be towed when:

A. it is necessary to prevent mechanical damage to the motor vehicle; or

B. the motor vehicle's front end is so damaged, or for some other reason, it cannot be towed by lifting the rear end.

[18.3.12.17 NMAC - Rp, 18.3.12.17 NMAC, 3/14/2017]

18.3.12.18 SAFETY CONSIDERATIONS:

A. Unsafe conditions. A towing service is not obligated to transport shipments when, in the service's judgment, weather or road conditions make it impracticable or unsafe to operate.

B. Passengers prohibited. No person, other than an employee of the towing service, shall ride in a disabled motor vehicle while it is being transported.

C. Chains or cable

across highway. A towing service shall not stretch or place any motor vehicles, cables or chains across any highway unless and until flagmen are placed a minimum distance of three hundred (300) feet from the obstruction in each direction along the highway to stop or warn approaching traffic. A towing service shall equip flagmen with red flags during daylight hours and electric lanterns with red lights during hours of darkness. [18.3.12.18 NMAC - Rp, 18.3.12.18 NMAC, 3/14/2017]

18.3.12.19 SAFETY EQUIPMENT REQUIREMENTS: All towing services must maintain the following safety equipment on each tow truck at all times for the described use:

A. flashing blue, amber or a combination of both colors of lights, front and rear, which shall be in operation whenever a towing service is standing on a roadway for the purpose of removing a motor vehicle and at all times while transporting a motor vehicle;

B. stop, tail, and turn signals on any motor vehicle in tow that can be operated from the towing vehicle;

C. spot lights that are capable of lighting the scene of disability after dark and additional spotlights or work lights positioned behind the cab of the towing service that can be used to illuminate the motor vehicle being serviced;

D. one hand axe;

E. one wrecking bar at least four feet in length;

F. at least one broom, one shovel, and one bag or container for removal of broken glass and debris from highway;

G. one 10 unit type first-aid kit;

H. at least three triangle-type reflectors;

I. at least six electronic fuses, 25 minute flares, or reflective cones;

J. at least four red signal flags (minimum dimensions - two feet by two feet (2' x 2')); and

K. at least one charged

fire extinguisher having a minimum capacity of 10 pounds of dry chemical capable of extinguishing class A, B and C fires.

[18.3.12.19 NMAC - Rp, 18.3.12.19 NMAC, 3/14/2017]

18.3.12.20 DEADHEAD

MILEAGE: Except as otherwise provided in this rule, a towing service may assess deadhead mileage charges when performing a nonconsensual tow of a vehicle, and the owner or operator of the towed vehicle asks or directs the towing service to tow the vehicle to a location other than the towing service's base of operation or storage facility. When calculating deadhead mileage charges in such case, deadhead mileage shall not exceed total mileage less loaded mileage.

A. Total mileage calculation. Total mileage shall equal the sum of:

(1) the mileage from the base of operation to the loading pick up point;

(2) the mileage from the loading pick-up point to the destination; and

(3) the mileage from the destination back to the original base of operation.

B. Loaded mileage calculation. Loaded mileage shall equal the number of miles from the loading pick-up point to the destination.

C Excess deadhead mileage charges. A towing service performing a public directive tow may assess excess deadhead mileage charges for the unloaded mileage from its base of operation to the scene and from the scene back to its base of operation when the vehicle needs to be recovered, but the vehicle is not towed.

[18.3.12.20 NMAC - Rp, 18.3.12.20 NMAC, 3/14/2017]

18.3.12.21 TOWING MULTIPLE MOTOR VEHICLES

IN ONE TRIP: When a towing service tows two or more disabled motor vehicles during one trip, it may charge the reasonable and

appropriate tariff rates for the second and succeeding motor vehicles as though each were an independent tow, including but not limited to separate charges for hookup, mileage, etc. for each vehicle.

[18.3.12.21 NMAC - Rp, 18.3.12.21 NMAC, 3/14/2017]

18.3.12.22 ALTERED, MUTILATED, OR MISSING VEHICLE IDENTIFICATION NUMBER (VIN):

A towing service must notify the local law enforcement agency or the New Mexico state police in writing as soon as it discovers an altered, mutilated, or missing VIN on a motor vehicle in its custody, unless the motor vehicle has been impounded by a law enforcement officer aware of the altered, mutilated, or missing VIN. [18.3.12.22 NMAC - Rp, 18.3.12.22 NMAC, 3/14/2017]

18.3.12.23 STORAGE

FACILITIES: Towing service includes the storage of motor vehicles. Towing service begins when the motor vehicle is entrusted to the towing service and ends when the towing service delivers the motor vehicle to the owner or the owner's agent. Storage begins when the motor vehicle arrives at the storage facility and ends when the motor vehicle leaves the storage facility.

A. Storage Facility.

A towing service that performs nonconsensual tows must maintain at least one of the following classes of storage facility:

(1) Type 1 - a fenced and locked area;

(2) Type 2 - a fenced, lighted, and locked area; or

(3) Type 3 - an enclosed, roofed and locked structure.

B. Office Location.

A towing service that performs nonconsensual tows must have its office located either within or in the immediate vicinity of the storage facility. For purposes of this rule, "immediate vicinity" means the area within one mile measured as the straight line distance between the property line of the storage facility

and the property line of the property within which the office is located.

C. Staffing and Access.

(1) A towing service that performs trespass tows must have a person working in an office that is within or in the immediate vicinity of the storage facility during normal business hours who is able to provide the services specified in Subsections A and B of 18.3.12.24 NMAC.

(2) A towing service that performs public directive tows must have a person working at, or available to meet with the public at, the storage facility or the office in the immediate vicinity of the storage facility by appointment during normal business hours within two hours from the time of telephone call requesting an appointment, who is able to provide the services specified in Subsections A and B of 18.3.12.24 NMAC.

D. Required Signage.

(1) The office of a towing service shall have prominent signage which may be read by a person in a passing vehicle, providing the name, address and contact telephone number of the towing service. If the office is not located within the storage facility, the office signage shall also include the address of the storage facility.

(2) If the storage facility is not located where the towing service office is located, the storage facility shall have prominent signage which may be read by a person in a passing vehicle, providing the name of the towing service, the address of the storage facility, the address of the towing service office, and the contact telephone number of the towing service.

