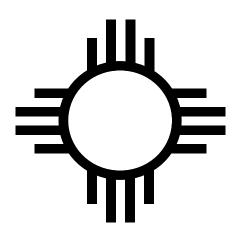
NEW MEXICO REGISTER

Volume XXVI Issue Number 5 March 16, 2015

New Mexico Register

Volume XXVI, Issue Number 5 March16, 2015



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

The Commission of Public Records Administrative Law Division Santa Fe, New Mexico 2015

COPYRIGHT © 2015 BY THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XXVI, Number 5 March 16, 2015

Table of Contents

Notices of Rulemaking and Proposed Rules

Albuquerque-Bernalillo County Air Quality Control Board
Notice of Hearing and Date Change for Regular Meeting
Notice of Hearing and Date Change for Regular Meeting to Amend 20.11.61 NMAC
Human Services Department
Medical Assistance Division
Notice of Rulemaking
Regulation and Licensing Department
Optometry, Board of
Public Rule Hearing and Regular Board Meeting
Pharmacy, Board of
Regular Board Meeting; Notice to the Public

Adopted Rules

Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Auditor, Office of the State	9	
2.2.2 NMAC	R	Requirements for Contracting and
		Conducting Audits of Agencies 195
2.2.2 NMAC	Ν	Requirements for Contracting and
		Conducting Audits of Agencies 195
Public Regulation Commis	ssion	
18.3.7 NMAC	A/E	Reports, Records and Accounts
Racing Commission		
15.2.1 NMAC	А	Horse Racing - General Provisions
15.2.6 NMAC	А	Veterinary Practices, Equine Health, Medication,
		and Trainer Responsibility
Regulation and Licensing	Departm	ient
Pharmacy, Board of		
16.19.5 NMAC	А	Internship Training Program
16.19.6 NMAC	А	Pharmacies
16.19.12 NMAC	А	Fees
16.19.29 NMAC	А	Controlled Substance Prescription Monitoring Program
16.19.36 NMAC	А	Compounded Sterile Preparations. 240

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) 476-7875; 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

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

CHANGE FOR REGULAR MEETING

The Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing on April 30, 2015 at 5:30 p.m. in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM. The purpose of the hearing is to consider the matter of AQCB Petition No. 2015-2, to amend 20.11.61 NMAC, Prevention of Significant Deterioration, and submit the adopted 20.11.61 NMAC to the U.S. Environmental Protection Agency for proposed incorporation into the New Mexico State Implementation Plan (SIP). The regularly scheduled meeting date on April 8, 2015 has been changed to April 30, 2015.

The proponent of this regulatory action is the City of Albuquerque, Environmental Health Department, Air Quality Program.

The hearing will consider whether to adopt the proposed amended version of 20.11.61 NMAC, in order to bring the regulation into compliance with standards in the Code of Federal Regulations. An information sheet with further details on the subject matter of the hearing is available at http://www.cabq. gov/airquality/air-quality-control-board/ documents/3.%20Information%20sheet%20 -%20Part%2061.pdf.

Following the hearing, the Air Board at its regular monthly meeting is expected to consider adopting the proposed amendments to 20.11.61 NMAC.

The Public Review Draft of the amended 20.11.61 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 Draft can also be found on the Air Quality Program web site at: http://www.cabq.gov/airquality/air-quality-control-board/documents/Part%2061%20 Public%20Review%20Draft.pdf.

The hearing will be conducted in accordance with NMSA § 74-2-6; Joint Air Quality Control Board Ordinance, Section 9-5-1-6, Adoption of Regulations, Notice and Hearing [ROA 1994]; Bernalillo County Ordinance, Section 30-35, Adoption of Regulations, Notice and Hearings [Ord. No. 94-5, Section 6, 2-2-94]; and 20.11.82 NMAC, Rulemaking Procedures—Air Quality Control Board; and other applicable procedures.

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. Persons wishing to present technical testimony must file with the Air Board a written notice of intent (NOI) to do so by 5:00 p.m. on April 14, 2015. 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.

The NOI must be filed in hard copy form (original plus 15 copies of all documents) by 5:00 p.m. on April 14, 2015, with Andrew Daffern, Air Quality Control Board Liaison, Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, New Mexico 87102.

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 Air Quality Control Board Liaison, Andrew Daffern, at the above contact information.

NOTICE FOR PERSON WITH DISABILITIES OR SPECIAL NEEDS:

If you have a disability or require special assistance to participate, including translation/interpretation service, or review of any agendas, minutes, or other public meeting documents, please contact Andrew Daffern, Air Quality Control Board liaison, by April 16, 2015, at (505) 768-2601, or adaffern@cabq.gov.TTY users requiring special assistance may call the New Mexico Relay at 1-800-659-8331.

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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

The Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing on April 30, 2015 at 5:30 p.m. in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM. The purpose of the hearing is to consider the matter of AQCB Petition No. 2015-1, to adopt a State Implementation Plan (SIP) for Sulfur Dioxide (SO2) to address Sections 110(a) (1) and (2) of the Federal Clean Air Act (CAA), 42 U.S.C. Sections 7410(a)(1) and (2) hereafter referred to as the "SO2 Infrastructure SIP". The regularly scheduled meeting date on April 8, 2015 has been changed to April 30, 2015.

The proponent of this regulatory action is the City of Albuquerque, Environmental Health Department, Air Quality Program.

The hearing will consider whether to adopt the SO2 Infrastructure SIP and submit it to the U.S. Environmental Protection Agency as a proposed revision to the New Mexico State Implementation Plan. An Infrastructure SIP is required by the U.S. Environmental Protection agency to demonstrate compliance with a newly issued National Ambient Air Quality Standard. An information sheet with further details on the subject matter of the hearing is available at: http://www. cabq.gov/airquality/air-quality-controlboard/documents/3.%20Information%20 Sheet%20-%20SO2.pdf

Following the hearing, the Air Board at its regular monthly meeting is expected to consider adopting the proposed Infrastructure SIP for SO2.

The Public Review Draft of the SO2 Infrastructure SIP 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 Draft can also be found on the Air Quality Program web site at http://www.cabq.gov/airquality/air-qualitycontrol-board/documents/SO2%20iSIP%20 Public%20Review%20Draft.pdf_

The hearing will be conducted in accordance with NMSA § 74-2-6; Joint Air Quality Control Board Ordinance, Section 9-5-1-6, Adoption of Regulations, Notice and Hearing [ROA 1994]; Bernalillo County Ordinance, Section 30-35, Adoption of Regulations, Notice and Hearings [Ord. No. 94-5, Section 6, 2-2-94]; and 20.11.82 NMAC, Rulemaking Procedures—Air Quality Control Board; and other applicable procedures.

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. Persons wishing to present technical testimony must file with the Air Board a written notice of intent (NOI) to do so by 5:00 p.m. on April 14, 2015. 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.

The NOI must be filed in hard copy form (original plus 15 copies of all documents) by 5:00 p.m. on April 14, 2015, with Andrew Daffern, Air Quality Control Board Liaison, Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, New Mexico 87102.

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 Air Quality Control Board Liaison, Andrew Daferrn, at the above contact information.

NOTICE FOR PERSON WITH DISABILITIES OR SPECIAL NEEDS:

If you have a disability or require special assistance to participate, including translation/interpretation service, or review of any agendas, minutes, or other public meeting documents, please contact Andrew Daffern, Air Quality Control Board liaison, by April 16, 2015, at (505) 768-2601, or adaffern@cabq.gov.TTY users requiring special assistance may call the New Mexico Relay at 1-800-659-8331.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Notice of rulemaking

The Human Services Department (the Department), Medical Assistance Division (MAD), recently promulgated proposed amendments to 8.321.2 Section 10 of the New Mexico Administrative Code (NMAC). To ensure that adequate time is available for the public to submit comments, the Department is repromulgating 8.321.2 Section 10 NMAC Behavioral Health Specialized Services Section 10 Applied Behavior Analysis (ABA). The register and the proposed amendments will be available March 16, 2015, on the HSD website: http://www.hsd.state.nm.us/ LookingForInformation/registers.aspx or

at: http://www.hsd.state.nm.us/public-noticesproposed-rule-and-waiver-changes-andopportunities-to-comment.aspx.

If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD at (505) 827-7743.

The Department finalized Section 10 of 8.321.2 NMAC January 1, 2014, with the minimum of detail as it developed the service. The Department has completed a lengthy study and discussion of ABA services and is now promulgating amendments to this section of the rule. Throughout this section of the rule, the Department refers to ABA billing instructions. The Department is proposing to include more detailed information in the rule while continuing to have other information contained in the ABA Billing Instructions as appropriate. The Department has posted for public comment the proposed amendments and the ABA billing instructions.

In addition, the Department is receiving comments on its proposed ABA fee schedule rates and State Plan Amendment 15-001, Attachment 4-19-B. The increase in expenditures to the Medicaid Program, including managed care plans, is anticipated to be \$1.5 million which can be viewed on the New Mexico Human Services Department website at: http://www.hsd. state.nm.us/providers/fee-for-service.aspx. At the page, accept the terms and conditions of using the site, scroll down to Proposed Fee Schedules or Rates, then see the posting titled: <u>Applied Behavior Analysis (ABA)</u> fee schedule rates 5.2015.

A public hearing to receive testimony on this proposed rule will be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road Santa Fe, NM on April 14, 2015, 11 a.m. Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to <u>madrules@state.nm.us</u> Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than April 14, 2015, 5:00 p.m. MDT.

If you are a person with a disability and you require this information in an alternative

format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-7743. In Santa Fe call 827-7743. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

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

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF OPTOMETRY

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Optometry will hold a Rule Hearing on Friday April 17, 2015. Following the Rule Hearing the New Mexico Board of Optometry will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Optometry Rule Hearing will begin at 12:00 p.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at Isleta Pueblo Hotel during the New Mexico Optometric Association's Annual Conference, 11000 Broadway SE, Albuquerque, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules in 16.16 NMAC: 16.16.3 NMAC - Requirements for Licensure by Examination; 6.16.10 - Renewal of Optometric Licenses; 16.16.13 NMAC -Continuing Education

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico, or call (505)476-4622 after March 18, 2015 or from the Board's website. 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 <u>no later</u> than April 2, 2015. 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.

Martha L. Gallegos, Administrator PO Box 25101, Santa Fe, NM 87505

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

A regularly scheduled board meeting has been set for the days of April 16th & 17th, 2015. The purpose will be to conduct a disciplinary hearing and regular board meeting agenda items. The meeting will take place in the <u>Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM</u>.

The New Mexico Board of Pharmacy has CANCELLED THE SPECIAL BOARD MEETING noticed for Thursday, March 26, 2015 at 9:00 a.m. The rescheduled date will be on April 16, 2015. The purpose of that meeting date will be to conduct a disciplinary hearing.

Anyone who needs special accommodations for the board meeting should contact the board office at (505) 222-9830 or contact Debra Wilhite, Administrative Secretary, at (505) 222-9835 or fax (505) 222-9845, e-mail <u>debra.wilhite@state.nm.us</u> as soon as possible.

The agenda (tentative) will be available starting April 6, 2015 through the board's website: <u>www.rld.state.nm.us/boards/pharmacy.aspx</u>. To obtain copies of the agenda or any documents linked to the agenda, you may access the agenda for printing via the website listed above.

Interested persons wishing to comment regarding the hearings or any agenda items must submit documentation; via fax (505) 222-9845, mail or email to Ben Kesner, <u>Ben.Kesner@</u> <u>state.nm.us</u> or Debra Wilhite, <u>debra.wilhite@state.nm.us</u> no later than Friday, April 10, 2015, if in attendance must provide 12 copies of the documentation for distribution to board members.

*The board may go into executive session at any time to discuss licensee and/or personnel matters.

The board will address:

Disciplinary Hearing: 9:15 a.m. - (*Bean & Associates will record hearing*) *David Nunez RP4873 and Medicap Pharmacy PH1775 - Case No. 2013-009 and 2013-030

Rule Hearings:

16.19.6 NMAC Pharmacies - New Section 28; Automated Filling

Systems

16.19.20 NMAC Controlled Substances - Section 67; Hydrocodone

Interested persons: If in attendance must provide 12 copies of the documentation for distribution to board members for presentation. (*Board staff is not required to make copies.*)

Published in the Albuquerque Journal February 25, 2015

End of Notices and Proposed Rules Section

This page intentionally left blank

NEW MEXICO OFFICE OF THE STATE AUDITOR

2 NMAC 2.2, Audits of Governmental Entities-Requirements for Contracting and Conducting Audits of Agencies, (filed 2-13-2014) repealed and replaced by 2.2.2 NMAC Audits of Governmental Entities-Requirements for Contracting and Conducting Audits of Agencies, effective 03/16/2015.

NEW MEXICO OFFICE OF THE STATE AUDITOR TITLE 2 PUBLIC FINANCE CHAPTER 2 AUDITS OF GOVERNMENTAL ENTITIES PART 2 REQUIREMENTS FOR CONTRACTING AND CONDUCTING AUDITS OF AGENCIES

2.2.2.1 ISSUING AGENCY: Office of the State Auditor. [2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 3-16-15]

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

[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 3-16-15]

2.2.2.3 **STATUTORY** AUTHORITY: Section 12-6-12 NMSA 1978 of the Audit Act, requires the state auditor to promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with auditing standards generally accepted in the United States of America. Chapter 12, Article 6 NMSA 1978 of the Audit Act, requires the state auditor to conduct financial and compliance audits of every agency in accordance with governmental auditing, accounting and financial reporting standards, and local, state and federal laws, rules, and regulations. The Audit Act further establishes a tiered system of financial reporting for local public bodies in which the amount of a local public body's annual revenue determines whether the local public body is subject to an agreed upon procedures engagement. The Audit Act also gives the state auditor the authority to cause the financial affairs and transactions of an agency to be audited in whole or in part, in addition to the annual audit. [2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 3-16-15]

Adopted Rules

2.2.2.4

2.2.2.6

2.2.2.7

DURATION:

Permanent [2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 3-16-15]

2.2.2.5 EFFECTIVE DATE: March 16, 2015, unless a later date is cited

at the end of a section. [2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 3-16-15]

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, 3-16-15]

DEFINITIONS:

"Agency" means any Α. department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation, or other special districts; and school districts; any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority and every office or officer of any entity listed in Paragraphs (1) through (3) of Subsection A of Section 12-6-2 NMSA 1978.

"Auditor" means state **B**. auditor or independent public accountant. C. "AICPA" means American institute of certified public accountants. D. "AUP" means agreed upon procedures. "CPA" means certified E. public accountant. "CPE" means F. continuing professional education. "DFA" means the G. New Mexico department of finance and administration. "ERB" means the New H. Mexico education retirement board. "FCD" means financial I.

control division of the department of finance and administration. "FDIC" means federal J. deposit insurance corporation. "FDS" means financial K. data schedule. "GAAP" means L. accounting principles generally accepted in the United States of America. М. "GAGAS" means generally accepted government auditing standards. N. "GASB" means governmental accounting standards board. "GAAS" means 0. auditing standards generally accepted in the United States of America. Р. "GSD" means the New Mexico general services department. "HED" means the New О. Mexico higher education department. "HUD" means R. U.S. department of housing and urban development. "IPA" means S. independent public accountant. "IRC" means internal T. revenue code. U. "LGD" means local government division of the New Mexico department of finance and administration. "Local public body" V. means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district. W. "NCUSIF" means national credit union shares insurance fund. X. "NMAC" means New Mexico administrative code. Y. "NMSA" means New Mexico statutes annotated.

Z. "Office" or "OSA" means the New Mexico office of the state auditor.

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

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

CC. "PERA" means the New Mexico public employee retirement association.

DD. "PHA" means public housing authority.

EE. "REAC" means real estate assessment center.

FF. "REC" means regional education cooperative.

GG. "RSI" means required supplemental information.

HH. "SAS" means the AICPA's statement on auditing standards. II. "SHARE" means statewide human resources accounting and management reporting system. **JJ.** "State auditor" may refer to either the elected state auditor of the state of New Mexico, personnel of his office designated by him, or independent auditors designated by him.

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

LL. "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.

MM. "UFRS" means uniform financial reporting standards.

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

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3-16-15]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. Section 12-6-3 NMSA 1978 (Annual Audits) mandates that: (1) the financial affairs of every agency be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him, or by independent auditors approved by him;

(2) the comprehensive annual financial report for the state be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him; and

(3) the audits be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. Subsection B of Section 12-6-3 NMSA 1978 establishes a tiered system of financial reporting for local public bodies in which the amount of a local public body's annual revenue determines whether the local public body is subject to an agreed upon procedures engagement. See 2.2.2.16 NMAC for information applicable to local public bodies. Section C of Section 12-6-3 NMSA 1978 states that 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. Section 2.2.215 NMAC provides regulations regarding this type of engagement. Section 12-6-14 NMSA 1978 (Contract Audits) states that "the state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however that a state-chartered charter school subject to oversight by the PED or an agency subject to oversight by the HED shall receive approval from its oversight agency

prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within 60 days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section." Section 61-28B-13(B) of the 1999 Public Accountancy Act states that a firm with an office in New Mexico must hold a permit issued pursuant to this section of the 1999 Public Accountancy Act (61-28B-1 NMSA 1978) in order to provide attest services including audits of financial statements. A permit is also required for a firm that does not have an office in New Mexico but performs attest services for a client whose principal place of business is in New Mexico. Pursuant to Subsection A of Section 16.60.3.14 NMAC, a person whose principal place of business is not New Mexico and who has a valid certificate/ license as a certified public accountant from another state shall be presumed to have qualifications substantially equivalent to New Mexico's requirements if the person meets the requirements of Section 26, Subsection A of the Act. Except as otherwise provided in 2.2.2.16 NMAC, IPAs shall submit a firm profile to the state auditor. Firms are required to notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts only with IPAs who have submitted a complete and correct firm profile that has been approved by the office and who have complied with all the requirements of this rule including but not limited to:

(4) 2.2.2.14

NMAC, continuing education and quality control requirements;

(5) listed professional service contracts the firm entered into pursuant to Subsection M of 2.2.2.8 NMAC, IPA Independence; (6) for IPAs who

have audited agencies under this rule in the past, they must have previously complied with:

(a) 2.2.2.9 NMAC, report due dates;

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

(c) 2.2.2.9 NMAC Paragraph (5) of Subsection A, notifying the state auditor regarding why audit reports will be late.

B. List of approved firms:

The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts and agreed upon procedures engagements with agencies. The state auditor's list of approved audit firms shall be reviewed and updated on an annual basis. The state auditor shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency's annual financial audit. For an IPA to be included on the state auditor's list of approved firms:

(1) an IPA shall submit its firm profile annually on January 5^{th} or on the next business day, in accordance with the guidelines set forth herein;

(2) the office shall review each firm profile for compliance with the requirements set forth in Subsections A through F of 2.2.2.8 NMAC; and

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

(4) the office shall inform all IPAs whose firm profiles were submitted by the deadline whether they are on the list of approved firms; and (5) concurrent

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

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

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

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

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

(4) the IPA employs only one CPA qualified to sign

a GAGAS audit report and the firm has not submitted the completed original contingency subcontractor form required by Subsection L of 2.2.2.8 NMAC; the IPA's peer (5) review is scheduled to be completed on or before publication of the list of approved firms, but is missing from the firm profile;

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

or

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

(1) the firm received a peer review rating of "failed"; the firm does (2)not have a current New Mexico firm permit

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

(4) the IPA has been restricted in the past and has not demonstrated improvement; or any other (5)reason determined by the state auditor

to serve the interest of the state of New Mexico.

E. Restriction: (1) IPAs may

be placed on contract restriction based on the office's review of the firm profile and deficiency considerations as described below. Contract restriction may take the form of limiting either the type of engagement or number of audit contracts, or both, that the IPA may hold. The office may impose a corrective action plan associated with the contract restriction. The deficiency considerations include, but are not necessarily limited to:

(a)

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

(b)

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

(c)

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

poor quality reports as determined by the office;

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

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

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

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

> (i) lack

of compliance with the Procurement Code; (i)

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

(k)

failure to comply with confidentiality requirements of 2.2.2.15 NMAC; **(II)**

failure to invite the state auditor or his designee to engagement entrance conference, progress meetings or exit conference after receipt of related notification from the office;

(\mathbf{m})

refusal to comply with office referrals or requests in a timely manner; or

> (**n**) anv

other reason determined by the state auditor to serve the interest of the state of New Mexico.

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

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

(4) If an agency or local public body submits an IPA recommendation letter to the office for

an IPA that was ineligible to perform that contract due to its restriction, the office shall immediately reject the IPA recommendation in accordance with Subparagraph (f) of Paragraph (6) of Subsection G of 2.2.2.8 NMAC.

F. Procedures for imposition of contract restrictions: (1)The state auditor may place an IPA under contract restriction in accordance with Subsection E of 2.2.2.8 NMAC.

(a)

The state auditor or his designee shall cause written notice of the contract

restriction to be sent by certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction. The letter shall contain the following information:

(i)

the office has placed a restriction on either the type of engagement or the number of audit contracts, or both, that the IPA is eligible to enter into;

(ii)

the conditions of the contract restriction; (iii)

the reasons for the contract restriction;

(iv) the action to place the IPA on restriction is brought pursuant to Section 12-6-3(A) NMSA 1978 and these regulations;

(v)

the IPA may request, in writing, reconsideration of the proposed contract restriction which must be received by the office within 15 calendar days from the day the IPA receives the letter of restriction; and (vi)

the email or street address where the IPA's written request for reconsideration shall be delivered, and the name of the person to whom the request shall be sent. **(b)**

The

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

(c)

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

(2)The

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

C 11

certified mail, return receipt requested. If the agency's G. notification letter referred to in Paragraph (5) of Subsection B of 2.2.2.8 NMAC, indicates that the agency's audit is to be conducted by an IPA, the agency shall comply with the following procedures to obtain professional services from an IPA for an audit.

Upon receipt (1) of written notification to proceed from the office, the agency shall identify all elements or services to be solicited pursuant to Subsection A of 2.2.2.10 NMAC, and request quotations or proposals for each applicable element of the annual financial audit as indicated below. Costs for the IPA to cooperate with the group engagement partners and team, and the primary government, caused by the requirements of AU-C 600 (Group Audit) will be included in the cost of the engagement like compliance with any other applicable standard.

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 nonaudit services (if applicable and allowed by current government auditing standards); and

(e)

(a)

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

(2)

The state auditor considers IPA services that cost less than \$60,000 excluding gross receipts tax to be small purchases. The agency may procure audit services for one year only. The agency is encouraged to procure the audit services using a multiple year proposal (not to exceed three years) in which the cost of audit service is \$60,000 or less in each year (excluding gross receipts taxes). The agency is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. Section 13-1-191.1 NMSA 1978, requires prospective contractors to complete a standard campaign contribution disclosure form and file it with the state agency or local public body as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

(3) For IPA

services that cost over \$60,000 excluding gross receipts tax for each year of the contract, the agency shall seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (Chapter 13, Article 1 NMSA 1978); GSD rule 1.4.1 NMAC, Procurement Code Regulations, if applicable; and DFA rule 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services. Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency as part of the competitive sealed proposal. In addition, if the agency intends to allocate a portion of the audit cost to federal funds as direct or indirect charges, the agency should comply with applicable procurement requirements stated in the federal office of management and budget's in OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments. Institutions of higher education and state and local hospitals should comply with procurement standards stated in OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations. The agency should note that the above circulars are in the process of being replaced by Uniform Guidance for Federal Awards. For one full fiscal year after the effective date of the Uniform Guidance (FY15), nonfederal entities must comply with the terms and conditions of their federal award, which will specify whether the Uniform Guidance applies.

(4) The agency may, and is strongly encouraged to, request a multiple year proposal to provide services not to exceed a term of three years including all extensions and renewals. The term of the contract shall be one-year with the option to extend for two successive one-year terms at the same price, terms and conditions as stated on the original proposal. Exercising the option to extend must be by mutual agreement of the parties to the contract and with the approval of the state auditor. In the event that either of the parties to the contract elects not to extend, or the state auditor disapproves the recommendation for renewal, the agency shall use the procedures described in Paragraphs (2) and (3) of Subsection G of 2.2.2.8 NMAC to solicit services.

(5) The agency shall evaluate all competitive sealed proposals or quotations received pursuant to Paragraphs (2) and (3) of Subsection G of 2.2.2.8 NMAC using an evaluation process, preferably executed by a selection committee. Members of component units such as charter schools, housing authorities, etc., are encouraged to be included in the IPA selection process. As part of their evaluation process, agencies may and are strongly encouraged to consider the

following criteria when selecting an IPA	A:
(a)	the
capability of the IPA, including:	
	(i)
whether the IPA has the resources to	
perform the type and size of the audit	
required;	
	(ii)
the results of the IPA's most recent exte	
quality control review (peer review); an	
	(iii)
the organization and completeness of th	
IPA's proposal or bid for audit services	
(b)	the
work requirements and audit approach	
the IPA, including:	01
the first, meruding.	(i)
the IPAs knowledge of the agency's new	
and the product to be delivered;	Ju
and the product to be derivered,	(ii)
whether the IPA's proposal or bid conta	
sound technical plan and realistic estim	
of time to complete the audit;	ale
of time to complete the addit,	(iii)
plans for using agency staff, including	(111)
internal auditors; and (iv) if the propose	alor
bid is for a multi-year contract, the IPA	
approach for planning and conducting t	
work efforts of subsequent years;	.ne
·	the
(c) IPA's technical experience, including:	the
IPA's technical experience, including.	(*)
the governmental audit experience of th	(i)
IPA and the specialization in the agency	
type of government (e.g., state agencies	
schools, hospitals, counties, cities, etc.)	,
including component units (housing	
authorities, charter schools, foundation	s);
and	141.
)the
IPA's attendance at continuing professi	
education seminars or meetings on aud	ıtıng,

g, accounting and regulations directly related to state and local government audits and the agency. (6) After making the IPA selection, each agency shall

completing the evaluations for each IPA and submit the completed IPA recommendation form for audits and the completed and signed audit contract to the state auditor by the deadline indicated in Subparagraph (c) below. In the event that the due date falls on a weekend or holiday the due date will be the next business day. Agencies with a fiscal year end other than June 30 must use a due date 30 days before the end of the fiscal vear:

(a)

agencies shall complete the IPA recommendation form for audits provided at www.osanm.org; agencies shall print the form on agency letterhead;

(\mathbf{h})

agencies shall complete the applicable audit contract form provided at www.osanm.org, obtain the IPA's signature on the contract,

and submit the completed and signed audit contract to the office with the completed IPA recommendation form;

(c) the agency shall deliver the fully completed and signed IPA recommendation form for audits and the completed audit contract to the state auditor by the deadlines shown below; if a completed IPA recommendation form and audit contract are not delivered to the state auditor by these deadlines, the auditor may according to professional judgment, include a finding of noncompliance with Paragraph (6) of Subsection G of 2.2.2.8 NMAC in the audit report:

regional education cooperatives, independent housing authorities, hospitals and special hospital districts - April 15; (ii)

school districts, counties, and higher education - May 1;

local workforce investment boards and combined county/municipality governments - May 15;

local public bodies that do not qualify for the tiered system - May 15;

councils of governments, district courts, district attorneys, state agencies and the state of New Mexico CAFR - June 1;

(vi)

(vii)

(iv)

(v)

(i)

local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC should follow the procedures at Subsection D of 2.2.2.16 NMAC, and submit the required recommendation form for tiered system local public bodies and the completed signed agreed upon procedures contract to the state auditor - July 1; and

component units on the primary government's due date;

(**d**)

schools that are chartered by PED and agencies that are subject to oversight by HED have the additional requirement of submitting their IPA recommendation to PED or HED for approval prior to submitting the recommendation to the state auditor (Section 12-6-14(A) NMSA 1978);

(e)

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

(**f**)

in the event the agency's recommendation and related contract are submitted without errors or omissions, but are not approved by the state auditor for reasons described at Subsection H of 2.2.2.8 NMAC, the state auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency; at which time the agency shall promptly submit a different recommendation; this process may continue until the state auditor approves a recommendation and related contract; during this process, whenever a recommendation and related contract are not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval; the agency shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation; the state auditor may hold an informal meeting to discuss the request; the state auditor may set the meeting in a timely manner with consideration given to the agency's circumstances.

(7) If the agency fails to make an IPA recommendation by the deadline contained in Subparagraph (c) of Paragraph (6) of this subsection, the state auditor may conduct the audit. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA 1978.

(8) If the agency fails to submit an IPA recommendation within 60 days of notification from the state auditor to engage an IPA (pursuant to Paragraph (5) of this subsection), the state auditor may select the IPA for that agency. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA 1978.

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

the

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

(b)

(a)

an IPA subject to contract restriction pursuant to Subsection E of 2.2.2.8 NMAC, is ineligible to be selected under this paragraph; (c) whether the IPA has conducted one or more audits of similar government agencies; (d)

the physical proximity of the IPA to the government agency to be audited; (e) whether the resources and expertise of

the IPA are consistent with the audit requirements of the government agency to be audited;

the

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

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

(10) The state

(f)

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

(a) is demonstrating progress in its own efforts to select an IPA:

(b) has

funds to pay for the audit;

on the state auditor's "at risk" list;

is

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

(e)

(g)

(c)

has failed to timely submit its IPA recommendation in accordance with the audit rule on one or more occasions; (f)

has

failed to make necessary corrections to its IPA recommendation in accordance with the audit rule or comments from office staff on one or more occasions; or

has

failed to timely submit its annual financial audit report in accordance with the audit rule deadlines on one or more occasions. (11) The

state auditor may appoint a committee of the state auditor's staff to make recommendations for the state auditor's final determination as to which IPAs will be selected for each government agency subject to the discretion of the state auditor pursuant to Paragraph (8) of this subsection. (12) Upon

selection of an IPA to audit a government agency subject to the discretion of the state auditor pursuant to Paragraph (8) of this subsection, the state auditor shall notify 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) agency was notified by the state auditor to select an IPA to perform its audit or agreed upon procedures engagement;

(b)

the

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

(c) pursuant to Subsection A of 12-6-14 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 should immediately take appropriate measures to procure the services of the selected IPA.

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

H. The state auditor will use discretion and may not approve: (1) an audit recommendation or agreed upon procedures professional services contract recommendation under 2.2.2.16 NMAC that does not serve the best interests of the public or the agency or local public body because of one or more of the following reasons:

(a)

lack

(i)

(b)

the following criteria for required auditor rotation apply:

of experience of the IPA;

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: (a) six consecutive years and for at least one of those years the audit fees exceeded \$60,000, excluding gross receipts tax; or (b) 12 consecutive years and each year the audit fees did not exceed \$60,000, excluding gross receipts tax;

(ii)

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

if the firm resulting from a merger or acquisition is determined to be the same firm, as before, and it is in the middle of a multiple year award, there will be a mandatory rotation of all the audit managers and the consecutive year count for rotation purposes starts over again (resets) with the new audit managers; (iv)

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

(v) prior to the closing of the transaction, the parties to a proposed acquisition, merger or consolidation may apply to the state auditor for the determination on an individual basis. referred to in (ii) above, of audit rotation conditions; and

(vi) any other consideration(s) that may be in the best interest of the public;

lack (c) 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;

lack (g) of compliance with the procurement code or this rule; or

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

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

(a) breached a prior-year contract;

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

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

performed nonaudit services (including services related to fraud) for an agency or local public body it is performing an audit or an agreed upon procedures for, without prior approval of the state auditor; (e)

performed nonaudit services under a separate contract for services that may be disallowed by GAGAS independence standards (see Subsection M of 2.2.2.8 NMAC);

(f)

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

(g)

impaired independence during an engagement;

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

(i) has not adhered to external quality control review standards as defined by GAGAS and Subsections A and B of 2.2.2.14 NMAC; (j) has

a history of excessive errors or omissions in audit or agreed upon procedures reports or working papers;

(k) released the audit report or agreed upon procedures report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the agreed upon procedures report, described in Subsection G of 2.2.2.16 NMAC, was received from the office;

(I)

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

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

(n)

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

 $(\mathbf{0})$

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

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

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

I. The agency must use the appropriate audit contract form provided by the state auditor on the website at www. osanm.org. The state auditor may provide audit contract forms to the agency via U.S.

mail if specifically requested by the agency. Only contract forms provided by the state auditor will be accepted and shall:

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

(2) bear original signatures;

(3) have the IPA's combined reporting system (CRS) number verified by the TRD for all state agencies whose contracts are approved through DFA's contracts office, prior to submission to the state auditor; and

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

J. The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile, or with the firm information if the IPA performs only engagements pursuant to 2.2.2.16 NMAC. The amount maintained should be commensurate with the risk assumed. The IPA must provide to the state auditor, prior to expiration, updated insurance information.

K. A breach of any terms of the contract shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or agreed upon procedures engagements of agencies or local public bodies in New Mexico.

L. Subcontractor requirements appear below.

(1)Audit firms that have only one individual gualified to supervise a GAGAS audit and issue the related audit report pursuant to Subsection B of 61-28B-17 NMSA 1978, and Paragraph 3.76 of GAGAS must submit with the firm profile, a completed original contingency subcontractor form that is dated to be effective until the date the next firm profile must be submitted. The form shall indicate which IPA on the state auditor's current list of approved IPA's will complete the IPA's audits in the event the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at www.osanm.org. The office will not approve audit contracts for such a firm

without the required original contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on an audit, then the IPA must obtain the prior written approval of the state auditor to subcontract a portion of the audit work. The IPA may subcontract only with IPAs who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of 2.2.2.8 NMAC. The audit contract shall specify subcontractor responsibility, who will sign the report(s), and how the subcontractor will be paid. See the related subcontractor form available at www.osanm.org.

The GAGAS 2011 M. Revision was issued by the United States government accountability office (GAO). It became effective for financial audits and attestation engagements for periods ending on or after December 15, 2012 (FY13), and for performance audits that began on or after December 15, 2011. Pursuant to GAGAS 3.08, "Auditors should apply the GAGAS conceptual framework at the audit organization, engagement, and individual auditor level to: identify threats to independence; evaluate the significance of the threats identified; both individually and in the aggregate; and apply safeguards as necessary to eliminate the threats or reduce them to an acceptable level." Auditors should use Paragraphs 3.33 and 3.58 of the GAGAS in evaluating threats to independence related to nonaudit services. Note that the old guidance on this subject, Government Auditing Standards: Answers to Independence Standard Questions (GAO-02-870G, July 2002), has been retired. Pursuant to GAGAS 3.40, "Auditors should establish and document their understanding with the audited entity's management or those charged with governance, the following: objectives of the nonaudit services; services to be performed; audited entity's acceptance of its responsibilities; the auditor's responsibilities; and any limitations of the nonaudit services."

(1)An IPA who performs the agency's annual financial audit shall not enter into any special audit or nonaudit service contract with the respective agency without the prior written approval of the state auditor. The exception to this requirement is an engagement that costs \$1,000 and less (exclusive of gross receipts tax) for client assistance with responses to IRS and other regulators. Only one exception per agency will be allowed per fiscal year. Requests for approval of professional service contracts should be submitted to the office with the original version of the signed agreement by the 5th of each month. The office shall review the requests and respond to the agency and

the IPA by the 25th of each month. The following documentation must be submitted to the office for review and approval.

(a)

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

For nonaudit services, include the auditor's documentation of:

(i)

whether management has the ability to effectively oversee the nonaudit service pursuant to GAGAS 3.34;

(ii)

the documented assurance from the entity that management will assume all management responsibilities, oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of the services performed; and accept responsibility for the results of the services pursuant to GAGAS 3.37; (iii)

the auditor's establishment and documentation (engagement letter) of the auditor's understanding with the entity's management or those charged with governance of the objectives of the nonaudit services, the services to be performed, audited entity's acceptance of its responsibilities, the auditor's responsibilities, and any limitations of the nonaudit service, pursuant to GAGAS 3.39; and

(iv)

the auditor's consideration of significant threats (if applicable) to independence that have been eliminated or reduced to an acceptable level through the application of additional safeguards, and a description of those safeguards. Upon completion of the nonaudit services, the IPA must provide the state auditor with a copy of any report submitted to the agency.