E. Lists or Logs of Nonconsensually Towed Vehicles.

(1) A towing service that performs nonconsensual tows must maintain the following records in addition to all other records required by rule:

(a) a list or log of each and all vehicles

currently held in the storage yard which were towed to the storage yard as the result of a trespass tow; and
(b)

a list or log of each and all vehicles currently held in the storage yard which were towed to the storage yard as the result of a public directive tow.

(2) Each list or log required in this rule shall be available to provide to an employee of the transportation division of the commission or for transmission to the transportation division of the commission upon the request or directive of an employee of the transportation division of the commission. Each list or log shall contain, for each vehicle required to be listed:

(a) a description of the vehicle, including the make, model, model year, color and vehicle identification number;

(b) the date that the vehicle was towed to the storage yard;

(c) whether the owner of the vehicle or a representative of the owner has been allowed access to the vehicle, and if so, the name of the person allowed access and the date of each access; and

(d) whether the vehicle has been legally abandoned, surrendered or transferred for charges by the owner, and, if so, the type and date of legal transfer.
[18.3.12.23 NMAC - Rp, 18.3.12.23 NMAC, 3/14/2017]

18.3.12.24 INSPECTION AND RELEASE OF TOWED MOTOR VEHICLES:

A. Motor vehicles ordered held for investigation. If a law enforcement agency orders a towing service to hold a motor vehicle for investigation, the towing service shall not, without specific written authorization of the law enforcement agency:

(1) allow the owner of the motor vehicle, the owner's agent, or a lienholder to inspect the motor vehicle or remove proof of ownership or personal

property from the motor vehicle; or
(2) release the motor vehicle to any person, including the owner, the owner's agent, or a lienholder.

B. Motor vehicles not held for investigation.

(1) If a law enforcement agency does not order a motor vehicle to be held for investigation, the towing service shall allow the owner, the owner's agent, or the lienholder of the motor vehicle without charge, during normal business hours, to:

(a) inspect the motor vehicle;

(b) remove proof of ownership from the motor vehicle; or

(c) remove personal property from the motor vehicle if he or she presents proof of ownership.

(2) The owner, the owner's agent, or the lienholder of a stored motor vehicle that has not been ordered held for investigation may obtain possession of the motor vehicle by paying all just and reasonable charges and providing proof of ownership:

(a) as a matter of right, during normal or extended business hours; or

(b) at the option of the towing service, during non-business hours; if a towing service elects to deliver a motor vehicle during non-business hours, it must assess the tariffed administrative charge for such delivery.

C. If the owner, the owner's agent, or the lienholder of a motor vehicle disputes any of the charges for towing or storage, or feels the motor vehicle was illegally towed, the towing service shall furnish to the disputant a written statement containing the name, address, and telephone number of the consumer relations division of the commission and advising the disputant that he or she may file a complaint with the commission as provided by applicable commission rules. The written statement shall be in substantially the following form:

"If you have a dispute with the towing service regarding charges for towing or storage, and are not satisfied with the solution offered by the towing service, you may file a complaint with the consumer relations division of the public regulation commission in writing at P.O. Box 1269, Santa Fe, New Mexico, 87504-1269 or by calling the commission's toll-free number 1-888-427-5772, or via email, crd.complaints@state.nm.us."

D. Towing services shall accept payment in cash. Additionally, towing services shall accept payment by either credit card or check. Towing services shall post in a conspicuous location at their place of business which forms of payment, are accepted. Nothing in this rule shall be deemed to restrict the forms of payment that a towing service may accept.

[18.3.12.24 NMAC - Rp, 18.3.12.24 NMAC, 3/14/2017]

18.3.12.25 [RESERVED]

18.3.12.26 NOTICE TO OWNERS OF TOWED MOTOR VEHICLES:

A. Identification of owner.

(1) On site.

Before a towing service tows a motor vehicle, it shall request ownership information from the authorizing law enforcement officer on scene.

(2) From the storage facility. If a towing service has not already obtained ownership information on a motor vehicle, it shall obtain the name and address of the registered owner and any lienholder of the motor vehicle.

(a)

If the motor vehicle has New Mexico plates, the towing service shall request ownership information within three business days after the motor vehicle comes into its possession.

(b)

If the motor vehicle has out-of-state plates or the towing service has other reason to believe that the motor vehicle is registered in a state other than New Mexico, the towing service must request the information from the

appropriate agency of that state within three business days after the motor vehicle comes into its possession.

(3)

Documentation.

(a)

Information requested from the Motor Vehicle Division of any state. A towing service shall retain in its files a photocopy of MVD Form 10705, Vehicle or Hull Identification Number Verification, indicating the date ownership and lienholder information was requested and a copy of any document received in response.

(b)

Information requested from other sources.

(i)

Electronically. A towing service shall print out and retain in its files a copy of the ownership and lienholder information shown on the computer screen, notated with the name of the person making the request and the date and time the request was made.

(ii)

By other means. A towing service shall maintain a record in its files indicating the name of the person requesting ownership and lienholder information, the source from which the information was requested, and the date and time the information was requested, and a copy of any document received from the source in response.

B. Notification of owner.

(1) Within

two business days of receiving information identifying the registered owner or any lienholder of the motor vehicle, the towing service shall notify the registered owner and the lienholder, if any, that the towing service has the motor vehicle in its possession.

(2) The

towing service shall use MVD Form 10058, notice of mechanic's or landowners's lien, and shall mail the notice by certified mail, return receipt requested, to the registered owner and the lienholder, if any.

(3) This

requirement applies even if the VIN is altered, mutilated, or missing.

C. Penalty for failure to comply with this section. A towing service shall not collect any charges or liens for storage of an unclaimed motor vehicle if it fails to either:

(1) request

ownership information within three business days after a motor vehicle comes into its possession; or

(2) mail notice

to the registered owner and any lienholder within two business days of receipt of ownership information.

D. Exception.

A towing service shall not be required to give the notice required by Subsection B of this section to the owner if, before the notice is required to be sent, the owner of the motor vehicle identifies himself to the towing service and makes any arrangement the towing service deems necessary for the payment of the towing and storage charges. However, the towing service shall still be required to give the notice to the lienholder of the motor vehicle.