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

execution. (3) The state auditor will not approve any contract for: (a)

by the state auditor but shall be submitted

to the state auditor within 30 days of

an agency's external auditor to perform the following nonaudit services that a management responsibilities: "setting policies and strategic directio the audited entity; directing and accepting responsibility the actions of the audited entity's emp in the performance of their routine, recurring activities; having custody of an audited entity's reporting to those charged with gover on behalf of management; deciding which of the auditor's or outside third party's recommendations implement; accepting responsibility for the manage of an audited entity's project; accepting responsibility for designing implementing, or maintaining internal control; providing services that are intended to used as management's primary basis making decisions that are significant subject matter of the audit; developing an audited entity's perform measurement system when that system material or significant to the subject n of the audit; and serving as a voting member of an aud entity's management committee or bo directors (GAGAS 3.36);" (b) following nonaudit services, pursuant GAGAS 3.50, always impair the audi independence: "determining or changing journal entr account codes or classifications for transactions, or other accounting reco the entity without obtaining managem approval; authorizing or approving the entity's transactions; preparing or making changes to sourc documents without management appr Source documents include those prov evidence that transactions have occurr (for example, purchase orders, payrol) records, customer orders, and contract such records also include an audited e general ledger and subsidiary records or equivalent;" provides that the state auditor may authorize the progress payments on the basis of evidence (c)

202

following nonaudit services, pursuant to GAGAS 3.53 and 3.54, always impair the

m	auditor's independence:	payment.
re		(3) Progress
	(i) "setting internal audit policies	payments up to 69% do not require state
(i)	or the strategic direction of internal audit	auditor approval provided that the agency
on for	activities;	certifies the receipt of services before any
(**)	(ii)	payments are made to the IPA. The agency
(ii) for	performing procedures that form part of	must monitor audit progress and make
	the internal control, such as reviewing and approving changes to employee data access	progress payments only up to the percentage that the audit is completed prior to making
ployees	privileges; and	the 69% payment. If requested by the state
	(iii)	auditor, the agency shall provide a copy of
(iii)	determining the scope of the internal audit	the approved progress billing(s). Progress
assets;	function and resulting work; and performing	payments from 70% to 90% require state
(iv)	or supervising ongoing internal control	auditor approval after being approved by
nance	monitoring procedures;"	the agency. When component unit audits
	(\mathbf{d}) the	are part of a primary government's audit
(v)	following nonaudit services, pursuant to	contract, requests for progress payment
	GAGAS 3.56, always impair the auditor's	approvals should be submitted by the
s to	independence:	primary government for both the primary
	(i)	government and the component unit. In this
(vi)	"designing or developing a financial or	situation, the office will not process separate
gement	other IT system that will play a significant	progress payment approvals submitted by
	role in the management of an area of	the component unit.
(vii)	operations that is or will be the subject	(4) The state
5,	matter of an audit;	auditor may allow only the first 50% of
1	(ii)	progress payments to be made without state
(•••)	providing services that entail making other	auditor approval for an IPA whose previous
(viii)	than insignificant modifications to the	audits were submitted after the due date
o be	source code underlying such a system; and (iii)	specified in Subsection A of 2.2.2.9 NMAC.
for to the	operating or supervising the operations of	(5) Subsection B of 12-6-14 NMSA 1978 (Contract Audits)
	such a system;"	provides that final payment under an audit
(ix)	(e)	contract may be made by the agency to the
nance	pursuant to GAGAS 3.47, "valuation	IPA only after the state auditor has stated,
m is	services that would have a material effect,	in writing, that the audit has been made in
natter	separately or in the aggregate, on the	a competent manner in accordance with
	financial statements or other information	contract provisions and this rule. The state
(x)	on which the audit firm is reporting, and	auditor's determination with respect to
ited	the valuation involves a significant degree	final payment shall be stated in the letter
oard of	of subjectivity, would impair the auditor's	accompanying the release of the report
	independence;"	to the agency. Final payment to the IPA
the	(f)	by the agency prior to review and release
to	the auditor's independence would also be	of the audit report by the state auditor
tor's	impaired by the performance of any of	is considered a violation of Section 12-
(*)	the nonaudit services listed at GAGAS	6-14(B) NMSA 1978 and this rule and
(i) ries,	3.58 regarding the entity's non tax disbursements, benefit plan administration,	must be reported as an audit finding in the audit report of the agency. If this statute is
nes,	investment advisory or management	violated, the IPA may be removed from the
rds for	services, listed prohibited consulting or	list of approved auditors.
nent's	advisory services, executive or employee	O. Preparation of financial
	personnel matters, and business risk	statements appears below:
(ii)	consulting.	(1) The financial
	N. The state auditor will	statements presented in audit reports shall
	approve progress and final payments for the	be prepared from the agency's books of
(iii)	annual audit contract as follows.	record and contain amounts rounded to the
e	(1) Subsection	nearest dollar.
oval.	A of 12-6-14 NMSA 1978 (Contract	(2) The financial
iding	Audits) provides that "payment of public	statements are the responsibility of the
red	funds may not be made to an independent	agency. The agency shall maintain adequate
1 time	auditor unless a contract is entered into and	accounting records, prepare financial
ts);	approved as provided in this section."	statements in accordance with accounting
entity's	(2) Subsection B	principles generally accepted in the United
or	of 12-6-14 NMSA 1978 (Contract Audits)	States of America, and provide complete,

of the percentage of audit work completed

as of the date of the request for partial

financial of the n adequate cial counting he United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date deadline imposed in Subsection A of 2.2.2.9 NMAC.

(3)If there are differences between the financial statements and the books, the IPA must provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.

If the IPA (4) prepared the financial statements for management's review and approval, in conformance with Subsection M of 2.2.2.8 NMAC, including documenting the safeguards as required by GAGAS 3.59, the fact that the auditor prepared the financial statements must be disclosed in the exit conference page of the audit report. If the IPA prepared the financial statements, the auditor must determine whether an AU-C 265.09 and .10 related audit finding should be reported.

(5) If the agency is a component of a primary government, the agency's procurement for audit services must 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.

Audit documentation Р. requirements are listed below:

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

When

requested by the state auditor, all of the audit documentation shall be delivered to the state auditor by the deadline indicated in the request.

(2)

(3)The audit documentation of a predecessor IPA must 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 will be borne by the requestor. If the successor IPA finds that the predecessor IPA's audit documentation does not comply with applicable auditing standards and this rule, or does not support the financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or

accounting standards generally accepted in the United States of America and related laws, rules and regulations and this rule, any or all of the following actions may be taken: (a)

the

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

(h)

the

state auditor may deny or limit the issuance of future audit contracts and require that the IPA to give precedence to outstanding multiple year proposals; or

(c)

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

О. Auditor communication requirements appear below:

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

(a)

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

"In

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

After the (2) agency and auditor have an approved audit contract in place, the IPA shall prepare a written and dated engagement letter during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a photocopy of the signed letter as part of the audit documentation. In addition to meeting the requirements of the AICPA guidance and the GAGAS requirements, the engagement letter should state that the engagement will be performed in accordance with 2.2.2 NMAC.

(3)

Within 30

days of execution of the engagement letter, the IPA shall submit to the state auditor an electronic copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates, which should facilitate meeting the audit due date in Subsection A of 2.2.2.9 NMAC. A separate engagement letter and list of client prepared documents is required for each fiscal year audited. Failure to provide this information within 30 days of execution could result in a restriction of contracts.

(4) The IPA shall conduct an audit entrance conference with the agency. The office has the authority to notify the agency or IPA that the state auditor should 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 must invite the state auditor or his designee to attend all such conferences.

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

R. Contract amendment requirements appear below:

(1) Amendments to contracts for audit services, agreed upon procedures services, or nonaudit services may be submitted to the office regarding executed contracts. Contract amendments submitted on an expired contract will be rejected. Amendments shall be approved in writing by the state auditor. Any amendments to contracts should be made on the contract amendment form. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. Any amendments to the contract must be in compliance with Sections 13-1-1 to 13-1-199 NMSA 1978 of the Procurement Code. Notwithstanding the delivery dates of the contract, audit report regulatory due dates are not subject to amendment.

Contract (2)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; (\mathbf{h})

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

(c) when the auditor or agency became aware of the work needed to be performed. (3)Since

annual financial audit contracts are fixedprice contracts, contract amendments for fee increases will only be approved for extraordinary circumstances or a significant change in the scope of an audit. For example, if an audit contract did not include a federal single audit, a contract amendment will be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and special procedures required by a regulatory body or a local, state or federal grantor. The addition of a "new program" does not mean the addition of one more major federal program when the Single Audit was already included in the IPA's procurement response. Contract amendments will not be approved to perform additional procedures to achieve an unqualified opinion. The state auditor shall also consider the auditor independence requirements of Subsection M of 2.2.2.8 NMAC when reviewing contract amendments for approval. Requests for contract amendments should be submitted to the office with the original version of the signed contract amendment by the 5th of each month. The request for contact amendment should include a description of the work to be performed and the estimated hours required to perform the additional work. The office will review the requests and respond to the agency and the IPA by the 25th of each month. Requests for contract amendments submitted after the 5th of each month will not be reviewed and responded to by the office until the 25th of the following month.

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

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

the	contract.	

in Contract termination S. requirements follow:

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

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

(a)

The agency should follow the Procurement Code and Subsection G of 2.2.2.8 NMAC, Subsection A of 2.2.2.15 NMAC or Subsection D of 2.2.2.16 NMAC, to obtain the services of a different IPA.

(**b**)

(c)

The IPA recommendation and completed contract for the newly procured IPA should be submitted to the office within 30 calendar days of the date of the termination notification letter.

As

indicated in Paragraph (3) of Subsection A of 2.2.2.9 NMAC, the state auditor will grant no extensions of time to the established regulatory due dates.

If the agency does not expect to deliver the engagement report by the regulatory due date, the agency must submit a written notification letter to the state auditor and oversight agency as required by Paragraph (5) of Subsection A of 2.2.2.9 NMAC and Paragraph (2) of Subsection H of 2.2.2.16 NMAC.

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 3-16-15]

REPORT DUE

2.2.2.9 DATES:

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

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

regional education cooperatives, cooperative educational services and independent housing authorities, September 30:

hospitals and special hospital districts: October 15:

(c)

counties: November 1;

school districts and higher education: November 15;

(e)

(**d**)

district courts, district attorneys and county/ municipality governments: December 1; (**f**)

pursuant to Subsection D of 12-6-3 NMSA 1978, state agency reports are due no later than 60 days after the state auditor receives notice from the FCD that the agency's books and records are ready and available for audit; see Paragraph (1) of Subsection A of 2.2.2.12 NMAC for additional details regarding due dates for state agencies. State agency reports are due no later than December 1 after the close of the fiscal vear;

(g)

workforce investment boards, councils of government and local public bodies (see also Subsection H of 2.2.2.16 NMAC): December 15;

(h)

agencies with a fiscal year-end other than June 30 must submit the audit report no more than five months after the fiscal yearend;

(i)

all separate audit reports prepared for component units (e.g., housing authorities, charter schools, hospitals, foundations, etc.) are due fifteen days before the primary government's audit report is due; and

(j) the state of New Mexico comprehensive annual financial report (CAFR) is due February 15. (2) If an audit

report is not delivered on time to the state auditor, the auditor must include this instance of noncompliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If appropriate, the finding should also be reported as a significant deficiency, or material weakness in the operation of internal control in the agency's internal controls over financial reporting pursuant to AU-C 265.09 and .10.

(3) An organized bound hard copy of the report should be submitted for review by the office with the following: copy of the signed management representation letter; a copy of the completed state auditor report review guide (available at); and a completed Summary of Findings Form also available at www. osanm.org. The report review guide should reference applicable page numbers in the audit report and be signed by the person completing the review guide. The audit manager or person responsible for the firm's quality control system should either

complete the report review guide or sign off as having reviewed it. A report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed management representation letter, the completed report review guide; and completed Summary of Findings Form are also submitted to the office. All separate reports prepared for component units should also be submitted to the office for review, along with a copy of the representation letter, and a completed report review guide for each separate audit report. A separate component unit report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed management representation letter, and the completed report review guide, and a completed Summary of Findings Form are also submitted to the office. If a due date falls on a weekend or holiday, or if the office is closed due to inclement weather, the audit report is due the following workday by 5:00 p.m. If the report is mailed to the state auditor, it should be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report shall be postmarked by the following workday. The state auditor will grant no extensions of time to the established regulatory due dates.

(**4**) AU-C

700.4 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 shown in Subsection A of this section, the auditor shall notify the state auditor and oversight agency of the situation in writing. This notification shall consist of a letter with official signatures, not an email. However, a scanned version of the official letter sent via email that contains the required signatures is acceptable. There must be a separate notification for each late audit report. The notification must include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the agency. If the IPA is going to miss the expected report submission date, then the IPA should send a revised notification letter. In the event the contract was signed after the report due date, the notification letter must still be submitted to the office explaining the reason the audit report will be submitted after the report

due date. A copy of the letter must be sent to the legislative finance committee and the applicable oversight agency: public education department, DFA's financial control division, DFA's local government division, or the higher education department. The late report notification letter is not required if the report was submitted to the office for review by the deadline, and then rejected by the office, making the report late when resubmitted. At the time the audit report is due, if circumstances still exist that will make the report late, the IPA or agency may consult the state auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the auditor to go beyond the scope of auditing standards generally accepted in the United States of America, or the audit report due date, to assure an unmodified opinion. Therefore, reports resubmitted to the office with changes of the IPA's opinion after the report deadline will be considered late and a late audit finding must be included in the audit report.

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

Audit report delivery C. and release requirements follow: All audit (1) reports (and all separate reports of component units if applicable) must be organized, bound and paginated. The office does not accept facsimile or emailed versions of the audit reports for 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 will be considered received by the due date. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the IPA and the office may take action in accordance with Subsection C of 2.2.2.13 NMAC. The firm should submit an electronic version of the corrected rejected report for office review. The name of the electronic file should be "corrected rejected report" followed by the agency name and fiscal year.

(2) Before initial submission the IPA should review the report using the appropriate report review guide available on the office's website. All questions in the guide must be answered, and the reviewer must sign and date the last page of the guide. The audit manager or person responsible for the IPA's quality control system must either complete the report review guide or sign off as having reviewed the completed questionnaire. If the review guide is not accurately completed or incomplete, the report will not be accepted.

(3) The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to 2.2.2.13 NMAC, and any significant deficiencies have been corrected by the IPA, the office will indicate to the IPA that the report is ready to print. After the office review of the final version of the audit report pursuant to 2.2.2.13 NMAC, the office will authorize the IPA to submit the following items to the office within five business days: the required number of hardcopies specified in the audit contract; and an electronic version of the audit report labeled "Final," in PDF format. The office will not release the report until the electronic version of the report is received by the office. The electronic file must:

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

(**b**) be

version 5.0 or newer;

(c)

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

(**d**)

have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the office 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

be

free of worms, viruses or other malicious content (a file with such content will be deleted by the office);

"flattened" into a single layer file prior to submission;

(i)

(h)

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);

be

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

(k)

(j)

the electronic file name must start with "final version," followed by the name of

the agency and the fiscal year, and then end with .pdf.

(4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter." Release of the audit report to the agency or the public prior to it being officially released by the state auditor will result in an audit finding. The agency or the IPA shall ensure that every member of the agency's governing authority receives a copy of the audit report.

(5) After the release of a report, the office will provide DFA and the legislative finance committee with notification that the report is available on the office website.

(6)If an audit report is reissued pursuant to AU-C Section 560, Subsequent Events and Subsequently Discovered Facts, the reissued audit report must be submitted to the office with a cover letter addressed to the state auditor. The cover letter must explain that:

(a) the attached report is a "reissued" report; the **(b)** circumstances that caused the reissuance;

and (c) a summary of the changes that appear in the reissued report. The office will subject the reissued report to the report review process and upon completion of that report review process, will issue a "release letter." The contents of the reissued audit report are subject to the same confidentiality requirements described in Paragraph (3) of Subsection J 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 office will notify the appropriate oversight agencies regarding the updated report on the office website.

(7) If changes to a released audit report are submitted to the office, 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, that includes the following minimum elements: (a)а

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

(b)

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

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 office will notify the appropriate oversight agencies regarding the updated report on the office website.

The agency and IPA D. may agree to, or the state auditor may impose, a contract provision that unjustified failure to meet delivery requirements by either party to the contract may result in a liability for a specified amount of liquidated damages from the offending party.

E. IPAs are encouraged to deliver completed audit reports before the due date to facilitate the review process performed by the office. If the office rejects and returns a substandard audit report to the IPA, the office will consider the audit report late if the corrected report is not resubmitted by the due date. The IPA will also be required to report a finding for the late audit report in the audit report.

F For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, the state auditor may require the agency to submit a status report to the office in accordance with deadlines specified by the state auditor. The status report shall be signed by a member of the agency's governing authority, a designee of the governing authority or a member of the agency's top management. At a minimum, the report shall include:

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

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

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

(4) a projected completion date for the financial audit or agreed-upon procedures. [2.2.2.9 NMAC - Rp, 2.2.2.9 NMAC, 3-16-15]

2.2.2.10 **GENERAL CRITERIA:**

Scope of annual A. financial audit:

The financial (1) audit shall cover the entire financial reporting entity including the primary

government and any component units of the primary government.

(a)

Entities must be reported as component units within the financial statements of the primary government, if the primary government is financially accountable for the entity (Paragraph 10 of GASBS 14) or if the nature and significance of the entity to the primary government

warrants inclusion (Paragraphs 5 and 6 of GASBS 39). The primary government, in conjunction with its auditors, must determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14 (as amended) and 39. The flowchart at Paragraph 68 of GASBS 61 is useful for this determination. All agencies that meet the criteria of GASBS 14 (as amended) or 39 to be a component unit of the primary government must be included with the audited financial statements of the primary government by discrete presentation unless otherwise approved by the state auditor. Exceptions may occur when an agency requires presentation other than discrete. An exemption must be requested by the agency, in writing, from the state auditor in order to present a component unit as other than a discrete component unit. The request for an exemption must include a detailed explanation, conclusion and supporting documentation justifying the request for blended component unit presentation. The approval of the state auditor for the exemption is required prior to issuing the report. Per Paragraph 1.01 of AAG-SLV, not-for-profit component units should be reported using the government financial reporting format if they have one or more of the following characteristics: popular election of officers or appointment or approval of a controlling majority of the members of the organization's governing body by officials of one or more state or local governments; the potential for unilateral dissolution by a government with the net assets reverting to the government; or the power to enact and enforce a tax levy. If a not-for-profit does not qualify to be reported using the governmental format under the above criteria, that fact should be explained in the notes to the financial statements (summary of significant accounting policies-financial reporting entity). **(b)**

If

a primary government has no component units, that fact should be disclosed in the notes to the financial statements (summary of significant accounting policies - financial reporting entity). If the primary government has component units that are not included in the financial statement due to materiality, that fact must also be disclosed in the notes. However, if the primary government is a state agency, department or board, or public institution of higher education or public post-secondary educational institution, county, municipality or public school district, Subparagraph (a) of Paragraph (4) of Subsection B of 6-5A-1 NMSA 1978 requires all 501(c) 3 component unit organizations with a gross annual income in excess of \$250,000 to receive an audit.

Such component units cannot be excluded from the audit based on the "materiality" criterion.

(c)

The state auditor requires the component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement and the statewide CAFR). Requests for exemption from this requirement must 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 must be met:

the group engagement partner should 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); **(ii)**

the component unit auditor selected must appear on the office of the state auditor list of eligible independent public accountants; (iii)

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

the office of the state auditor standard contract form must be used;

(v)

the primary government, the primary engagement partner, management of the component unit, and the component auditor should all coordinate their efforts to ensure that all audit reports of the component unit and the primary government are submitted by the applicable deadlines;

(vi)

all component unit findings must be disclosed in the primary government's audit report except the statewide CAFR is required to include only separate legal component unit findings that are significant to the state as a whole; and

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

The

level of planning materiality required by the state auditor for component units is at the individual fund level. This requirement does not apply to the audit of the statewide CAFR. College and university component units have a different materiality level. See Paragraph (3) of Subsection E of 2.2.2.12 NMAC.

(e)

(**d**)

With the exception of the statewide CAFR, the following supplemental information (SI) pertaining to component units should

be audited at the more detailed fund level included in the scope of the audit and opined on as illustrated in Example A-14 (AAG-SLV):

component unit fund financial statements, and the combining and individual fund financial statements if separately issued financial statements of the component units are not available (AAG-SLV 3.22); and

(ii)

(i)

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

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

(a)

the level of planning materiality required by the state auditor is at the individual fund level; the state auditor requires that the budgetary comparison statements be audited and included as part of the basic financial statements consistent with GASBS 34 footnote 53 and AAG-SLV 11.13. The level of planning materiality described in the Paragraphs 4.72 and 4.73 of the AICPA Audit and Accounting Guide, State and Local Governments, should be used for the statewide CAFR audit.

(**b**) scope of the audit includes the following statements and disclosures which the auditor is required to audit and give an opinion on, the basic financial statements consisting of:

(i) the government-wide financial statements; (ii)

fund financial statements;

(iii)

(iv)

budgetary comparison statements (for only the general fund and major special revenue funds when the budget information is available on the same fund structure basis as the GAAP fund structure): and

notes to the financial statements;

the (c) auditor must audit the following required supplemental information, if applicable, and include it in the auditor's opinion (AAG-SLV 14.65); budgetary comparisons for the general fund and major special revenue fund data presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds (GASB Statement No. 41, Budgetary

Comparison Schedules-Perspective Differences an amendment of GASB Statement No. 34);

(**d**)

with the exception of the statewide CAFR, the auditor must audit the following supplemental information at the individual fund level, if applicable, and opine on it in the auditor's opinion following Example A-14 (AAG-SLV 14 Appendix A):

(i)

component unit fund financial statements, and the combining and individual fund financial statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.22);

(ii)

combining and individual fund financial statements: and

(iii)

individual fund budgetary comparison statements for the remaining funds that have a legally adopted budget including any major capital project or debt service funds, non-major governmental funds, enterprise funds and internal service funds.

the

(e)

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 pension plans;

(iii)

RSI schedules required by GASBS 43 for postemployment benefit plans other than pension plans;

(iv)

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

(v)

infrastructure modified approach schedules derived from asset management systems (Paragraphs 132 and 133 of GASBS 34); (f)

the audit engagement and audit contract compensation include an AU-C 725 opinion on the remaining supplemental information schedules presented in the audit report;

(i)

some examples of remaining SI schedules are: the schedule of expenditures of federal awards required by OMB Circular A-133, the schedule of pledged collateral required by Paragraph (3) of Subsection N of 2.2.2.10 NMAC, the schedule of changes in assets and liabilities for agency funds required by Subsection Z of 2.2.2.10 NMAC, and the school district schedule of cash reconciliation required by Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC;

the

(ii) the auditor shall subject the information on the remaining SI schedules to procedures required by AU-C 725;

(iii) 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 Subparagraph (b) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC; (iv)

the auditor shall report on the remaining supplementary information (SI) in an explanatory paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725; see also the independent auditor's report example on the office website at www.osanm.org.

(g)

the audit engagement and audit contract compensation include AU-C 720 procedures and auditor reporting be performed on a schedule of vendor information. The agency shall prepare a schedule of vendors for purchase exceeding \$60,000 (excluding gross receipts tax) that includes the following information: names of all vendors that responded to requests for bids or requests for the proposals during the fiscal year; whether the vendor was an in-state vendor or an out-of-state vendor; if the vendor was in-state and chose the veterans' preference instead of the in-state preference; a short description of the scope of work; the name of the vendor that was awarded the contract; and the dollar amount of the resulting contract. This "Schedule of Vendors" must be included in the "Other Information Section" of the audit report.

B. Legislation regarding budget adjustment requests (BARs) prevents or restricts many budget transfers or increases. The IPA shall satisfy himself that these restrictions are not being violated by direct payment or other unauthorized transfers.

C. Legislation can designate a fund as reverting or nonreverting: The IPA must review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation must be reverted and to whom. The law will also indicate the deadline for the required reversion. Appropriate audit procedures must be performed to determine compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes should fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements must disclose the specific legislation that

makes a fund or appropriation non-reverting and any minimum balance required. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements must disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of 2.2.2.12 NMAC and the DFA white papers "calculating reversions to the state general fund," and "basis of accountingmodified accrual and the budgetary basis." The statewide CAFR is exempt from this requirement.

D. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

(1) GAGAS issued by the U.S. general accounting office, the 2011 revision;

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

(3) OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organization, as amended (unless the grant agreement specifies that the Uniform Administrative Requirements apply in FY15);

(4) AICPA Audit Guide, Governmental Auditing Standards and Circular A-133 Audits, latest edition; (5) AICPA Audit and Accounting Guide, State and Local Governments, latest edition; and (6) 2.2.2

NMAC, Requirements for Contracting and Conducting Audits of Agencies, latest edition.

E. The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the GASB Codification, latest edition. Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB, other applicable pronouncements, and GASB illustrations and trends for financial statements. In addition to the revenue classifications required by NCGAS 1.110, the office requires that the statement of revenues, expenditures, and changes in fund balances - governmental funds include intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

F. IPAs who perform government audits are expected to maintain professional libraries including current editions of the publications and standards noted above. The audit guides published by the practitioners publishing company (PPC) or similar authors' practice aides are not considered to be authoritative.

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

(1) Procurement Code (Sections 13-1-1 through 13-1-199 NMSA 1978) including providing the state purchasing agent with the name of the agency's or local public body's chief procurement officer, pursuant to Section 13-1-95.2 NMSA 1978, and state purchasing regulations, 1.4.1 NMAC;

(2) Per Diem and Mileage Act (Sections 10-8-1 through 10-8-8 NMSA 1978), Regulations Governing the Per Diem and Mileage Act, and 2.42.2.11 NMAC, Mileage-Private Conveyance, effective June 19, 2009;

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

(4) Public School Finance Act (Sections 22-8-1 through 22-8-48 NMSA 1978);

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

(6) For Public Employees Retirement Act (Sections 10-11-1 through 10-11-141 NMSA 1978) auditors should test to ensure 100% of payroll is reported to PERA; PERA membership is mandatory under the PERA Act, unless membership is specifically excluded pursuant to Section 10-11-3(B) NMSA 1978;

(7) Educational Retirement Act (Sections 22-11-1 through 22-11-55 NMSA 1978);

(8) Sale of Public Property (Section 13-6-1 through 13-6-8 NMSA 1978);

(9) Anti-Donation Clause (NM Constitution Article IX, Section 14);

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

(11) state agency budget compliance with Sections 6-3-1 through 6-3-25 NMSA 1978, and local government budget compliance with Sections 6-6-2(A) and 6-6-5 through 6-6-7 NMSA 1978;

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

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

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

(15)Article IX of the State Constitution limits on indebtedness:

(16)for agencies receiving general fund appropriations, Laws of 2014 Regular Session, Chapter 63, Section 3, Subsection J states, "Except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9(1) NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2014 may be expended for payment of agency-issued credit card invoices;"

for Retiree (17)Health Care Authority Act (Section 10-7C-1 through 10-7C-19 NMSA 1978) auditors should test to ensure 100% of payroll is reported to NMRHCA. RHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978; and

(18)Governmental Conduct Act (Sections 10-16-1 through 10-16-18 NMSA 1978);

(19) If applicable to the agency's audit contract, the auditor shall perform additional audit procedures indicated in the "other provisions" section of the audit contract. If the additional audit procedures 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 R of 2.2.2.8 NMAC will apply.

H. The following federal compliance audit requirements must be tested (with the exception of the statewide CAFR audit):

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

(a)

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

(b)

Uniformed Administrative Requirements,

Cost Principles, and Audit Requirements for Federal Awards, or the next five items; (c)

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

(d)

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

OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments, revised October 7, 1994 and further amended August 29, 1997; (\mathbf{f})

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

(g)

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

OMB Circular A-133. Compliance Supplement, latest edition; and (i)

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; and

(j)

OMB Catalog of Federal Domestic Assistance (CFDA), latest edition. (2) IRS

employee income tax compliance issues noncompliance with these IRS requirements requires a current year audit finding: (a)

employee fringe benefits are presumed by the IRS to be income to the employee unless they are specifically excluded from income by the tax code; any employee fringe benefits not excluded from income by the tax code must be reported on the employee's W-2; examples of such fringe benefits could be: meal allowances paid to employees for meals away from home when overnight travel is not involved; discounted housing like school district teacherages, dues for membership in clubs organized for business, pleasure, recreation, or other social purpose (except rotary and kiwanis club); cash and non-cash awards, and employee insurance benefits for dependents who do not meet the IRS definition of a "dependent"; personal use of a government agency vehicle is always taxable income to the employee unless the vehicle is a qualified non-personal use vehicle (Rev. 1.274-5T(k)(3) provided to the employee as a "working condition fringe benefit": (i)

examples of qualified non-personal use

vehicles are: clearly marked police and fire vehicles; unmarked law enforcement vehicles (officer must be authorized to carry a firearm and have arrest authority); ambulance or hearse; vehicle with gross weight over 14,000 lbs.; 20 passenger bus and school bus; tractor and other farm equipment; and delivery truck with driver seating only;

(ii)

the value of commuting and other personal use of a "nonqualified vehicle" must be included on the employee's W-2; there are three rules the IRS allows to be used for valuing personal use of an employer's vehicle: automobile lease valuation rule; cents-per-mile rule; and the commuting rule (\$3 per day); for more detailed information regarding valuation of personal use of vehicles see IRS Pub. 15-B; **(b)**

city

or county "volunteer firefighters" who are reimbursed when they provide firefighting services on state or federal land have been determined by the IRS to be employees of the respective city or county;

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

for

(**d**) more information regarding these and other IRS issues please contact the federal state and local government specialist with the IRS in Albuquerque, NM at 505-837-5610.

I. Audit finding requirements appear below:

Internal

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

(a)

AU-C 260.09 requires the auditor to evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material

weaknesses. Guidance for evaluating deficiencies is available at AU-C 260. A5 through 269.A11. Examples of circumstances that may be deficiencies, significant deficiencies, or material weaknesses are listed at AU-C 260.A37;

(b)

pursuant to Section 12-6-5 NMSA 1978, which requires that any violation of good accounting practices shall be set out in detail in the report, all findings, including those required by Section 12-6-5 NMSA 1978, regarding weaknesses in internal controls, warrant the attention of those charged with governance; therefore, all such findings must be included 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.

GAGAS (2)Section 4.05 (2011 revision) requires auditors to "evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements or financial data significant to the audit objectives. When planning the audit, auditors should ask management of the audited entity to identify previous audits, attestation engagements, and other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented; auditors should use this information in assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives." In addition to this standard, the IPA will report the status of all prior-year findings in the current year audit report including the current year finding reference number (if repeated) followed by the original finding reference number appearing in brackets, the title of the finding, and whether the finding has been resolved or repeated in the current year; findings from special audits performed by the state auditor must be included in the findings of the annual financial and compliance audits of the related fiscal year.

(3)Current-year audit findings:

(a)

the Data Collection Form requires federal award audit finding reference numbers to: have a new standard format with the four digit audit year, a hyphen and a three digit sequence number (e.g. 2013-001, 2013-002...2013-999); and match the finding reference numbers on the data collection

form (Form SF-SAC) to those reported in the schedule of findings and questioned costs and the applicable auditor's report; therefore, all current year audit findings will follow this new required format; depending on the IPA's classification of the finding, the finding reference number should be followed by one of the following descriptions: "material weakness" in internal control; "significant deficiency" in internal control; "material noncompliance;" or "other noncompliance"; or "findings that do not rise to the level of a significant deficiency"; any unresolved prior-year findings must be repeated in the current year using the new format; however, as noted above, the status report of all prior year findings will include the old original finding number in brackets, following the new standardized finding reference number, to enable the report user to see what year the finding was originally written;

(\mathbf{h})

written audit findings should be prepared and submitted to the agency management as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference; findings are not subject to negotiation; the agency should also prepare a corrective action plan as required by GAGAS 4.33; the agency shall respond, in writing, to the IPA's audit findings within 10 business days; the agency's responses to the audit findings and the corrective action plan should be included in the finding after the recommendation; pursuant to GAGAS 4.38, "when the audited agency's comments are inconsistent or in conflict with findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditor's recommendations, the auditors should evaluate the validity of the audited agency's comments; if the auditors disagree with the comments, they should explain in the report their reasons for disagreement," after the agency's response; "conversely, the auditors should modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence;" lack of agency responses within the 10 business days does not warrant a delay of the audit report; pursuant to GAGAS 4.39, "if the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited entity; in such cases, the auditors should indicate in the report that the audited entity did not provide comments;" (c)

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

condition (provides a description of a situation that exists and should include the extent of the condition and an accurate perspective; the number of instances found and the dollar amounts involved, if any, and, for repeat findings, include here, management's progress or lack of progress towards implementing the prior year corrective action plan);

(ii) criteria (should identify the required or desired state or what is expected from the program or operation; should cite the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(iii) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks;

(iv) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause will serve as a basis for the recommendation):

(v)

recommendation addressing each condition and cause; and

(vi)

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

 $(\mathbf{4})$ If appropriate in the auditor's professional judgment, failure to submit the completed IPA recommendation form and contract by the due date at Subparagraph (c) Paragraph (6) of Subsection G of 2.2.2.8 NMAC, may be considered 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, and the contract was not approved by the state auditor, this shall be reported as a finding of noncompliance with Subsection M of 2.2.2.8 NMAC.

(6) Component unit audit findings must be reported in the primary government's financial audit report. This is not required for the statewide CAFR unless a legally separate component unit's (like NM finance authority's or NM mortgage finance authority's) finding is (i) significant to the state as a whole.

(7)A release of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation of Section 12-6-5(A) NMSA 1978 and will require an additional finding in the audit report.

(8)When

auditors detect immaterial violations of provisions of contracts or grant agreements or abuse that are required to be reported by Section 12-6-5 NMSA 1978, that do not rise to the level of significant deficiencies or material weaknesses, those findings should be classified as warranting the attention of those charged with governance, since Section 12-6-5 NMSA 1978 requires any violation of law found by the audit to be set out in detail in the report; the auditor must 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 (see the report on internal control examples at www. osanm.org).

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

Exit conference and J. related confidentiality issues follow: (1) The IPA must hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.) if applicable. The office has the authority to notify the agency or IPA that the state auditor should 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 must 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 must be held with the component unit's governing authority and top management. Unless the cost of the audit is \$5,000 or less, the exit conference must be held in person; a telephone or webcam exit conference will not meet this requirement; if extraordinary circumstances exist that will prevent the exit conference from taking place in person, the IPA shall submit a written request for an exemption from this requirement to the state auditor at least 48 hours prior to the scheduled exit conference; the written request for the exemption must include the justification for the request and the concurring signature

of the agency; the IPA may not hold a telephonic or webcam exit conference without prior written approval of the state auditor; the date of the conference(s) and the names and titles of personnel attending must be stated in the last page of the audit report.

The IPA with (2) 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 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 the Single Audit Act or Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(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 office, and has become a public record; agencies subject to the Open Meetings Act who wish to have a quorum of the governing board present at the exit conference will have to schedule the exit conference during a closed meeting in compliance with the Act, in order to avoid disclosing audit information that is not yet public record, in a public meeting.

(a)

pursuant to the Open Meetings Act (Sections 10-15-1 through 10-15-4 NMSA 1978), any closed meetings shall be held only after reasonable notice to the public; (**b**)

Section 12-6-5 NMSA 1978 (Reports of Audits) provides that an audit report does not become a public record, subject to public inspection, until five calendar days after the date it is released by the state auditor to the agency being audited; (c)

Example 31 in the seventh edition of the attorney general's Open Meetings Act Compliance Guide states that "where the agency being audited is governed by a public body subject to the Open Meetings Act and where release of the report occurs at an exit conference at which a quorum of the members of the body is present, such exit conference need not be open to the public in order to preserve the confidentiality of the information protected by Section 12-6-5 NMSA 1978;" (**d**)

once the audit report is officially released

to the agency by the state auditor (by an authorizing letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. The presentation of the audit report should be documented in the minutes of the meeting. See AU-C 260.12 through 260.14 for information that should be communicated to those charged with governance.