[18.3.12.26 NMAC - Rp, 18.3.12.26 NMAC, 3/14/2017]

18.3.12.27 TOWING SERVICE RESPONSIBILITY: A towing service shall be responsible for:

A. removing debris at the scene of an accident whether or not specifically directed to do so by law enforcement authorities; and

B. the safekeeping and delivery of a motor vehicle and its contents entrusted to it or which come into its custody in the course of its authorized operations.

[18.3.12.27 NMAC - Rp, 18.3.12.27 NMAC, 3/14/2017]

18.3.12.28 RECORDS: A towing service shall maintain for a period of three years complete and permanent records of income, photographs, tow bills, and any other documentation required by this rule for non-consensual tows separate and apart from any other towing services and from any other business conducted by the towing service.

[18.3.12.28 NMAC - Rp, 18.3.12.28

NMAC, 3/14/2017]

18.3.12.29 TOWING

SERVICES WITH MULTIPLE STORAGE FACILITIES:

A towing service may apply to operate with multiple storage facilities by completing the application form prescribed by the director. The director shall approve the application if it contains the name of the towing service, the warrant number, the mailing address of the new storage facility, the physical address of the new storage facility, and a list of the equipment the towing service will station at the new storage facility. A towing service performing non-consensual tows shall transport towed vehicles to the nearest storage facility. [18.3.12.29 NMAC - Rp. 18.3.12.29 NMAC, 3/14/2017]

HISTORY OF 18.3.12 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971;

SCC 72-12, N.M. Wrecker Tariff No. 1-B, Issued September 29, 1969, filed on 10/2/1972;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;

SCC 77-3, N.M. Wrecker Tariff No. 1-D, Issued July 1, 1976, filed on 6/6/1977;

SCC 79-2, N.M. Wrecker Tariff No. 3-D, Issued April 15, 1979, filed on 5/25/1979;

SCC 86-4, In the Matter of Minimum Specifications for Wreckers-General Order No. 42 (1986 Revision), filed 9/29/1986;

SCC 92-4-TR, New Mexico Wrecker Rules, filed on 7/29/1992;

SCCMC Rule No. 14, Equipment Required on Certain Vehicles, filed on 3/5/1982;

SCC Rule 202, Definitions, filed on 1/5/1993;

SCC Rule 267, Wrecker Services, filed on 1/5/1993.

HISTORY OF REPEALED MATERIAL:

SCC Rule 202, Definitions, filed on 1/5/1993;

SCC Rule 267, Wrecker Services, filed on 1/5/1993.

18.3.12 NMAC, Motor Carrier General Provisions - Towing Service, filed 12/10/2002, repealed 2/13/2015

18.3.12 NMAC, Motor Carrier General Provisions - Towing Service, filed 1/28/2015, repealed 3/14/2017

PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS

PART 15 FUEL SURCHARGE FOR WRECKER SERVICES PERFORMING NON- CONSENSUAL TOWS

18.3.15.1 ISSUING

AGENCY: New Mexico Public Regulation Commission.

[18.3.15.1 NMAC - Rp. 18.3.15.1, 03/14/2017]

18.3.15.2 SCOPE: This rule applies to all wrecker services performing non-consensual tows. [18.3.15.2 NMAC - Rp. 18.3.15.2, 03/14/2017]

18.3.15.3 STATUTORY

AUTHORITY: Sections 8-8-4, 65-2A-4 and 65-2A-21 NMSA 1978.

[18.3.15.3 NMAC - Rp. 18.3.15.3, 03/14/2017]

18.3.15.4 DURATION:

Permanent.

[18.3.15.4 NMAC - Rp. 18.3.15.4, 03/14/2017]

18.3.15.5 EFFECTIVE

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

[18.3.15.5 NMAC - Rp. 18.3.15.5, 03/14/2017]

18.3.15.6 OBJECTIVE: The purpose of this rule is to establish a procedure providing fair and reasonable voluntary fuel surcharges to wrecker services performing non-consensual tows.

[18.3.15.6 NMAC - Rp. 18.3.15.6, 03/14/2017]

18.3.15.7 DEFINITIONS:

In addition to the definitions in Sections 24-10B, 65-2A-3, 65-6-2 NMSA 1978, and 18.3.1.7 NMAC, as used in this rule:

A. EIA reference price refers to the weekly gasoline or diesel fuel price for the Rocky Mountain region, as published at the United States department of energy's official energy information administration website at <http://tonto.eia.doe.gov/oog/infogdu/gasdiesel.asp>, or such other address on which that same information may be displayed by the energy information administration in the future;

B. fuel surcharge program means the procedures and requirements set forth in this rule, by which wrecker services performing non-consensual tows may implement limited increases in their rates, reflecting the changing price of fuel, without a formal proceeding before the commission; [18.3.15.7 NMAC - Rp. 18.3.15.7, 3/14/2017]

18.3.15.8 TOWING SERVICES PERFORMING NON-CONSENSUAL TOWS: Motor

carriers performing non-consensual towing services that choose to charge a fuel surcharge under the fuel surcharge program shall comply with the following table and formula:

<i>If Rocky Mountain EIA gas/diesel price is between:</i>	<i>Then, the Fuel Surcharge on total mileage charge is:</i>
\$2.26 - \$2.50	3.75 percent
\$2.51 - \$2.75	4.25 percent
\$2.76 - \$3.00	4.75 percent
\$3.01 - \$3.25	5.25 percent
\$3.26 - \$3.50	5.75 percent
\$3.51 - \$3.75	6.25 percent
\$3.76 - \$4.00	6.75 percent
\$4.01 - \$4.25	7.25 percent
\$4.26 - \$4.50	7.75 percent
\$4.51 - \$4.75	8.25 percent
\$4.76 - \$5.00	8.75 percent
\$5.01 - \$5.25	9.25 percent
\$5.26 - \$5.50	9.75 percent
\$5.51 - \$5.75	10.25 percent
\$5.76 - \$6.00	10.75 percent
\$6.01 - \$6.25	11.25 percent
\$6.26 - \$6.50	11.75 percent
\$6.51 - \$6.75	12.25 percent
\$6.76 - \$7.00	12.75 percent
\$7.01 - \$7.25	13.25 percent
\$7.26 - \$7.50	13.75 percent

A. the fuel surcharge formula is the percentage referenced in the above table based on the current EIA reference price multiplied by the total mileage charge, including all allowed loaded, deadhead, and excess deadhead miles;

B. the fuel adjustment shall be stated as a separate charge on the charge ticket or invoice, and shall include the surcharge percentage at the current EIA reference and total miles charged for fuel.