At all

(4) 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 through 4.32 and GAGAS 4.40 through 4.44.

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

Paragraphs (1) 4.06 through 4.08 of the GAGAS 2011 revision, states that "in addition to the AICPA requirements concerning fraud and noncompliance with provisions of laws and regulations, when performing a GAGAS financial audit, auditors should extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements; abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances; abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate; abuse does not necessarily involve fraud, or noncompliance with provisions of laws, regulations, contracts, or grant agreements; because the determination of abuse is subjective, auditors are not required to detect abuse in financial audits; however, as part of a GAGAS audit, if auditors become aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, auditors should apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives; after performing additional work, auditors may discover that the abuse represents potential fraud or noncompliance with provisions of laws, regulations, contracts, or grant agreements;"

New Mexico Register / Volume XXVI, Number 5 / March 16, 2015

(2) Pursuant to Section 12-6-6 NMSA 1978 (Criminal Violations), an agency or IPA shall notify the state auditor immediately, in writing, upon discovery of any violation of a criminal statute in connection with financial affairs; the notification shall include an estimate of the dollar amount involved, and a complete description of the violation, including names of persons involved and any action taken or planned; if warranted, the state auditor may cause an audit of the financial affairs and transactions of the agency in whole or in part pursuant to Section 12-6-3 NMSA 1978 and Subsection A of 2.2.2.15 NMAC; if the state auditor does not designate an agency for audit, an agency shall follow the provisions of Subsection D of 2.2.2.15 NMAC when entering into a professional services contract for a special audit, performance audit or attestation engagement regarding the financial affairs and transactions of the agency relating to financial fraud, waste and abuse.

(3) Section 12-6-6 NMSA 1978 states that the state auditor, immediately upon discovery of any violation of a criminal statute in connection with financial affairs, shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

L. Special revenue funds authority: the authority for creation of special revenue funds and any minimum balance required must be shown in the audit report (i.e., cite the statute number, code of federal regulation, executive order, resolution number, or other specific authority) 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.

M. Public monies:

(1) Definition - all monies coming into all agencies (i.e., vending machines, fees for photocopies, telephone charges, etc.) shall be considered public monies and be accounted for as such; for state agencies, all revenues generated must be authorized by legislation (Section 6-4-2 NMSA 1978 and MAPS FIN 11.4).

(2) If the agency has material derivatives or securities investments the auditor should seek the assistance of audit firm staff or of a specialist from outside the firm, that has the skill or knowledge required to plan and perform auditing procedures for specific assertions about derivatives and securities; see the related requirements at: Paragraphs .04 through .10 AU-C 501, Audit Evidence-Specific Considerations for Selected Items and AU-C 620, Using the Work of an Auditor's Specialist.

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

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council) and the SHARE fund number (state agencies only);

(b) account name;

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

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

reconciled balance of deposits and investments as of the balance sheet date as reported in the

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

(**d**)

(c)

account balance of deposits and investments as of the balance sheet date; and

(e) financial statements;

(f) with the implementation of the SHARE system, both the "book" and "bank" information reside on this unified system; there are no longer stand-alone systems providing single-source information. State General Fund Investment Pool (SGFIP) balance information is now available and retrievable at each state agency being audited; this information is identical to what DFA or STO can obtain from the system. At this time, the STO cannot act in the capacity of an independent third-party to provide account balance confirmations to other agencies or auditors, IPAs can now access account balance information by having the agency run a query or a trial balance report from SHARE; therefore, IPAs and state agencies should not request bank confirmations from STO (state agencies only);

(g) in auditing the investment in the State General Fund Investment Pool (SGFIP) of a state agency, the IPA should review the individual state agency's cash reconciliation procedure 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 should 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. For example, some agencies receive only the cash annually appropriated to the agency audit report should include disclosure in light of the reconciliation issues at the statewide level, and what the agency is doing to mitigate its risk of misstated SGFIP account balances. Taking all these and more facts gained during audit procedures into consideration, the IPA should use his or her professional judgment to determine each agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA. (state agencies only)

(4) Pledged collateral:

(a) all audit reports should disclose the collateral requirements in the notes to the financial statements; in addition, there should be a supplementary schedule or note to the financial statements that discloses the collateral pledged by each bank and savings and loan association (S&L) that is a depository for public funds; the schedule should disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, CUSIP number, fair market value and maturity date;

(b) if the pledged collateral for deposits in banks, savings and loan associations, or credit unions, in an aggregate amount is not equal to one half of the amount of public money in each account (Section 6-10-17 NMSA 1978), there should be a finding in the audit report; no security is required for the deposit of public money that is insured by the FDIC or NCUSIF, according to Section 6-10-16 NMSA 1978; the collateral requirements should be calculated separately for each bank and disclosed in the notes as follows to show compliance and GASB 40 disclosure information (for line items iv-viii, delete the line items if custodial credit risk category does not apply):

New Mexico Register / Volume XXVI, Number 5 / March 16, 2015

(i)	Total on deposit in bank or credit union	\$ 450,000
(ii)	Less: FDIC or NCUSIF coverage *	250,000
(iii)	Uninsured public funds	200,000
(iv)	Pledged collateral held by agency's agent in agency's name	(50,000)
(v)	Pledged collateral held by the pledging bank's trust department in agency's name	(75,000)
(vi)	Pledged collateral held by the pledging financial institution	(12,500)
(vii)	Pledged collateral held by pledging bank's trust department or agent but not in	
	agency's name	(12,500)
(viii)	Uninsured and uncollateralized	(\$ 50,000)

(c) custodial credit risk is defined as the risk that the government's deposits may not be returned to it in the event of a bank failure; per GASBS 40.8, the notes to the financial statements should disclose the amount of deposits subject to custodial credit risk for categories (vi), (vii) or (viii) above;

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

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

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

(e) repurchase agreements must be covered by 102% of pledged collateral per Subsection H of Section 6-10-10 NMSA 1978; disclosure similar to that shown above is also required for the 102% pledged collateral requirement;

(f) per Subsection A of 6-10-16 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;"

(g) securities shall be accepted as security at market value pursuant to Subsection C of 6-10-16 NMSA 1978;

(h) state agency investments in the office of the state treasurer's general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer; however, the notes to the financial statements should refer the reader to the state treasurer's separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments; see Paragraph (14) of Subsection A of 2.2.2.12 NMAC for related GASBS 40 disclosure requirements;

(i) if an agency has other "authorized" bank accounts, pledged collateral information should be obtained from the bank and disclosed in the notes to the financial statements; the state treasurer monitors pledged collateral related to most state agency bank accounts; state agencies should not request the pledged collateral information from the state treasurer; in the event pledged collateral information specific to the state agency is not available, the following note disclosure should be made; detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds; however, the office of the state treasurer's collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts;

(5) State treasurer's external investment pool (local government investment pool); agencies that have investments in the state treasurer's short-term investment fund must disclose the information required by Paragraph 15 of GASB Statement No. 31 in the notes to the financial statements; the following information may be helpful for this disclosure:

(a) the investments are valued at fair value based on quoted market prices as of the valuation date;

(b) the state treasurer local government investment pool is not SEC registered; the state treasurer is authorized to invest the short-term investment funds, with the advice and consent of the state board of finance, in accordance with Subsections I through O of Section 6-10-10 and Paragraph (1) of Subsection A and E of 6-10-10 NMSA 1978;

(c) the pool does not have unit shares; per Paragraph (1) of Subsection F of 6-10-10 NMSA 1978, at the end of each month all interest earned is distributed by the state treasurer to the contributing entities in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts were invested;

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

(e) the end of the fiscal year weighted average maturity (interest rate risk in number of days) available on the state treasurer's website at http://www.nmsto.gov/gasb 40 disclosure.

N. Budgetary presentation:

(1)

Prior year balance included in budget:

(a) if the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of fund balance on the budgetary basis required to balance the budget;

(b) if the agency prepares its budget on the cash basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of prior-year cash balance required to balance the budget (or fund balance on the cash basis);

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures should be reconciled; this reconciliation is required at the individual fund level; if the required budgetary comparison information is included in the basic financial statements, the reconciliation should be included on the statement itself (preferred) or in the notes to the financial statements; if the budgetary comparison is presented as supplemental information as required by Subparagraph (c) of Paragraph (3) of Subsection O of 2.2.2.10 NMAC below, the reconciliation to GAAP basis should be presented at the bottom of the budgetary comparison; if the required budgetary comparison is presented as RSI (for reasons described below in Subparagraph (b) of Paragraph (3) in this section) the reconciliation should appear in either a separate schedule or in notes to RSI according to the *AICPA Audit and Accounting Guide, State and Local Governments*, (AAG-SLV 11.14); also, the notes to the financial statements should disclose the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level of budgetary control; the legal level of budgetary control

for local governments is at the fund level; the legal level of budgetary control is at the function level for school districts; the legal level of budgetary control for state agencies is explained at Paragraph (11) of Subsection A of 2.2.2.12 NMAC; for additional information regarding the legal level of budgetary control, the IPA should contact the applicable oversight agency, DFA, HED, or PED.

Budgetary (3)comparisons must show the original and final appropriated budget (same as final budget approval by DFA, HED or PED), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a) the basic financial statements must include budgetary comparison statements for only the general fund and major special revenue funds if the budget structure for those funds is similar enough to the GAAP fund structure to provide the necessary information;

(b)

the required supplemental information section is the place where the budgetary comparisons should appear for the general fund and major special revenue funds if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for the general fund and major special revenue funds. An example of this "perspective difference" would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data. See Paragraphs 3 and 10 in GASB Statement No. 41, Budgetary Comparison Schedules -Perspective Differences. When budgetary comparisons have to be presented as required supplemental information (RSI) due to such perspective differences it is a requirement of the state auditor that they be audited and included in the auditor's opinion. See AAG-SLV 14.65 in the AICPA Audit and Accounting Guide, State and Local Governments (latest edition); (c)

Supplemental information (SI) is the place where all other budgetary comparison information should appear except the general and major special revenue fund budgetary comparisons. Non-major governmental funds and proprietary funds that have legally adopted budgets (including budgets approved by a resolution) should have budgetary comparisons appearing in the SI section of the report. It is a requirement of the state auditor that

budgetary comparison statements presented in the basic financial statements or as required supplemental information (RSI) or supplemental information (SI) be audited and included in the auditor's opinion. For an example of an opinion that includes SI or RSI see Example A-14 in the AICPA Audit and Accounting Guide, State and Local Governments (latest edition).

Appropriations to 0. agencies: (1)

related findings:

Budget

(a)

if actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact must be reported in a finding and disclosed in the notes to the financial statements:

(\mathbf{h})

if budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables required to balance the budget), that fact must also be reported in a finding after the auditor confirms the finding with the agency's budget oversight entity (if applicable), since budget deficits are generally not allowed;

> (2)Special,

deficiency, specific, and capital outlay appropriations:

(a)

special, deficiency, and specific appropriations and capital outlay appropriations funded by severance tax bonds or general obligation bonds of the state must be disclosed in the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances and unencumbered balances should be shown in a supplementary schedule or in a note to the financial statements. This is a special requirement of the state auditor and it does not apply to the statewide CAFR audit. the **(b)**

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

Р. consideration of internal control and risk assessment in a financial statement audit: all financial audits performed under this rule are required to include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. Inquiry alone is not sufficient testing of internal controls; the requirement to test internal controls applies even in circumstances when the auditor has assessed control risk at maximum; this is a special requirement of the state auditor; this requirement does not require an auditor to retest controls previously tested during the

performance of an AU-C 402 (previously SAS 70) audit, when the auditor is relying on the AU-C 402 audit report.

Lease purchase **Q**. agreements:

(1) The New Mexico supreme court has held that it is unconstitutional for agencies to enter into lease purchase agreements after January 9, 1989, unless special revenue funds are the designated source of payments for the agreement. (Any agreements executed prior to that date may not be extended or amended without compliance with the guidelines of Montano v. Gabaldon, 108 N.M. 94, 766 P.2d 1328);

(a)

the attorney general interpreted Montano to mean that long-term contracts for professional services, leases, and real property rental agreements may still be entered into within the constraints of the Bateman Act and the Procurement Code; however, any agreement which is in effect for more than one fiscal year, including leases of real property, must have a provision allowing the agency to terminate the agreement at will at any time. or at least at the end of each fiscal year. without penalty; furthermore, the agency must have no "equitable or moral" duty to continue to make payments under the contract; the agreements must also contain a non-appropriation clause allowing for termination of the agreement in the event the agency decides not to appropriate funds for each fiscal year;

(b)

the attorney general subsequently opined that if the source of funds to repay the debt is solely repaid from the project revenue or from a special non-general-tax fund and not from any general tax revenue, then the debt, be it in the form of bonds or a lease purchase agreement, is not the sort of debt which triggers the constitutional requirement of approval by the voters. This is the teaching of the Connelly case relied on by the court in Montano. Montano did not reverse Connelly, Seward and the other cases which have consistently limited the application of constitutional restrictions to debts which are paid out of general tax revenues.

If specific (2) questions as to the constitutionality of a particular lease agreement remain, an independent legal opinion should be obtained from the attorney general.

reports:

R. Required auditor's

(1) The independent auditor's report should follow the examples contained in the AICPA Audit and Accounting Guide, Government Auditing Standards and Circular A-133 Audits (latest edition), Chapter 4 Example

214

4-14 (including the reference to the schedule of expenditures of federal awards when applicable), and the AICPA Audit and Accounting Guide State and Local Governments (latest edition), Chapter 14, Appendix A - Illustrative Auditor's Reports, Example A-14 which illustrates how to opine on the basic financial statements and the combining and individual fund financial statements presented as supplementary information; see also the guidance provided in Chapter 14, Appendix A, Footnote 4 regarding wording that should be used when opining on budgetary statements on the GAAP basis. All independent auditor's reports should include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America and with applicable Government Auditing Standards per GAGAS 4.18; this statement should be modified in accordance with GAGAS 2.24b, if some GAGAS requirements were not followed. As applicable, the first sentence of the AU-C 725 opinion paragraph should state that the audit was conducted for the purpose of forming opinions on the basic financial statements, the combining and individual financial statements, and the budgetary comparisons; see also the report example on the office website at www. osanm.org.

(2) The report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards should follow the applicable AICPA report example available in the AICPA Audit and Accounting Guide, Government Auditing Standards and Circular A-133 Audits, (latest edition) Chapter 4; pursuant to Section 12-6-5 NMSA 1978, which requires that any violation of good accounting practices shall be set out in detail in the report, all findings, including those required by Section 12-6-5 NMSA 1978, regarding noncompliance or weaknesses in internal controls, warrant the attention of those charged with governance; therefore, all such findings must be included 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; see the report examples on the office website at www.osanm.org.

(a)

the state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be dated the same date as the independent auditor's report; (b) no separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency will be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Paragraph (4) of Subsection Q of 2.2.2.8 NMAC above, regarding this issue.

(3) The report on compliance for each major federal program: report on internal control over compliance - report examples are available in Appendix - Illustrative Auditor's Reports under Circular A-133 of Chapter 13 in the current version of the *AICPA Audit and Accounting Guide, Government Auditing Standards and Circular A-133 Audits.*

(4) One report cover: the state auditor requires the financial statements, supplemental information, other information required by item (g) in Paragraph (2) of Subsection A of 2.2.2.10, and the following reports to be included under one report cover: the independent auditor's report including the AU-C 725 report on supplemental information; the AU-C 720 other matter paragraph to disclaim an opinion on other information; the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards (required by Section 12-6-5 NMSA 1978, GAGAS 4.17 and AU-C 265.11 through 265.16); and the report on compliance for each major federal program, report on internal control over compliance (required by OMB Circular A-133 and Uniform Administrative Requirements.

Cost Principles, and Audit Requirements for Federal Awards); if applicable, the independent auditor's report must include the AU-C 725 opinion on 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 must also contain a table of contents and an official roster; the IPA should submit a written request for an exemption from the "one report cover," and receive prior written approval from the state auditor in order to present any of the above information under a separate cover.

S. Service organizations: If the agency uses a service organization to process certain transactions, the auditor should follow the applicable guidance provided in AU-C 402; the AU-C Section has been updated to:

(1) allow the IPA to make reference to the work of the service auditor, to explain a modification of the IPA's opinion (AU-C 402.22), if applicable; and

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

Т

Disposition of property: (1) Sections

13-6-1 and 13-6-2 NMSA 1978 govern the disposition of obsolete, worn-out or unusable tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions; pursuant to Subsection A of 13-6-4 NMSA 1978, municipalities are exempt from this requirement; at least 30 days prior to any such disposition of property on the agency inventory list described below in Subsection Y of 2.2.2.10 NMAC, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action must be sent to the state auditor;

In the event (2)a computer is included in the planned disposition, the agency shall "sanitize" or effectively make "inaccessible," all licensed software and any electronic media pertaining to the agency; hard drive erasure or destruction certification is still required even if the asset originally cost less than the capitalization threshold at the time of purchase, and the asset was not included in the capital asset inventory; according to the May 5, 2002 memorandum from the chief information technology security and privacy office, "ordinary file deletion procedures do not erase the information stored on hard disks or other magnetic media; sanitizing erases or overwrites totally and unequivocally, all information stored on the media; there are three basic approaches:

(a)

purchasing and using a commercial degaussing product to erase magnetic disks; (b)

overwriting stored data a minimum of five times; or

(c)

reformatting the drives (F disking)." (3) Agencies and

local governments disposing of any digital equipment with storage capabilities should take care to properly erase stored data prior to the intended disposition; agencies subject to the notification requirements of Subsection B of 13-6-1 NMSA 1978, must certify in writing the proper erasure or destruction of the hard drive and submit the written certification along with the notification of the proposed disposition of property, to the state auditor at least 30 days prior to taking action to dispose of the asset; the IPA shall test for compliance with this

215

requirement; this is a special requirement of the state auditor and it applies even if the original purchase price of the digital equipment was less than \$5,000, in which case the 30 day wait is not required.

U. Joint powers agreements and memorandums of understanding:

All (1)joint powers agreements (JPA) and memorandums of understanding (MOU) must be listed in a supplementary schedule in the audit report. The statewide CAFR schedule should include JPAs and MOUs that are significant to the state as a whole. The schedule should include the following information for each JPA or MOU:

(a) participants; **(b)** party responsible for operations; (c) description; (**d**) beginning and ending dates of the JPA or MOU: total (e) estimated amount of project and portion applicable to the agency; (**f**) amount the agency contributed in current fiscal year; (g) audit responsibility; (h) fiscal agent if applicable; and (i) name of government agency where revenues and expenditures are reported. (2)For selfinsurance obtained under joint powers agreements or memorandums of understanding, see the GASB Codification Section J50.113. V. Capital asset inventory: The Audit (1)

Act (Section 12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment that cost over \$5,000; all agencies are required to update their capitalization policy and implement it in accordance with the law; this change in capitalization threshold should be accounted for prospectively from June 17, 2005 forward, as a change in estimate per GASBS 62.69; older capital assets that were capitalized under previous lower capitalization thresholds should not be removed from the capital assets list during the implementation of the most recent capitalization threshold increase; any new items received after June 17, 2005 should be added to the inventory list only if they meet the new capitalization threshold; regarding safeguarding and management of assets that do not meet the capitalization threshold, the state auditor encourages agencies to

maintain a separate accountability report for those items that cost \$5,000 or less;

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

Schedule of changes W. in assets and liabilities for the agency funds: Agency funds are excluded from the statement of changes in fiduciary net position (Paragraph 110 of GASBS 34 as amended by GASBS 63) because they have no "net assets;" therefore it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the agency funds be included as supplemental information (SI) for all agencies that have agency funds; the schedule should show additions and deductions for each agency fund except for school districts; school districts should see Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC for more information regarding the presentation of the statements of changes in assets and liabilities - agency funds for school districts: the schedule should appear toward the end of the table of contents and requires an AU-C 725 opinion in the independent auditor's report.

Accounting for forfeited X. property:

(1) Seized property should be accounted for in an agency fund before the "judgment of forfeiture" per Section 31-27-6 NMSA 1978 judgment of forfeiture.

Once the (2) judgment of forfeiture is made, the property should be accounted for in a special revenue fund because the revenues are legally restricted for specified purposes; the balance sheet of such a special revenue fund that accounts for seized property may have zero balances at the end of a fiscal year because net balance amounts may have been transferred to the general fund of the governing body of the seizing law enforcement agency, or the general fund to be used for drug abuse treatment services, for drug prevention and education programs, for other substance abuse demand-reduction initiatives or for enforcing narcotics law violations; exceptions are forfeitures of property arising from: violations of hunting or fishing regulations that must be deposited in the game protection fund; and violations against cultural properties that must be used for the restoration of the affected cultural property, with net balances being deposited into the general fund;

(3)

Seized

property resulting in forfeiture proceeds creates revenue for the governmental agency that seized the property. That revenue and related expenditures must be included in the budget process of the governmental agency.

See Section (4) 31-27-1 NMSA 1978 and related cross references for guidance on various types of seizures and forfeitures; Section 31-27-7 NMSA 1978 provides statutory guidance for proper disposition of forfeited property and use (allowable expenditures) of all related proceeds.

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

AICPA Statement on Z. Auditing Standards No. 128, Using the Work of Internal Auditors. This statement is effective for audits of financial statements for periods ending on or after December 15, 2014 (FY15). SAS No. 128 describes the external auditor's responsibilities when using the work of internal auditors when (1) the external auditor is using the work of the internal audit function in obtaining audit evidence; and (2) when the external auditor is using the internal auditors to provide direct assistance under the direction, supervision, and review of the external auditor. SAS No. 128 supersedes previous related guidance in AU-C 610. One of the things that SAS No. 128 requires as a

prerequisite to being able to use the work of the internal audit function, is that the external auditor evaluate the application by the internal audit function of a systematic and disciplined approach, including quality control.

AA. AICPA Statement on Auditing Standards No. 129, Amendment to Statement on Auditing Standards No. 122 Section 920, Letters for Underwriters and Certain Other Requesting Parties, as amended. This statement is effective for comfort letters issued on or after December 15, 2014.

GASBS 69, BB.

Government Combinations and Disposals of Government Operations. This statement establishes accounting and financial reporting standards related to government mergers, acquisitions, and transfers of operations. The requirements of this statement are effective for government combinations and disposals of government operations occurring in financial reporting periods beginning after December 15, 2013 (FY15) and should be applied on a prospective basis. Either application is encouraged.

GASBS 71. Pension CC. Transaction for Contributions Made Subsequent to the Measurement Date - an amendment of GASBS Statement No. 68. "This statement amends Paragraph 137 Statement 68 to require that, at transition, a government recognize a beginning deferred outflow of resources for its pension contributions, if any, made subsequent to the measurement date of the beginning net pension liability. Statement 68, as amended, continues to require that beginning balances for other deferred outflows of resources and deferred inflows of resources related to pensions be reported at transition only if it is practical to determine all such amounts."

The requirements of this statement should be applied at the same time the provisions of Statement 68 are applied (fiscal years beginning after June 15, 2014 (FY15)).

DD. GASBS 68, Accounting and Financial Reporting for Pensions-An Amendment of GASBS Statement No. 27: This (1)

statement is effective for financial statements for fiscal years beginning after June 15, 2014 (FY15); this statement replaces the requirements of GASBS 27, Accounting for Pensions by State and

Local Governmental Employers, and the requirements of GASBS 50 Pension Disclosures, as they relate to pensions that are provided through pension plans administered as trusts; the requirements of GASBS 27 and 50 remain applicable for pensions that are not covered by GASBS 68.

(2) Employers that participate in PERA and ERB should consult their oversight agencies (DFA, LGD, PED and HED), regarding the measurement date that each employer should use in implementing GASBS 68 in FY15; note that GASBS 68.34 and 68.57 require that "contributions to the pension plan from the employer subsequent to the measurement date of the net pension liability and before the end of the reporting period should be reported as a deferred outflow of resources related to pensions." After their (3)

FY14 audit reports are audited and released, PERA and ERB plan to provide each of their participant employers with their allocated pension liability information as of June 30, 2014; the state auditor is requiring that:

(a)

prior to distribution of this information to the participant employers, the PERA and ERB will obtain an audit of the schedules of allocated pension liability information, pursuant to AU-C 805, Special Considerations - Audits of Single Financial Statement and Specific Elements, Accounts, or Items of a Financial Statement; **(b)**

pursuant to AU-C 805.16, the PERA and ERB auditors will provide PERA and ERB with a separate report on the AU-C 805 audit performed;

(c)

the AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of allocated pension liability information must be submitted to the office for review and release pursuant to 2.2.2.13 NMAC, prior to distribution to the PERA and ERB participant employers; and

(d)

as soon as the AU-C 805 reports, including the allocated pension information, become public record, PERA and ERB will make the information available to the participant employers.

On the

(4) subject of whether the liability should be included in the stand-alone financial statements of funds see Implementation Guide-GASB Statement 68, Question and Answer 122, that 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 should be given to Statement 1, paragraph 42 of NCGA, 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, should include note disclosure referring the reader to the statewide comprehensive annual financial report (CAFR) for the state's pension liability and other pension-related information. The stand-alone report for the New Mexico Component Appropriation Funds should include note disclosure of the net pension liability for all the state agencies of the state of New Mexico.

EE. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards OMB Circular A-133 is being replaced by "Uniform Guidance for Federal Awards" (Uniform Guidance). The standards set forth in Subpart F – Audit Requirements were effective December 26, 2013, and will apply to audits of fiscal year beginning on or after December 26, 2014 (FY16). For one full fiscal year after the effective date of the Uniform Guidance (FY15), non-federal entities must comply with the terms and conditions of their Federal award, which will specify whether the Uniform Guidance applies. Regarding the new procurement standards, "the non-Federal entity must document whether it is in compliance with the old or new standard, and must meet the documented standard. For example, the first full fiscal year for a non-Federal entity with a June 30th year end would be the year ending June 30, 2016 (FY16). The Single Audit Compliance Supplement will instruct auditors to review procurement policies and procedures based on the documented standard. For future fiscal years, all non-Federal entities will be required to comply fully with the uniform guidance." See Item 200.100, Frequently Asked Questions for OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards at 2 CFR 200.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 3-16-15]

2.2.2.11 THE ACCOUNTABILITY IN **MENT ACT:**

A. This section applies to agencies that have performance measures associated with their budgets; the purpose of Sections 6-3A-1 through 6-3A-9 NMSA 1978 of the Accountability in Government Act 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 perfoction state government programs.

В. Agency performance measures are included in the General Appropriations Act; the agency shall include a schedule of performance data

(outcomes, outputs, efficiency, etc.) if the schedule is required by the agency's oversight agency such as DFA, HED and PED and preparation guidelines are issued by the oversight agency.

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

The IPA should include D. 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, 3-16-15]

2.2.2.12 SPECIFIC

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

Α. PERTAINING TO AUDITS OF STATE AGENCIES: (1) Due dates

for agency audits: Subsection D of Section 12-6-3 NMSA 1978 states that state agency reports are due no later than 60 days after the state auditor receives notice from the financial control division of DFA that the agency's books and records are ready and available for audit; the financial control division requires that each agency submit a management representation letter documenting management's responsibility for the accounting records, the agency has recorded all transactions properly in SHARE, and the agency is ready and available for audit; in addition, the financial control division mandates that each agency, with the help of its independent auditor, identify and submit with the management representation letter a schedule of deliverables and agreed to milestones for the audit; the milestones ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time; once the financial control division receives the management representation letter, the schedule of deliverables and milestones, the financial control division will notify the state auditor in writing regarding the expected audit deadline for the agency; the 60 days to the

audit deadline will be based on the date of the financial control division's notification to the state auditor, which will be based on input from the agency to the financial control division and the agency's schedule of deliverables and milestones. State agency reports are due no later than December 1 after the close of the fiscal year.

(2) Materiality at the individual fund level means at the individual SHARE fund level for state agencies; all the individual SHARE funds should be reported in the financial statements and opined on in the independent auditor's report.

Accounts payable at year-end: If goods and services were (3)received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable should be reported for the respective amount due in both the government-wide financial statements and the fund financial statements (NCGAS 1 Paragraph 70); per Section 6-10-4 NMSA 1978, the "actual" expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of current year budget; they will be paid out of the budget of the following fiscal year; an agency's reversions should be calculated using the budgetary basis expenditures because the agency does not have the legal authority to obligate the state for liabilities once the appropriation period has lapsed; thus the agency cannot keep the cash related to accounts payable that were not paid timely; this will result in a negative fund balance in the modified accrual basis financial statements of a reverting fund. (4)

Net position/fund balance:

(a) pursuant to GASBS 63.8 the government-wide statement of net position and the proprietary fund statement of net position should show net position as:

(i) net investment in capital assets; **(ii)** restricted (distinguishing between major categories of restrictions); and

unrestricted; pursuant to GASBS 63.10, "restricted component of net position (iii) consists of restricted assets reduced by liabilities and deferred inflows of resources related to those assets; generally, a liability relates to restricted assets if the asset results from a resource flow that also results in the recognition of a liability or if the liability will be liquidated with the restricted assets reported;" pursuant to GASBS 63.11, "the unrestricted component of net position is the net amount of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the determination of net investment in capital assets or the restricted component of net position;"

governmental fund financial statement fund **(b)** balances should be reported in accordance with GASBS 54; this statement was effective for financial statements for periods beginning after June 15, 2010 (FY11);

(c) the statement of fiduciary net position (fiduciary fund financial statement) should show net position as "held in trust for" (Paragraph 108 of GASBS 34 as amended by GASBS 63). (5)

Book of record:

The state maintains the centralized accounting (a) system, SHARE; the SHARE data and reports are the original book of record that the auditor is auditing; each fiscal year, the agency is required to record all audit adjusting journal entries in SHARE; the financial information in SHARE is to agree to the agency's audited financial statements, with the exception of accounts payable as explained in Paragraph (3) Subsection A of 2.2.2.12 NMAC (accounts payable); if the independent auditor finds that the agency did not record all audit adjusting journal entries, the auditor must include this instance of noncompliance with Sections 6-5-2.1 and 6-5-4.1 NMSA 1978; if the agency maintains a separate accounting system, it should be reconciled with the SHARE system and all applicable adjustments should be recorded in SHARE periodically throughout the fiscal year; the financial control division provides to agencies: the manual of model accounting practices (MAPs), various white papers, yearly closing instructions, and various accounting guideline memos. These documents provide guidance for an auditor regarding policy and procedure requirements and they are available on the financial control division's website at http://www.nmdfa.state.nm.us "resource information;"

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

	Appropriation unit code	Appropriation unit description
200		Personal services & employee benefits
	300	Contractual services
I	400	Other

New Mexico Register / Volume XXVI, Number 5 / March 16, 2015

500	Other financin	g uses	
600	Non-budgeted		
	(c) revenu	e categories of appropriations to	state
agencies are listed below; the	e budgetary compa	arison statements for state agenc	ies must be
presented in the audit report	by the revenue cat	egories shown below and by the	e expenditure
categories that appear in the	agency's final app	roved budget:	
	(i)	state general fund;	
	(ii)	other state funds;	
	(iii)	internal service funds/inter-a	gency
transfers; or			
	(iv)	federal funds. For more detail	il about the
chart of accounts see the DFA	A website.		
(6)	Reversions to sta	te general fund:	

all reversions to the state general fund must be (a) identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - (FY 15); the gross amount of the appropriation and the gross amount of the reversion must be shown separately.

(b) Subsection A of 6-5-10 NMSA 1978 requires "all unreserved, undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30 to the general fund; the division may adjust the reversion within 45 days of release of the audit report for that fiscal year;" failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(7) Nonreciprocal (not payments for materials or services rendered) interfund (internal) activity includes (a) transfers and (b) reimbursements (Paragraph 410 of GASBS 34).

intra-agency transfers between funds within the (a)agency should offset; reasons for intra-agency transfers should be fully explained in the notes to the financial statements; in the separate audit reports of state agencies, transfers between their internal funds should be shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements:

(b) inter-agency transfers (between an agency's internal funds and other funds of the state that are outside the agency such as state general fund appropriations, special appropriations, bond proceeds appropriations, reversions to the state general fund, and transfers to/from other state agencies) should be segregated from intraagency transfers and should be fully explained in the notes to the financial statements along with the agency number and SHARE fund number to whom and from whom transferred; the transfers may be detailed in supporting schedules rather than in the notes, but agency and SHARE fund numbers must be shown; the schedule should be presented on the modified accrual basis; the IPA is responsible for performing audit procedures on all such inter-agency transfers;

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

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

(ii) if the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit's separately issued financial statements should report such activity between itself and the primary government as revenues and expenses; when the blended component unit is included in the primary government's financial statements, such inter-agency transfers would be reclassified as transfers (Paragraph 318 of GASBS 34);

all resource flows between a discretely (iii) presented component unit of the state and other funds of the state are required to be reported as external transactions-revenues and expenses in the primary government's financial statements and the component unit's separately issued financial statements (Paragraph 318 of GASBS 34);

all transfers to and from SHARE fund 853, the state (**d**) general fund appropriation account, must be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections;

reimbursements are transfers between funds that (e) are used to reallocate the revenues and expenditures/expenses to the appropriate fund; reimbursements should not be reported as interfund activity in the financial statements. (8)GSD 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 must capitalize those assets based on actual amounts expended in accordance with GSD instructions issued in 2.20.1.10 NMAC, Valuation of Assets.

(9) State-owned motor vehicle inventory: Successful management of the state-owned vehicles pursuant to the Transportation Services Act (Sections 15-8-1 through 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory; thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

> (10)Independent

auditor's report:

(a)

the independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Section 11, must include an explanatory paragraph preceding the opinion paragraph; the explanatory paragraph should reference the summary of significant accounting principles disclosure regarding the reporting agency, and indicate that the financial statements are not intended to present the financial position and changes in financial position of the primary government, the state, but just the financial position and the changes in financial position of the department; the auditor should follow Example A-16 in Appendix A - Illustrative Auditor's Reports of the AICPA Audit and Accounting Guide State and Local Governments (latest edition);

(b)

а

statement should be included that the audit was made in accordance with generally accepted government auditing standards per Paragraphs 4.18, 2.24 and 2.25 of GAGAS. (11) Budgetary

basis for state agencies: Per Chapter 69, Section 3, item L of the General Appropriation Act Laws, 2014. "For the purpose of administering the General Appropriation Act of 2014 and approving operating budgets, the state of New Mexico shall follow the modified accrual basis of accounting for governmental funds in accordance with the manual of model accounting practices issued by the department of finance and administration." The budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of

the fiscal year that do not get accrued by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely or accrued by statutory deadline must be paid out of the next year's budget. As previously stated in Paragraph (3) of Subsection A of 2.2.2.12 NMAC (accounts payable), if goods and services were received by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable should be recorded for the respective amount due in both the government-wide financial statements and the fund financial statements (Paragraph 70 of NCGAS 1). 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 will require a reconciliation of expenditures, see Paragraph (2) of Subsection O of 2.2.2.10 NMAC (budgetary presentation). Since SHARE is the book of record for the state, all transactions are recorded in SHARE under the modified accrual basis of accounting except for accounts payable not meeting the statutory deadline; therefore, the "actual" expenditures in the budgetary comparison schedules shall equal the expenditures as recorded in SHARE for the fund. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of 12 months (multipleyear 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 should be disclosed in the notes to the financial statements. Per Subsection C of Section 10 of the General Appropriation Act of 2014, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other. Therefore, the legal level of budgetary control would be the appropriation program level (A-Code, P-Code, R-Code, and Z-Code). The A-Code pertains to capital outlay appropriations (general obligation/severance tax or state general fund). The P-Code pertains to operating funds. The R-Code pertains to American Recovery & Reinvestment Act (ARRA) funds. The Z-Code pertains to special appropriations; total expenditures for the program need to be compared to the programs approved final budget for compliance.