[18.3.15.8 NMAC - Rp. 18.3.15.8, 3/14/2017]

HISTORY of 18.3.15 NMAC: [RESERVED]

PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.2 NMAC, Section 10, effective 3/14/2017.

18.3.2.10 CONTENTS OF APPLICATIONS FOR A WARRANT: An applicant for a warrant shall file with the commission an application containing the following information and documents:

- A. the applicant's name;
- B. if the applicant is a sole proprietor or a partnership, the applicant's social security number for purposes of verifying parental responsibility act compliance;
- C. each and all of the applicant's doing business as (d/b/a) [name] names, if applicable;
- D. the applicant's principal place of business within the state of New Mexico and mailing address, and, for a towing service, the mailing and physical address of the storage facility and office, if different from those of the principal place of business;
- E. the applicant's business telephone number;
- F. the applicant's electronic mail address, if applicable;
- G. the applicant's combined reporting system (CRS) number obtained from the New Mexico taxation and

revenue department;

H. if the applicant is a corporation or limited liability company, evidence that the applicant is authorized by the office of the secretary of state to do business in New Mexico and that it is in good [corporate] standing in New Mexico;

~~**I.** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, and the date the business entity was created;~~

J. if the applicant is a commuter service, a description of the area to be served;

K. if the applicant is a towing service providing non-consensual tows, a proposed tariff meeting the requirements of 18.3.6 NMAC and Sections 65-2A-20 and 21 NMSA 1978;

L. an appointment of an agent for service of process;

M. a list of all equipment to be used by the applicant, including all equipment leases filed with and approved by the commission in accordance with these rules;

N. for each piece of equipment, an annual inspection form completed by a qualified inspector within the preceding 12 months that shows that each motor vehicle proposed to be operated by the applicant meets the safety requirements of the federal motor carrier safety regulations;

O. a list of drivers and drivers license information for each driver including state of issuance, license number, and class of license; a legible copy of each driver's license; a legible copy of each driver's motor vehicle record received from the driver licensing agency of the state or states within which the driver is licensed; and a legible copy of each driver's medical examiner's certificate as required by 49 CFR 391.43(g);

P. the applicant's written statement certifying that all drivers meet the driver qualifications of 18.3.4 NMAC - Safety Requirements, and that the applicant will maintain driver qualification files on each driver;

Q. the applicant's U.S. DOT safety rating, if it has one;

R. proof of public liability insurance in accordance with 18.3.3 NMAC - Financial Responsibility;

S. if the applicant is a towing service, proof of garage keepers and on the hook liability insurance as required by 18.3.3.11 NMAC;

T. a copy of either a certificate of workers' compensation insurance or a certificate of exemption from the workers' compensation administration; (commuter services shall not be required to file a certificate for volunteer drivers but shall file the appropriate certificate for drivers who are employees);

U. the applicant's written statement certifying that it has developed a drug and alcohol testing program that will meet the requirements of 49 CFR Parts 40 and 382; or, if the applicant is a commuter van pool, a certification that it has a program providing for an initial drug test for anyone seeking to be a commuter service driver;

V. a copy of the applicant's written preventive maintenance program for its motor vehicles as required by 18.3.4.11 NMAC;

W. a contact person~~and~~, telephone number and email address for the commission to ~~call~~ use in the event of a question, inquiry or complaint;

X. the ~~notarized~~ verified oath of the applicant pursuant to Subsection MMM of Section 65-2A-3 NMSA 1978 attesting that all statements in the application are true and correct;

Y. the application fee required by Section 65-2A-36 NMSA 1978; and

Z. a statement disclosing any other operating authority(ies) owned or operated by the applicant including any partial interest in any other operating authority(ies), and certifying that the operating authority sought in the application does not duplicate the operating authority of the same kind

and for the same territory already held by the motor carrier.

[18.3.2.10 NMAC - Rp, 18.3.2.11 NMAC, 2/13/2015; A, 3/14/2017]

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

This is an amendment to 16.19.2 NMAC, Sections 8 and 14, effective 03-29-2017.

16.19.2.8 APPLICATIONS - SUBJECTS: Applicants for licensure by examination shall pass the standard national examination currently known as the North American ~~[Pharmacist-Licensure Examination]~~ pharmacist licensure examination (NAPLEX) and pass the multi-state pharmacy jurisprudence examination (MPJE).

A. EXAMINATIONS:

(1) In order to sit for the examination based on NAPLEX subjects, the applicant must be a graduate from a college of pharmacy accredited by the American council on pharmaceutical education (ACPE).

(2) To pass an examination, the candidate shall have a score of at least 75 in the NAPLEX examination.

(3) To pass the MPJE in the state of New Mexico, the candidate shall have a score of at least 75.

(4) Candidates taking NAPLEX in participating states may transfer scores in compliance with national association of board of pharmacy (NABP) "score transfer program", upon payment of the fee to the New Mexico board of pharmacy for licensure by examination, and in compliance with such other requirements set by the New Mexico board of pharmacy so long as New Mexico participates in the NABP "score transfer program".

(5) Only those score-transfer applicants who have passed the NAPLEX and received their score may take the MPJE.

B. Graduates of schools or colleges of pharmacy

not accredited by the ACPE, shall be eligible to take the licensing examination required under this section by providing evidence satisfactory to the board that the applicant has satisfied the requirements of 61-11-9 NMSA 1978:

(1) has submitted an application on a form supplied by the board;

(2) has completed the internship requirements of 16.19.5 NMAC; and

(3) has successfully completed the NABP foreign pharmacy graduate equivalency examination (FPGEE) certification program.

C. Applicants with work experience as a pharmacist in another country may petition the board to accept the work experience in lieu of internship requirements of 16.19.5 NMAC. The board may elect to accept all, a portion or none of the experience as a substitute for internship requirements.

[04-30-98; 16.19.2.8 NMAC - Rn, 16 NMAC 19.2.8, 03-30-02; A, 02-15-03; A, 12-15-05; A, 06-08-16; A, 03-29-17]

16.19.2.14 REINSTATEMENT EXAMINATIONS:

A. The board may require an applicant for reinstatement of licensure, for any reason, including revocation, to make a passing score on any combination of [either] the NAPLEX and MPJE, or the pharmacist assessment remediation evaluation (PARE) or both.