(12) 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 should not report in its basic financial statements bonds payable that are obligations of the state of New Mexico. The proper reporting of these payables and the related bond face amounts (proceeds) is in the state's comprehensive annual financial report (CAFR). The STO audit report, notes to the financial statements must explain the following: (i)

by statute, STO is responsible for making the state's bond payments and keeping the related records; however, it is not responsible for the related debt, the state is; and

(ii)

refer the reader to the detailed supplemental information in the STO audit report and the statewide CAFR; the STO's financial statements include audited supplemental information (SI) regarding the state of New Mexico bond obligations; the SI schedules must show:

(iii)

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 Paragraph 119 of GASBS 34; (2) the details of debt service requirements to maturity required by Paragraph 10 of GASBS 38; and

 (iv) any violations of bond covenants and related actions taken to address violations of bond covenants, required by Paragraph 9 of GASBS 38 and Section 12-6-5 NMSA 1978;

(b)

DFA has provided accounting and reporting guidance for state agencies that receive or administer any special capital outlay appropriations from the state legislature that are financed by bond proceeds; DFA's guidance is available in the "FY 2008 Audit Forum" section at http://www. nmdfa.state.nm.us/Forums.aspx; in the notes to the financial statements, agencies should disclose that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients, and the agency is not obligated in any manner for the related indebtedness; agencies should also disclose the specific revenue recognition policy for these appropriations; each agency's IPA should audit the agency's financial statement presentation of this capital outlay project information and the related budget comparisons, to ensure that they are presented in accordance with accounting principles that are generally accepted in the United States.

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

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

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

interest rate risk:

(i)

(ii)

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

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

a statement that the agency does not have an investment policy that limits investment interest rate risk;

(c) the disclosure should also refer the reader to the separate audit report for the STO for additional information regarding the SGFIP. (15) Format for

the statement of activities: State agencies that have more than one program or function must use the financial statement format like GASBS 34, Illustrations B-1 through B-4(b); the simplified statement of activities, GASBS 34, Illustration B-5 should not be used for agencies that have multiple programs or functions; Paragraph 41 of GASBS 34 requires governments to report direct expenses for each function. (16) Oversight

duties of the department of finance and administration's financial control division: On October 3, 2008, the state controller and the state auditor distributed a letter to agencies regarding the CAFR unit's request for agencies' draft financial statements for the preparation of the comprehensive annual financial report (CAFR) for the state; agencies were concerned about violating Paragraph (4) of Subsection C of 2.2.2.9 NMAC, delivery and release of the audit report; Subsection S of 6-5-2.1 NMSA1978 provides FCD to "have access to and authority to examine books, accounts, reports, vouchers, correspondence files and other records, bank accounts, money and other property of a state agency;" in addition, Section 6-5-4.1 NMSA 1978 mandates that FCD shall compile the CAFR; after some consideration and discussion of the conflicting regulations, the state controller and the state auditor concluded, "pursuant to these rules, Sections 6-5-4.1 and 12-6-5 NMSA 1978 should be construed to give effect to both statutes and the corresponding administrative rules; therefore, an agency shall provide a copy of its draft audited financial statements to financial control division in order that the division may compile the CAFR; the agency's audit report is not public record unless released in accordance with Section 12-6-5 NMSA 1978;" to review the entire letter, the DFA-FCD oversight letter, go to the FCD website at http://nmdfa.state.nm.us/ Financial Control.aspx under the resource information tab, memos and notices link, and comprehensive annual financial report; the unaudited draft financial statements submitted to DFA shall exclude the opinion and findings; submission of the unaudited draft financial statements is the responsibility of the agency and not the auditor.

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 a housing authority created by an intergovernmental agreement between a city and county that is authorized to exercise all powers under the Municipal Housing Law Section 3-45-1 *et seq.* NMSA 1978.

(2) The financial statements of a housing authority that is a department or component unit of a primary government, must be included in the financial audit report of the primary government by discrete presentation unless an exemption from this requirement has been obtained from the state auditor.

(a)

discrete presentation shows financial data of the component unit in a column to the right of and separate from the financial data of the primary government. See Paragraphs 44 through 50 of GASBS 14, as amended. (b) the

primary government in cooperation with its auditor must make the determination whether the housing authority is a component unit of the primary government; see Paragraph (1) of Subsection A of 2.2.2.10 NMAC for guidance in this determination; in the event the primary government and auditor determine that the housing authority is a department of, rather than a component unit of the primary government, a request for exemption from the discrete presentation requirement must be submitted to the state auditor, by the primary government, explaining why the housing authority should not be a discretely presented component unit; the request for exemption must include evidence that the housing authority is not a separate legal agency from the primary government and that the corporate powers of the housing authority are held by the primary government; evidence included in the request must address these issues: (i)

the housing authority is not a corporation registered with the secretary of state; (ii)

there was never a resolution or ordinance making the housing authority a public body corporate; and

(iii)

the housing authority was authorized under the Municipal Housing Law, Section 3-45-1 *et seq.* NMSA 1978.

(c)

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

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

(a)

local governments are encouraged to include representatives from the public housing authorities that are departments in the IPA selection process.

(b)

the

IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold a separate entrance and exit conference with housing authority's management and a member of the governing board. The office has the authority to notify the agency or IPA that the state auditor should 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 must invite the state auditor or his designee to attend all such conferences.

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

(a)

must account for financial activity in

proprietary funds;

(b)

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

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

(i)

the primary engagement partner should 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 the use of the work of the component auditors (AU-C 600.15);

(ii)

the component unit auditor selected must appear on the office of the state auditor list of eligible independent public accountants; (iii)

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

the office of the state auditor standard contract form must be used;

(v)

the primary government, the primary engagement partner, management of the component unit, and the component auditor should all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable deadlines at item (i) Paragraph (1) of Subsection A of 2.2.2.9 NMAC;

(vi)

all component unit findings must be disclosed in the primary government's audit report;

(vii)

any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC;

(viii)

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

(5) Auditors and public housing authorities must follow the

requirements of Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities Not-for-Profit Multifamily Program Participants and their Independent Accountants, which is available on the HUD website under a search for UFRS; additional administrative issues related to the audit of public housing authorities follow:

(a)

housing authority audit contracts must include the cost of the audit firm's AU-C 725 opinion on the financial data schedule (FDS); the public housing authority must electronically submit a final approved FDS based on the audited financial statements no later than nine months after the public housing authority's fiscal year end; the auditor must:

(i) electronically report on his comparison of the electronic FDS submission in the REAC staging data base through the use of an ID and password;

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 financial statements;

(b)

(ii)

the audit must include this separate attestation engagement; the preparation and submission cost for this HUD requirement must be included in the audit contract; the IPA shall consider whether any fee accountant used by the housing authority is a service organization; the IPA shall follow applicable guidance at AU-C 402 regarding service organizations;

(c)

the IPA shall provide the housing authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the housing authority. (6)

Single

audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority schedule of expenditures of federal awards, then the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation the housing authority federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards; see Paragraphs 6.17 and 13.32 of the AICPA Audit Guide, Government Auditing Standards and Circular A-133 Audits for more information regarding this issue.

PERTAINING TO С. AUDITS OF SCHOOL DISTRICTS:

(1) The auditor selection process: In the event that a statechartered charter school subject to oversight by the PED is not subject to the requirement to use the same auditor as PED, that charter school shall submit its IPA recommendation to PED for approval, prior to submitting the IPA recommendation to the state auditor for approval; the sample cover letter is provided at www.osanm.org; it may be used for the PED approval signature; this process must be completed in time to meet the deadline for submission of the IPA recommendation and the audit contract to the office; the IPA recommendation and completed contract are due to the state auditor on or before May 1; in the event the due date falls on a weekend or a holiday the due date will be the next business day;

(2)Audit planning level of materiality:

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

(b)

if a 501(c)3 component unit organization had a gross annual income in excess of \$250,000, Section 6-5A-1 NMSA 1978 requires that entity to be audited regardless of its materiality in relation to the primary government;

(3) Regional education cooperative (REC) audits: (a)

a separate financial and compliance audit is required on activities of RECs; the IPA shall provide a copy of this report to the participating school districts and the PED once the report has been released by the state auditor; the presentation of these funds should be in conformity with accounting principles generally accepted in the United States of America;

(b)

audits of RECs should test for compliance with PED rule 6.23.3.7 through 6.23.3.12 NMAC;

(c)

if applicable, any on-behalf payments for fringe benefits and salaries made by RECs for employees of school districts should be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with Sec. N50.131;

(**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 should provide the adjusting entries to the REC to reconcile cash per the financial statements to cash per the REC accounting records; however, if cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report, then the IPA should write a finding stating that the PED reports do not reconcile to the REC accounting records.

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

(a) audits of school districts shall test for compliance with PED Regulation, 6.20.2 NMAC, Governing Budgeting and Accounting for New Mexico Public Schools and School Districts and the Manual of Procedures, primarily Supplement 7, Cash Controls;

(b)

the audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year; this schedule is also required for each charter school chartered by a school district and each charter school chartered by the PED; this schedule will account for cash in the same categories as used by the district in its monthly cash reports to the PED Subsection D and E of 6.20.2.13 NMAC, state that "the cash basis of accounting is used for budgeting and reporting" to PED; the financial statements are prepared on the accrual basis of accounting; if there are differences between the financial statements, school district records and department records, the IPA should provide the adjusting entries to the school district to reconcile the report to the school district records;" however, if there is some difference between the school district records and the PED report amounts, other than those explained by the adjusting entries, then the IPA should write a finding stating that the PED reports do not reconcile to the school district records;

(c)

on-behalf payments of salaries and fringe benefits made for school district employees by RECs must be accounted for in accordance with GASB Cod. Sec. N50.129 through .133 and disclosed in accordance with Sec. N50.134; "employer governments should obtain information about the amount of on-behalf payments for fringe benefits and salaries from the paying entity or the third-party recipient; inter-entity cooperation is encouraged. If information cannot be obtained from those sources, employer governments should make their

best estimates of the amounts" (Paragraph 9 of GASBS 24);

(**d**)

anv

joint ventures or other entities created by the school districts are agencies subject to the Audit Act;

(e)

agency fund reporting: under GASBS 34 a statement of changes in fiduciary net position is required for pension trust funds, investment trust funds, and private-purpose trust funds; however, agency funds have no net position and will be excluded from this presentation (Paragraph 110 of GASBS 34 as amended by GASBS 63); therefore, it is a requirement of the state auditor that a schedule of changes in assets and liabilities - agency funds for the fiscal year be included as supplemental information in the audit report for each school district and each charter school; the schedules should show the changes (both additions and deductions) in the agency funds summarized by school or for each activity; the schedule should appear toward the end of the table of contents and requires an AU-C 725 opinion in the independent auditor's report;

(**f**)

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

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

(5) Pertaining to charter schools:

(a)

a charter school is a conversion school or start-up school within a school district authorized by the local school board or authorized by the PED to operate as a charter school; a charter school is considered a public school, accredited by the state board of public education and accountable to the school district's local school board or to the PED, for ensuring compliance with applicable laws, rules and charter provisions; a charter school is administered and governed by a governing body in a manner set forth in the charter;

(b)

certain GASBS 14 criteria must be applied

to determine whether a charter school is a component unit of the chartering entity (the district or PED); GASBS 14, was amended by GASBS 61; the district, the PED, the charter school and the IPA must evaluate whether the amended GASBS 14 criteria requires a charter school to be presented as a component unit of its chartering entity; if a charter school is determined to be a component unit, then the charter school must be included in the financial statements of its sponsoring school district or PED by discrete presentation or blended presentation, if the GASB 34 (as amended) criterion for blended presentation is met; (c)

the financial statements for charter schools that are determined to be component units pursuant to the amended GASBS 14 criteria should be presented and opined on in the following manner:

any charter school that has been determined to be a component unit should not be omitted based on materiality; all the charter schools that are component units should be included in the basic financial statements (full accrual basis presentation) in one of the following manners: a separate column for each component unit presented in the government-wide statement; combining statements of component units presented as a basic financial statement after the fund financial statements; or as condensed financial statements in the notes to the basic financial statements (Paragraphs 124 through 126 of GASB 34);

(ii)

(i)

when separate audited financial statements are not available for a charter school, the fund financial statements for that charter school must be presented in the primary government's financial statements on the modified accrual basis of accounting; if applicable, combining and individual fund financial statements should also be presented for the nonmajor funds; the financial statements should be presented as supplemental information (SI) according to AAG-SLV 3.22 (latest edition);

(iii)

the state auditor requires that individual fund budgetary comparison statements for all of the charter school's funds must be included in the supplemental information section of the financial statements following the fund financial statements and the combining statements for the nonmajor funds to demonstrate compliance with legally adopted budgets; the budgetary comparisons must be audited and included in the auditor's opinion;

New

Mexico public schools insurance authority (NMPSIA): both legal compliance and substantive tests should be performed at the agency level on these transactions.

(6)

D. PERTAINING TO AUDITS OF COUNTIES: (1) Tax roll

reconciliation - county governments: Audit reports for counties must include two supplementary schedules. The first one is a "tax roll reconciliation of changes in the county treasurer's property taxes receivable" showing the June 30 receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Subsection C of 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" must show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. Property taxes levied in January 2014 are budgeted for the fiscal year July 1, 2014 through June 30, 2015. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, a finding is required to be reported.

(2) The following is an example of a tax roll reconciliation schedule:

[Please see table on page 224]

STATE OF NEW MEXICO (NAME) COUNTY TAX ROLL RECONCILIATION - CHANGES IN THE COUNTY TREASURER'S PROPERTY TAXES RECEIVABLE FOR THE YEAR ENDED JUNE 30, 2015	
Property taxes receivable, beginning of year	\$ 641,290
Changes to Tax Roll:	
Net taxes charged to treasurer for fiscal year	4,466,602
Adjustments:	
Increases in taxes receivables	3,066
Charge off of taxes receivables	(6,144)
Total receivables prior to collections	5,104,814
Collections for fiscal year ended June 30, 2015	(4,330,993)
Property taxes receivable, end of year	\$ 773,821
Property taxes receivable by years:	
2006-2014	226,344
2015	547,477
Total taxes receivable	\$ 773,821

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

PERTAINING TO AUDITS OF COLLEGES AND UNIVERSITIES:

(1) Update to the auditor selection process: After completing the evaluation for each IPA, the college or university shall submit the IPA recommendation to the HED for approval, prior to submitting the recommendation to the state auditor for approval; the sample cover letter provided at www.osanm.org may be used for the HED approval signature; the IPA recommendation is due to the state auditor on or before May 1; in the event the due date falls on a weekend or holiday the due date will be the next workday.

(2) Budgetary comparisons: the legal level of budgetary control per 5.3.4.10 NMAC should be disclosed in the notes to the financial statements; the state auditor requires that every college and university's audit report include budgetary comparisons as supplementary information (SI); the budgetary comparisons must be audited and an auditor's opinion must be rendered; an AU-C 725 opinion does not meet this requirement, the budgetary comparisons must show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column; the auditor must confirm the final adjusted and approved budget with the HED; the auditor must compare the financial statement budget comparison to the related September 15 budget submission to HED; the only differences that should exist between the HED budget submission and the financial statement budget comparisons are: (a) adjustments made by the institution after September 15; and (b) audit adjustments; if the HED budget submission does not tie to the financial statement budget comparison, taking into account only those differences, then the auditor should write a related finding; a reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements should be disclosed at the bottom of the budgetary comparisons (preferred) or in the notes to the financial statements; the reconciliation is required only at the "rolled up" level of unrestricted and restricted - all operations and should include revenues and expenses; the HED approved the following format which must be used for the budgetary comparisons:

(a) Unrestricted and restricted - all operations (Schedule 1)	
Beginning fund balance: Unrestricted and restricted revenues: State general fund appropriations, federal revenue sources, tuition and fees, land and permanent fund, endowments and private gifts, other	
Total unrestricted and restricted revenues	
Fund balance budgeted	
Total unrestricted and restricted revenues and fund balance budgeted	
Unrestricted and restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant, student social and cultural activities, research, public service, internal service, student aid grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness, other (student aid, grants and stipends; and independent operations)	

224

E.

Те	tal unrestricted and restricted expenditures
Change in fu	and balance net assets (budgetary basis), ending fund balance
(b) Ur	nrestricted - instruction and general (Schedule 2)
government contracts/gra	und balance, unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state appropriations, local government appropriations, federal government contracts/grants, state government ants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, sales and services, other
То	tal unrestricted revenues
Fu	ind balance budgeted
То	tal unrestricted revenues and fund balance budgeted
Unrestricted maintenance	expenditures: Instruction, academic support, student services, institutional support, operation and c of plant
То	tal unrestricted expenditures
Net Transf	Pers
Change in fu	ind balance (budgetary basis)
Ending fund	1 balance
(c) Re	estricted - instruction and general (Schedule 3)
local govern	evenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations ment appropriations, federal government contracts/grants, state government contracts/grants, local contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and er
То	tal restricted revenues
Fu	ind balance budgeted
То	tal restricted revenues and fund balance budgeted
Restricted ex maintenance	xpenditures: Instruction, academic support, student services, institutional support, operation and of plant
То	tal restricted expenditures
	et assets (budgetary basis)

sent their financial statements using the business type activities (BTA) model; the level of planning materiality described in the AICPA Audit and Accounting Guide, State and Local Governments, Section 4.73, must be used for the audit of these institutions; planning materiality for component units is at the individual component unit level; if a 501(c)3 component unit organization had a gross annual income in excess of \$250,000, Section 6-5A-1 NMSA 1978, requires that entity to be audited regardless of materiality; see Paragraph (1) of Subsection A of 2.2.2.10 NMAC for more information about contracting for these required audits;

(4) Compensated absence liability should be shown as follows: the statement of net position should reflect the current portion of compensated absences under current liabilities, and the long-term portion of compensated absences under noncurrent liabilities.