B. The criteria for passing these examinations shall be the same as required by this regulation or as required by the NABP.

C. If a pharmacist has not been active in the area of pharmacy practice for greater than one year but less than six years, the pharmacist candidate shall complete the following:

- (1) submit renewal form;
- (2) pay past renewal fees and reinstatement fees;
- (3) submit proof of continuing education for each

inactive renewal period;

(4) submit proof of completed internship of minimum of 60 hours for each year of inactivity;

(5) successfully complete the MPJE; or

D. In lieu of past renewal fees, reinstatement fees and proof of continuing education an inactive pharmacist may successfully complete the internship minimum of 60 hours for each year of inactivity, and successfully pass the NAPLEX and the MPJE.

E. If a pharmacist has not been active in the area of pharmacy practice for six years or more, the pharmacist candidate shall:

(1) complete the internship minimum of 60 hours for each year of inactivity; and

(2) successfully pass the NAPLEX and the MPJE.

F. The applicant must follow the same rules and procedures as if reciprocating his license as described in 16.19.3 NMAC.

[04-30-98; 16.19.2.14 NMAC - Rn, 16 NMAC 19.2.14, 03-30-02; A, 06-08-16; A, 03-29-17]

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

This is an amendment to 16.19.20 NMAC, Sections 46, 65, and 68, effective 03-29-2017.

16.19.20.46 PRESCRIPTION - PARTIALLY REFILLED:

A. ~~[A Schedule II prescription may be partially filled if the amount is recorded on the prescription. The remaining portion may be filled within 72 hours of the partial filling. Pharmacist must notify the prescribing physician if remaining portion cannot be filled within a 72 hour period]~~ A prescription for a controlled substance in Schedule II may be partially filled if the total quantity dispensed in all partial fillings does not exceed the total

quantity prescribed. Remaining portions shall be filled not later than 30 days after the date on which the prescription is written.

B. Partial filling of a prescription for Schedule III or IV shall be recorded in the same manner as a refill, providing the total quantity of partial filling does not exceed the total quantity prescribed and no dispensing occurs after six [(6)] months from date of prescription.

C. A prescription for a Schedule II controlled substance written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities, to include individual dosage units.

(1) If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient".

(2) A prescription that is partially filled and does not contain the notation "terminally ill" or LTCF patient" shall be deemed to have been filled in violation of this regulation. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist.

(3) The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions, for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness, shall be valid for a period not to exceed 60 days from the issue date unless sooner

terminated by the discontinuance of medication.

[16.19.20.46 NMAC - Rp 16 NMAC 19.20.20(5), 07-15-02; A, 03-29-17]

16.19.20.65 SCHEDULE I:

A. Section 30-31-6 NMSA 1978, Schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section. **OPIATES**, unless specifically exempt or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

Acetylmethadol	(1)	
Allylprodine	(2)	
Alphacetylmethadol	(3)	
Alphameprodine	(4)	
Alphamethadol	(5)	
methyl fentanyl	(6)	Alpha-
Benzethidine	(7)	
Betacetylmethadol	(8)	
Betameprodine	(9)	
Betamethadol	(10)	
Betaprodine	(11)	
Clonitazene	(12)	
Desmethyltramadol	(13)	
Dextromoramide	(14)	
Diampromide	(15)	
Diethylthiambutene	(16)	
Dimethylthiambutene	(17)	
Dimenoxadol	(18)	Difenoxin
	(19)	

Dimepheptanol	(20)	
Dimethylthiambutene	(21)	
Dioxaphetyl Butyrate	(22)	
Dipipanone	(23)	
Ethylmethylthiambutene	(24)	
Etonitazene	(25)	
Etoperidine	(26)	
Furethidine	(27)	
Hydroxypethidine	(28)	
Ketobemidone	(29)	
Levomoramide	(30)	
Levophenacymorphan	(31)	
Morpheridine	(32)	
Noracymethadol	(33)	
Norlevorphanol	(34)	
Normethadone	(35)	
Norpipanone	(36)	
Phenadoxone	(37)	
Phenampromide	(38)	
Phenomorphane	(39)	
Phenoperidine	(40)	
Piritramide	(41)	
Proheptazine	(42)	
Propiramide	(43)	
Racemoramide	(44)	
Tilidine	(45)	
Trimeperidine	(46)	
	(47)	

B. OPIUM DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the

existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.

Acetorphine	(1)	
dihydrocodeine	(2)	Acetyl
morphine	(3)	Benzyl
methylbromide	(4)	Codeine
N-Oxide	(5)	Codeine-
Cyprenorphine	(6)	
Desomorphine	(7)	
morphine	(8)	Dehydro
	(9)	Etorphine
	(10)	Heroin
	(11)	
Hydromorphanol	(12)	
Methyldesorphine	(13)	
Methyldihydromorphine	(14)	Morphine
methylbromide	(15)	Morphine
methylsulfonate	(16)	Morphine-
N-Oxide	(17)	Myrophine
	(18)	
Nicocodeine	(19)	
Nicomorphine	(20)	
Normorphine	(21)	Pholcodine
	(22)	Thebacon
	(23)	Drotebanol
	(24)	Beta-
Hydroxy-3-Methylfentanyl	(25)	
3-Methylthiofentanyl	(26)	Acetyl-
Alpha-Methyl fentanyl	(27)	Alpha-
Methylthiofentanyl	(28)	Beta-
hydroxycodone	(29)	Para-
Fluoro fentanyl	(30)	
Thiofentanyl	(31)	

6-acetylmorphine (6AM) (32) Acetyl	-trimethoxy amphetamine; (4)	N,N-diisopropyltryptamine (5-MeO-DIPT); (32)
fentanyl (33) Butyryl	Bufotenine; (5)	2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe); (33)
fentanyl (34)	Diethyltryptamine; DET; (6)	2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe); (34)
Betahydroxythiofentanyl (35) Furanyl	Dimethyltryptamine; DMT; (7) 4-methyl-2,5-dimethoxy-amphetamine; DOM or STP; (8) Lysergic acid amide; (9) Lysergic acid diethylamide; (10) Marijuana; (11) Mescaline; (12) Peyote; (13) N-ethyl-3-piperidyl benzilate; (14) N-methyl-3-piperidyl benzilate; (15) Psilocybin; (16) Psilocyn; (17)	2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe); (35) Synthetic cannabinoids: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture of preparation which contains any quantity of the following synthetic cannabinoids which demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity: (a)
(3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide) (37)	Tetrahydrocannabinols; (18) Parahexyl (synthetic analog of delta-9-tetrahydrocannabinol (THC) an active ingredient of cannabis); (19) Hashish; (20) 2, 5	CP 55,244 ((hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl)phenyl] 1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol); (b)
U47700 (trans-3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide) (38)	-dimethoxyamphetamine; 2, 5-DMA; (21) 4-bromo-2, 5-dimethoxy-amphetamine; 2, 5-DMA; (22)	CP 55,940 (5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]-5-(2-methyloctan-2-yl)phenol); (c)
MT-45 (1-(4-Nitrophenylethyl)piperidylidene-2-(4-chlorophenyl)sulfonamide) (39) W-15	4-methoxyamphetamine; PMA; (23) Ethylamine	JWH-081 (1-pentyl-3-[1-(4-methoxynaphthoyl)]indole); (d)
(4-chloro-N-[1-(2-phenylethyl)-2-piperidinylidene]-benzenesulfonamide) (40)	N-ethyl-1-phenylcyclohexylamine (PCE); (24) Pyrrolidine	JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole); (e)
W-18 (1-(4-Nitrophenylethyl)piperidylidene-2-(4-chlorophenyl)sulfonamide) (41) U-50488	1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine; (25) Thiophene (analog of phencyclidine) TCP or TPCP; (26) Alpha-ethyltryptamine; (27) 2,	JWH-133 3-(1,1-dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H dibenzo[b,d]pyran; (f)
<u>(2-(3,4-dichlorophenyl)-N-methyl-N-[(1R,2R)-2-pyrrolidin-1-ylcyclohexyl]acetamide)</u> (42) U50488H	5-dimethoxy-4-ethylamphet-amine; (28) Ibogaine; (29) 2,.5	JWH 203 1-pentyl-3-(2-chlorophenylacetyl)indole; (g)
<u>(-)(trans)-3,4-dichloro-N-methyl-N-[2-(1-pyrrolidinyl)cyclohexyl]benzeneacetamide)</u> C.	dimethoxy-4-(n-propylthiophenethylamine (2C-T-7); (30) Alpha-methyltryptamine (AMT); (31) 5-methoxy-	JWH 210 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone; (h)
HALLUCINOGENIC SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical position, and geometric isomers). (1) 3,4		AM-694 (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole); (i)
-methylenedioxy amphetamine; (2)		AM-1221 (1-(N-methylpiperdin-2-yl)methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole; (j)
5 - methoxy - 3,4-methylenedioxy amphetamine; (3) 3,4,5		

AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole);

(k)

RCS-4 or SR-19 (1-pentyl-3-[(4-methoxy)-benzoyl]indole);

(l)

RCS-8 or SR-18 (1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole);

(m)

JWH-210 (1-pentyl-3-(4-ethylnaphthoyl)indole);

(n)

WIN-49,098 (Pravadoline)
(4-methoxyphenyl)-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]
methanone;

(o)

WIN-55,212-2 (2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)
pyrrolo-1,4-benzoxazin-6-yl)-1-naphthalenylmethanone);

(p)

any of the following synthetic cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation;

(i)

naphthoylindoles: any compound containing a 3-(1-naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398 and AM-2201;

(ii)

naphthylmethylindoles: any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and

whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-175, JWH-184, and JWH-199;

(iii)

naphthoylpyrroles: any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-307;

(iv)

naphthylmethylindenes: any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-176;

(v)

phenylacetylindoles: any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8;

(vi)

cyclohexylphenols: any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the

cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol (CP 47,497 C8 homologue), CP 47,497 and CP 55,490;

(vii)

benzoylindoles: any compound containing a 3-(benzoyl) [5] OTS-3833.4 indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241;

(q)

UR-144 1-(pentyl-1H-indol-3-yl)
(2,2,3,3-tetramethylcyclopropyl)
methanone;

(r)

XLR11 1-(5-fluoro-pentyl)-1H-indol-3-yl(2,2,3,3-tetramethylcyclopropyl)
methanone;

(s)

AKB48 N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide;

(t)

Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22, QUPIC);

(u)

Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB22; 5F-PB22);

(v)

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA);

(w)

N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA);

(x)

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA);

(y)

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA);

(z)

[1-(5-fluoropentyl)-1H-indazol-3-yl]

(naphthalen-1-yl)methanone (THJ-2201);

(aa)

FDU-PB-22 IUPAC: 1-Naphthyl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate;

(bb)

5-fluoro ABICA IUPAC: N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide;

(cc)

FUB-144 IUPAC: [1-(4-fluorobenzyl)-1H-indol-3-yl] (2,2,3,3-tetramethylcyclopropyl) methanone (AKA FUB-UR-144);

(dd)

MN-18 IUPAC: N-(1-Naphthyl)-1-pentyl-1H-indazole-3-carboxamide;

(ee)

FUB-PB-22 IUPAC: Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate;

(ff)

ADB-CHMINACA (N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide);

(gg)

AMB-FUBINACA (methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate);

(hh)

5-fluoro-AMB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl] carbonyl]-L-valine, methyl ester);

(ii)

5-fluoro-ADB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl] carbonyl]-3-methyl-D-valine, methyl ester);

(36) Substances

determined by the board to have the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of 30-31-23C NMSA 1978. Substances include but are not limited to:

(a)

salvia divinorum;

(b)

salvinorin A (methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-

(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2H-benzo[f]isochromene-7-carboxylate);

(37)

4-methyl-ethylcathinone (4-MEC);

(38)

4-ethyl-methcathinone (4-EMC);

(39)

2-ethylamino-1-phenyl-propan-1-one (ethcathinone);

(40)

3',4'-methylenedioxyethylcathinone (ethylone);

(41)

beta-keto-N-methyl-3,4-benzodioxolybutanamine (bk-MBDB, butylone);

(42)

naphthylpyrovalerone (NRG-1, naphyrone);

(43)

N,N-dimethylcathinone (metamfepramone);

(44)

alpha-pyrrolidinopropiophenone (alpha-PPP);

(45)

alpha-pyrrolidinobutiophenone (α -PBP);

(46) 4'-methoxy-alpha-pyrrolidinopropiophenone (MOPPP);

(47)

4'-methyl- α -pyrrolidinopropiophenone (MPPP);

(48)

3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP);

(49)

3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone (MDPBP);

(50)

4'-methyl- α -pyrrolidinobutiophenone (MPBP);

(51)

alpha-pyrrolidinovalerophenone (alpha-PVP);

(52)

5,6-methylenedioxy-2-aminoindane (MDAI);

(53)

alpha-methylamino-butyrophenone (buphedrone);

(54)

beta-keto-ethylbenzodioxolylbutanamine (eutylone);

(55)

beta-keto-ethylbenzodioxolylpentanamine (pentylone);

(56)

(57) 4-Bromo-

2,5-dimethoxyphenethylamine (2c-B, Nexus);

(58)

N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)-phenethylamine, and N-hydroxy MDA);

(59)

5-methoxy-N,N-dimethyltryptamine (5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);

(60)

4-methylmethcathinone (Mephedrone);

(61)

3,4-methylenedioxypropyvalerone (MDPV);

(62)

2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(63)

2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);

(64)

2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);

(65)

2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T4);

(66)

2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);

(67)

2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);

(68)

2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

(69)

3,4-Methylenedioxy-N-methylcathinone (Methylone);

(70)

Aminorex (2-amino-5-phenyl-2-oxazoline);

(71)

Pentedrone;

(72)

4-fluoro-N-methylcathinone (4-FMC; flephedrone);

(73)

3-fluoro-N-methylcathinone (3-FMC);

(74)

3-methylmethcathinone (3-MMC);

(75)

3,4-Dimethylmethcathinone (3,4

DMMC);
 (76) 3-Methyl-N-ethylcathinone (3-MEC);
 (77)
 2-methylamino-1-(4-methylphenyl)butan-1-one (4-methylbuphedrone; 4-MeBP);
 (78)
 4-methylthioamphetamine (4 MTA);
 (79) 5-methyl-3,4-methylenedioxyamphetamine (5-Me MDA);
 (80)
 6-benzofuran (6-APB);
 (81)
 4-methoxyamphetamine (PMA);
 (82)
 2,5-dimethoxy-4-bromophenethylamine (2C-B);
 (83)
 2,5-dimethoxy-4-chlorophenethylamine (2C-C);
 (84) 4-methyl-2,5-dimethoxyphenethylamine (2C-D);
 (85)
 2,5-dimethoxy-4-ethylphenethylamine, (2C-E, aquarust, cindy);
 (86)
 3,4-dimethyl-2,5-dimethoxyphenethylamine (2C-G);
 (87)
 2,5-dimethoxy-4-iodophenethylamine (2C-I);
 (88)
 2-[2,5-dimethoxy-4-(2-fluoroethylthio)phenyl]ethanamine (2C-T21);
 (89)
 2-(8-bromo-2,3,6,7-tetrahydrofuro[2,3-f][1]benzofuran-4-yl)ethanamine (2C-B-FLY);
 (90)
 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, (Bromo-DragonFLY, 3C-Bromo-Dragonfly, DOB-Dragonfly);
 (91)
 2,5-Dimethoxy-4-bromoamphetamine (DOB);
 (92)
 2,5-Dimethoxy-4-chloroamphetamine (DOC);
 (93)
 2,5-Dimethoxy-4-methylamphetamine (DOM);
 (94)

2,4,5-trimethoxyamphetamine (TMA2);
 (95)
 2,4,6-trimethoxyamphetamine (TMA6);
 (96)
 6,7-methylenedioxy-2-aminotetralin (MDAT);
 (97) 4-acetoxy-N,N-diisopropyltryptamine (4-acetoxy DiPT, ipracetin);
 (98)
 O-Acetylpsilocin (4-acetoxy DMT, psilacetin);
 (99) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO MET, metocin);
 (100) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO MiPT, hats);
 (101)
 5-methoxy- α -methyltryptamine, (5-MeO-aMT, Alpha-O);
 (102) N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-methylpropan-2-amine (5-MeO-MiPT);
 (103) N,N-diisopropyltryptamine (DiPT);
 (104)
 dipropyltryptamine (DPT);
 (105) N,N-diallyl-5-methoxytryptamine (5-MeO-DALT);
 (106)
 3-methoxyphencyclidine (3-MeO PCP);
 (107)
 4-methoxyphencyclidine (4-MeO PCP);
 (108) dizocilpine (MK-801);
 (109)
 tetrachloroethylene (PCE, perchloroethylene, perchloroethene, Perc);
 (110) 3-MeO-2-Oxo-PCE (methoxetamine);
 (111)
 phencyclamine, N-(1-phenylcyclohexyl)propanamine (PCPr);
 (112)
 1-(1-(2-thienyl)cyclohexyl)piperidine (Tenocyclidine);
 (113)
 3-methoxyeticyclidine, N-ethyl-1-(3-methoxyphenyl)cyclohexanamine (3-

MeO PCE);
 (114) 6-ethyl-6-nor-lysergic acid diethylamide (ETH-LAD);
 (115) 6-allyl-6-nor-LSD (AL-LAD);
 (116)
 10-didehydroergoline-8-carboxamide (PRO-LAD);
D. DEPRESSANTS:
 Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
 (1)
 mecloqualone;
 (2)
 methaqualone;
 (3)
 benzodiazepines;
 (a)
 bromazepam;
 (b)
 camazepam;
 (c)
 cloxazolam;
 (d)
 delorazepam;
 (e)
 ethylloflazepate;
 (f)
 fludiazepam;
 (g)
 flunitrazepam;
 (h)
 haloxazolam;
 (i)
 ketazolam;
 (j)
 loprazolam;
 (k)
 lormetazepam;
 (l)
 medazepam;
 (m)
 nimetazepam;
 (n)
 nitrazepam;
 (o)
 nordiazepam;

oxazolam;	(p)	chlorophenylpiperazine (mCPP);	16.19.20.68	SCHEDULE IV:
pinazepam;	(q)	(10) methylenedioxybenzylpiperazine (MDBZP);		Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section:
tetrazepam;	(r)	(11) para-methoxyphenylpiperazine (meOPP);		
<u>flubromazepan</u>	(s)	(12) para-chlorophenylpiperazine (pCPP);		A. DEPRESSANTS:
<u>diclazepam</u>	(t)	(13) para-fluorophenylpiperazine (pFPP);		Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
(4) gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB;		(14) 2-diphenylmethylpiperidine, (2-DPMP, desoxypipradrol);	(1)	Alfaxalone
(5) gamma butyrolactone and any chemical compound that is metabolically converted to GHB;		(15) diphenyl-2-pyrrolidinemethanol (D2PM, diphenylprolinol);	(2)	
(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB;		(16) methylnaphthidate (HDMP-28);	(3)	Alprazolam
(7) gamma-hydroxyvaleric acid (GHV, 4-methyl-GHB);		(17) 3α-carbomethoxy-4β-(4-chlorophenyl)-N-methylpiperidine (Nocaine, (+)-CPCA);	(4)	Barbital
(8) gamma-valerolactone (GVL);		(18) butyltolylquinuclidine (2-Butyl-3-(p-tolyl)quinuclidine, BTQ);	(5)	Chloral
(9) methylmethaqualone (MMQ);		F. Any material, compound, mixture of preparation which contains any quantity of the following substances.	(6)	
(10) mebroqualone (MBQ);		(1) 3-methylfentanyl(N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts and salts of isomers;	(7)	Chlordiazepoxide
E. STIMULANTS:		(2) 3, 4-methylenedioxyamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;	(8)	Clobazam
Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.		(3) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;	(9)	Clonazepam
(1) fenethylamine;		(4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its optical isomers, salts and salts of isomers;	(10)	Clorazepate
(2) N-ethylamphetamine;		(5) cathinone;	(11)	Clotiazepam
(3) cis-4-methylaminorex;		(6) methcathinone.	(12)	Diazepam
(4) N, N-dimethylamphetamine;		[16.19.20.65 NMAC - Rp 16 NMAC	(13)	Estazolam
(5) N-benzylpiperazine (BZP, 1-benzylpiperazine);		19.20.28, 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10; A, 11-27-11; A, 06-15-12; A, 08-31-12; A, 12-19-13; A, 06-28-14; A, 12-13-15; A, 10-19-16; A, 03-29-17]	(14)	Ethinamate
(6) 2,3-dichlorophenylpiperazine (DCPP);			(15)	
(7) dibenzylpiperazine (DBZP);			(16)	Flurazepam
(8) methylbenzylpiperazine (MBZP);			(17)	Fospropofol
(9) meta-			(18)	Halazepam
			(19)	Lorazepam
			(20)	Mebutamate
			(21)	Meproamate
			(22)	Methohexital
			(23)	Methylphenobarbital
			(24)	Midazolam
			(25)	Oxazepam
				Paraldehyde

Petrichloral	(26)
Phenobarbital	(27)
	(28) Prazepam
	(29) Quazepam
	(30) Suvorexant
	(31)
Temazepam	(32) Triazolam
	(33) Zopiclone

B.

FENFLURAMINE: Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical position, or geometric) and its salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine

C. LORCASERIN:

Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical position, or geometric) and its salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Lorcaserin

D. STIMULANTS:

Unless specifically exempt or unless listed in another schedule any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical position, or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

Diethylpropion	(1)
Phentermine	(2)
	(3) Pemoline
(including organometallic complexes and chelates thereon)	
	(4) Pipradrol
	(5)
SPA ((-)-1-dimethyl amino-1,2-diphenylmethane)	
	(6) Mazindol
	(7) Cathine

Fencamfamin	(8)
Fenproporex	(9)
	(10) Mefenorex
	(11) Modafinil
	(12)

Sibutramine

[D:] E. OTHER

SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

Dextropropoxyphene(Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)	(1)
Pentazocine	(2)
Carisoprodol	(3)
Nalbuphine Hydrochloride	(4)
Butorphanol Tartrate	(5)
	(6) Dezocine
	(7)
Dichloralphenazone	(8) Zaleplon
	(9) Zolpidem
	(10) Tramadol
	(11)

Eluxadolone (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.

[E:] F. NARCOTIC

DRUG: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof: Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

[F:] G. EXEMPTION

OF CHLORAL: When packaged in a sealed, oxygen-free environment, under nitrogen pressure, safeguarded against exposure to the air. Chloral when existing under the above

conditions is a substance which is not intended for general administration to a human being or another animal, and contains no narcotic controlled substances and is packaged in such a form that the package quantity does not present any significant potential for abuse. All persons who engage in industrial activities with respect to such chloral are subject to registration; but shall be exempt from Section 30-31-16 through 19 of the New Mexico Controlled Substances Act and 16.19.20.19 NMAC through 16.19.20.52 NMAC of the board of pharmacy regulations.

[G:] H. EXEMPT

COMPOUNDS: Librax and Menrium are preparations which contain chlordiazepoxide, a depressant listed in Schedule IV, 16.19.20.68.A.5 NMAC and other ingredients in such combinations, quantity, preparation or concentration as to vitiate the potential for abuse of chlordiazepoxide, and are hereby exempt preparations.

	(1) Librax
	(2) Menrium,
5-2	
	(3) Menrium,
4-5	
	(4) Menrium,
10-4	
[16.19.20.68 NMAC - Rp 16 NMAC 19.20.28(3), 07-15-02; A, 06-30-05; A, 05-14-10; A, 03-07-11; A, 08-31-12; A, 09-07-14; A, 12-13-15; A, 03-29-17]	

End of Adopted Rules

2017 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXVII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 17
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	April 27	May 16
Issue 10	May 18	May 30
Issue 11	June 1	June 13
Issue 12	June 15	June 27
Issue 13	June 29	July 11
Issue 14	July 13	July 25
Issue 15	July 27	August 15
Issue 16	August 17	August 29
Issue 17	August 31	September 12
Issue 18	September 14	September 26
Issue 19	September 28	October 17
Issue 20	October 19	October 31
Issue 21	November 2	November 14
Issue 22	November 16	November 28
Issue 23	November 30	December 12
Issue 24	December 14	December 26

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, 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 505-476-7942.