(5) Component unit issues: legally separate entities that meet the criteria set forth in GASBS 14 as amended by GASBS 39 and GASBS 61 to qualify as a component unit of an educational institution, must be included in the educational institution's audit report as a discrete component unit; an exemption must be obtained from the state auditor in order to present any component unit as blended; the same auditor must audit the component unit and the educational institution unless an exemption is obtained from the state auditor.

(a)if the college or university has no component units there should be a statement to that effect in the notes to the financial statement in the description of the reporting entity;

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

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

The MD&A analysis of significant variations between original and final budget amounts and between final (6)budget amount and actual budget results is required by this rule for colleges and universities; the analysis should include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity; (7)

Required note disclosure for donor-restricted endowments are:

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

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

the policy for authorizing and spending investment income, such as a spending-rate or total-return (c) policy." (Paragraph 121 of GASBS 34)

Submit draft copy of financial statements to FCD: Section 11 of Article XII of the New Mexico state (8)constitution established the following New Mexico educational institutions:

	(a)	the
university of New Mexico;		
	(b)	NM
state university;		
	(c)	NM
highlands university;		
	(d)	
western NM university;		
	(e)	
eastern NM university;		
	(f)	NM
institute of mining and techn		
	(g)	NM
military institute;		
	(h)	NM
school for the visually handi	11 /	
	(i)	NM
school for the deaf; and		
	(j)	

northern NM college; these educational institutions should provide the FCD with a draft copy of their financial statements, excluding opinions and findings, pursuant to Paragraph (16) of Subsection A of 2.2.2.12 NMAC, and the letter dated October 3, 2008, described therein, from the state controller and the state auditor. [2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 3-16-15]

2.2.2.13 REVIEW OF AUDIT REPORTS AND AUDIT DOCUMENTATION:

Section 12-6-14(B) Α. NMSA 1978 requires that the state auditor or personnel of his office designated by him examine all audit reports of agencies made pursuant to contract; all audits under the contracts approved by the state auditor are subject to review. The office will review all reports submitted by the IPA to determine if the reports are presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards. The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. In addition, as discussed in Paragraph (6) of Subsection C of 2.2.2.9 NMAC, audit reports reissued by the agency and IPA pursuant to AU-C 560 are also subject to office review procedures.

В. Released audit reports are subject to a comprehensive report and audit documentation review by the state auditor. The IPA's audit documentation must be assembled in one complete file or one complete set of files in one location, whether the documentation is hardcopy or electronic, pursuant to AU-C 230.16. The documentation must be either all hardcopy or all electronic office reviews of audit and AUP working papers include the review of firm documentation of compliance with governmental auditing, accounting and financial reporting standards issued by GASB, AICPA, GAO, OMB Circular A-133

or Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and the requirements of this rule.

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

(1) As instructed by the office, the IPA may be required to correct the deficiencies and if necessary the working papers, and reissue the audit report to the agency, and any others receiving copies.

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

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

D. Results of review follow. After the review is completed, the office will issue a letter to advise the IPA about the results of the review. The IPA is required to respond 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 will be noted during the firm profile review process.

[2.2.2.13 NMAC - Rp, 2.2.2.13 NMAC, 3-16-15]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

Α. Continuing professional education: U.S. GAO Government Auditing Standards, 2011 Revision (GAGAS), Section 3.76 states "Auditors performing work in accordance with GAGAS, including planning, directing, performing audit procedures, or reporting on an audit in accordance with GAGAS, should maintain their professional competence through CPE. Therefore, each auditor performing work in accordance with GAGAS should complete, every two years, at least 24 hours of CPE that directly relates to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. Auditors who are involved in any amount of planning, directing, or reporting on GAGAS audits and auditors who are not involved in those activities but charge 20% or more of their

time annually to GAGAS audits should also obtain at least an additional 56 hours of CPE (for a total of 80 hours of CPE in every two-year period) that enhances the auditor's professional proficiency to perform audits. Auditors required to take the total 80 hours of CPE should complete at least 20 hours of CPE in each year of the two-year period. Auditors hired or initially assigned to GAGAS audits after the beginning of an audit organization's twoyear CPE period should complete a prorated number of CPE hours." The GAO issued Government Auditing Standards: Guidance on GAGAS Requirements for Continuing Professional Education, GAO-05-568G, April 2005. It provides helpful guidance to auditors and audit organizations regarding the implementation of the GAGAS CPE requirements. The guide is available at www.gao.gov/govaud.

В. Peer review: GAGAS Section 3.82 states "each audit organization performing audits in accordance with GAGAS must: establish and maintain a system of quality control that is designed to provide the audit organization with reasonable assurance that the organization and its personnel comply with professional standards and applicable legal and regulatory requirements; and have an external peer review performed by reviewers independent of the audit organization being reviewed at least once every three years." Required elements of each audit organization's system of quality control are described at GAGAS 3.83 through 3.96. Section 3.96 states "the audit organization should obtain an external peer review at least once every three years that is sufficient in scope to provide a reasonable basis for determining whether, for the period under review, the reviewed audit organization's system of quality control was suitably designed and whether the audit organization is complying with its quality control system in order to provide the audit organization with reasonable assurance of conforming with applicable professional standards."

(1) Per the AICPA PR Section 100 Standards for Performing and Reporting on Peer Reviews, a firm's due date for its initial peer review is 18 months from the date the firm enrolled in the peer review program or should have enrolled whichever is earlier. A firm's subsequent peer review is due three years and six months from the previous peer review year end.

(2) If the firm is unable to submit its latest current external quality control review documentation by the date the annual firm profile review process is completed, the firm will be put on "conditional approval" status by the office pursuant to Subsection C of 2.2.2.8 NMAC. (3) The state

auditor requires the location of the external quality control review to be the office of the firm under review, regardless of whether the firm reviewed is a sole practitioner and regardless of the number of firm employees. External quality control reviews performed at a location other than the office of the firm under review will not be accepted by the state auditor.

(4) The IPA firm profile submission to the state auditor requires copies of:

(a)

proof that the firm your peer reviewer is associated with is a firm that received a peer review rating of "pass" under the updated peer review standards;

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

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

(**d**)

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

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

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

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

(6) During the procurement process audit firms shall provide a copy of their most recent external peer review report to the agency upon submitting a bid proposal or offer and any subsequent peer review reports received during the period of the contract.

(7) The peer review should meet the requirements of GAGAS 3.96 through 3.107s.

(8) The New Mexico public accountancy board's substantial equivalency provision has been replaced with mobility pursuant to Section 61-28B-13 NMSA 1978. Under the mobility provision in the statute, a CPA may enter the state and perform work, provided he or she holds a current, valid license from some state. If the CPA is performing any type of attest work, his firm must apply for a firm permit.

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

C. The state auditor performs its own quality control review of IPA audit reports and working papers. When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding peer review rating, the state auditor may no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor will take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 3-16-15]

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

A. Requirements for special audits or attestation examinations follow.

(1) Information regarding designations follows. 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 or attestation engagement regarding the financial affairs and transactions of an agency or local public body based on information or a report received from an agency, IPA or member of the public. The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the scope and any procedures required for the special audit or attestation engagement.

(2) All reasonable
 costs of special audits or attestation
 engagements conducted pursuant to this
 section shall be borne by the agency audited
 pursuant to Section 12-6-4 NMSA 1978.
 (3) Information

about who performs the special audit or attestation engagement follows. The state auditor may perform the special audit or attestation engagement, or require the audit or attestation engagement to be performed by an IPA. If the state auditor designates an agency for special audit or attestation engagement to be conducted by an IPA, the agency shall:

(a)

upon receipt of notification to proceed from the state auditor, identify all elements or services to be solicited, and obtain the state auditor's written approval of the proposed scope of work and request quotations or proposals for each applicable element of the special audit or attestation engagement; follow all applicable procurement requirements in accordance with Chapter 13 Article 1 of the Procurement Code, when selecting an IPA to perform the special audit or attestation engagement;

(c)

(b)

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

(**d**)

after completing the evaluations for each IPA and making the IPA selection, each agency shall submit the following information to the state auditor by the due date specified by the state auditor in the notification letter;

(i)

a completed IPA Recommendation Form for special audits, or attestation engagements (the form) provided at www.osanm.org, that the agency shall print on agency letterhead; and

(ii)

a completed audit contract form including the contract fee, start and completion date, and the specific scope of services to be performed by the IPA, for special audit, or attestation engagement, provided at www.osanm.org, with the IPA and agency signatures on the contract;

(e)

IPA Recommendation Forms and contracts that are submitted to the office with errors or omissions will be rejected by the state auditor. The state auditor will return the rejected IPA Recommendation Form and contract to the agency with a checklist indicating the reason(s) for the rejection;

(**f**)

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

(g) any contract amendments will be processed in accordance with Subsection R of 2.2.2.8 NMAC.

(4) Entrance, progress and exit conferences requirements follow. The IPA will hold an entrance conference and an exit conference with the agency, unless the IPA has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption. The state auditor has the authority to notify the agency or IPA that the state auditor should 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 must invite the state auditor or his designee to attend all such conferences.

Requirements

(5) for report submission follow. The state auditor will review reports of any special audit or attestation engagement made pursuant to this section for compliance with the professional services contract and Section 2.2.2.15 NMAC. Upon completion of the report, the IPA shall deliver the organized and bound report to the state auditor, along with a completed Summary of Findings Form available at www. osanm.org. A report will not be considered received by the state auditor unless it is accompanied by the completed Summary of Findings Form. Unfinished or excessively deficient reports will be rejected by the state auditor. The firm should submit an electronic version of the corrected rejected report for state auditor review. The name of the electronic file should be "Corrected Rejected Report" followed by the agency name and fiscal year. The IPA is required to respond to all review comments as directed by the state auditor. After its review of the report for compliance with the professional services contract, the state auditor will authorize the IPA to print and submit the final report; the required number of hardcopies specified in the professional services contract and an electronic version of the report, in the PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, all must be delivered to the state auditor within five business days. The state auditor will not release the report until the electronic version of the report is received by the state auditor. The state auditor will provide the agency with a letter authorizing final payment to the IPA and the release of the report pursuant to Section 12-6-5 NMSA 1978. Released reports may be selected by the state auditor for comprehensive report and work paper reviews. After a comprehensive review is completed, the state auditor will issue a letter to advise the IPA about the results of the review. The IPA is required to respond,

in writing, to all review comments as directed in the letter.

(6) Payment requirements follow. All reasonable costs of special audits and attestation engagements conducted pursuant to this section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. Progress payments up to 90% of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final payments from 91% to 100% may be made by the agency only after the state auditor has stated in a letter to the agency that the report has been released by the state auditor. When component unit audits are part of a primary government's audit contract, requests for progress payment approvals should be submitted by the primary government for both the primary government and the component unit. The primary government cannot exclude the component units in this process. All applicable component units and the primary government should be included in one request for progress payment approval. The state auditor will not process separate progress payment approvals submitted by the component units.

B. Requirements for performance audits follow.

(1)Definition and designation requirements follow. Pursuant to the authority set forth in Section 12-6-3(C) NMSA 1978, the state auditor may initiate a performance audit based on information or a report received from an agency, IPA or member of the public. "Performance audits are defined as audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria." Performance audits provide objective oversight to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. The term "program" includes government entities, organizations, programs, activities, and functions. For each performance audit, the state auditor shall identify the audit subject matter and performance aspects to be included, and may also include the potential findings and reporting elements that the auditors expect to develop. The audit plan for each performance audit shall be submitted to the state auditor for written approval.

(2)All reasonable costs of a single-entity performance audit conducted pursuant to this section shall be borne by the entity 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) Requirements regarding who conducts the performance audit follow. The state auditor may perform the performance audit, or may engage a team comprised of any of the following: independent public accountants; individuals with master's degrees or doctorates in a relevant field such as business, public administration, public policy, finance, economics; individuals with their juris doctorate; CFE-certified fraud examiners; CFF-certified forensic auditors; CIAcertified internal auditors; or other specialists (collectively, the "performance audit team"). The state auditor shall follow all applicable provisions of the Procurement Code in selecting and contracting with the performance audit team.

(4) Entrance, progress and exit conferences requirements follow. The performance audit team shall hold an entrance conference and an exit conference with the state auditor. The state auditor, in its sole discretion, may invite to an entrance or exit conference any representative of an agency.

The state (5) auditor may direct that the performance audit be conducted in accordance with the general standards of Chapter 3 and the field work standards of Chapter 6 of the Government Auditing Standards. If so directed, the CPE requirements of Paragraph 3.76 and 3.79 through 3.81 of GAGAS apply. If so directed, the performance audit report will follow the reporting standards set forth in Chapter 7 of the Government Auditing Standards. GAGAS 7.32 requires the performance auditors to obtain and report the views of responsible officials of the agency concerning the findings, conclusions, and recommendations included in the audit report, as well as any planned corrective actions.

(6) Report requirements follow. The performance audit team will submit to the state auditor for review a draft report of any performance audit. Upon completion of the report, the performance audit team shall deliver the organized and bound report to the state auditor, along with a completed Summary of Findings Form available at www. osanm.org (if applicable). Unfinished or excessively deficient reports will be rejected by the state auditor. The firm should submit an electronic version of the corrected rejected report to the state auditor for review. The name of the electronic file should be "Corrected Rejected Report" followed by the performance audit name

and fiscal year. The performance audit team is required to respond to all review comments as directed by the state auditor. After its review of the report, the state auditor will authorize the performance audit team to print and submit the final report; the required number of hardcopies specified in the professional services contract and an electronic version of the report, in the PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, all of which must be delivered to the state auditor within five business days. The state auditor will not release the report until the electronic version of the report is received by the state auditor. A copy of the report shall be sent to the agency audited or examined; five days later, or earlier if the agency waives the five-day period, the report shall become a public record, at which time the office will notify the secretary of finance and administration and the legislative finance committee that the reports are available on the office website. The state auditor will provide the agency or agencies responsible for payment with a letter authorizing final payment to the performance audit team and the release of the report pursuant to Section 12-6-5 NMSA 1978. Released reports may be selected by the state auditor for comprehensive report and workpaper reviews. After a comprehensive review is completed, the state auditor will issue a letter to advise the performance audit team about the results of the review. The performance audit team is required to respond, in writing, to all review comments as directed in the letter.

(7) Payment requirements follow. The contract(s) governing the performance audit team shall set forth the procedures for progress payments, final payment and submission of invoices.

C. Forensic audits of financial fraud, waste or abuse in government reported by agencies, IPAs or members of the public follow.

(1) Information regarding definitions, reports of fraud, waste & abuse, and designation follows. Pursuant to the authority set forth in Section 12-6-3(C) NMSA 1978, the state auditor may conduct procedures in connection with reports of financial fraud, waste and abuse in government made by agencies, IPAs or members of the public ("forensic audit"). The state auditor may conduct a forensic audit pursuant to an IPA report made in satisfaction of Section 12-6-6 NMSA 1978 and Subsection K of 2.2.2.10 NMAC, or the oral or written report of an agency, IPA or member of the public regarding financial fraud, waste or abuse in government. (a)

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. osanm.org;

(b)

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.

All reasonable

costs of a single-entity forensic audit conducted pursuant to this section shall be borne by the entity being investigated pursuant to Section 12-6-4 NMSA 1978. The state auditor, in its sole discretion, may apportion among the entities being investigated some or all of the reasonable costs of a multi-entity Forensic Audit.

(2)

(3) Requirements regarding who conducts the forensic audit follow. The state auditor may perform the forensic audit, or may engage a team comprised of any of the following: independent public accountants; individuals with their juris doctorate; CFE-certified fraud examiners; CFF-certified forensic auditors; CIA-certified internal auditors; or other specialists (collectively, the "forensic audit team"). The state auditor shall follow all applicable provisions of the procurement code in selecting and contracting with the forensic audit team.

(4) Entrance and exit conference requirements follow. The forensic audit team will hold an entrance conference and an exit conference with the state auditor. The state auditor, in its sole discretion, may invite to an entrance or exit conference any representative of an agency.

(5) Report requirements follow. The forensic audit team will submit to the state auditor for review a draft report of any forensic audit. Upon completion of the report, the forensic audit team shall deliver the organized and bound report to the state auditor, along with a completed Summary of Findings Form available at www.osanm.org (if applicable). Unfinished or excessively deficient reports will be rejected by the state auditor. The firm should submit an electronic version of the corrected rejected report for state auditor review. The name of the electronic file should be "Corrected Rejected Report" followed by the performance audit name and fiscal year. The forensic audit team is required to respond to all review comments as directed by the state auditor. After its

review of the report, the state auditor will authorize the IPA to print and submit the final report; the required number of hardcopies specified in the professional services contract and an electronic version of the report, in the PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, all of which must be delivered to the state auditor within five business days. The state auditor will not release the report until the electronic version of the report is received by the state auditor. The state auditor will provide the agency or agencies responsible for payment with a letter authorizing final payment to the forensic audit team and the release of the report pursuant to Section 12-6-5 NMSA 1978. Released reports may be selected by the state auditor for comprehensive report and work paper reviews. After a comprehensive review is completed, the state auditor will issue a letter to advise the forensic audit team about the results of the review. The forensic audit team is required to respond, in writing, to all review comments as directed in the letter.

(6) Payment requirements follow. The contract(s) governing the forensic audit team shall set forth the procedures for progress payments, final payment and submission of invoices.

D. Rules applicable to all agency-initiated special audits, attestation engagements, performance audits and forensic audits follows.

(1) With the exception of agencies that are authorized by statue to do performance audits and forensic audits, this section applies to instances in which an agency enters into a professional services contract for a special audit, performance audit, attestation or forensic audit engagement 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 or Subsection C of 2.2.2.15 NMAC.

(2)Contracting requirements follow. An agency or an IPA shall not enter into a professional services contract for a special audit, performance audit, attestation 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 must be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA unless the agency or IPA applies to the state auditor for an exemption and the state auditor grants the exemption. The agency shall contract with an IPA that has been approved by the state auditor for a special audit or attestation. The IPA may contract with the professionals described in 2.2.2.15(B)(3) NMAC

for a performance audit. The IPA may contract with the professionals described in 2.2.2.15(C)(3) NMAC for a forensic audit. 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 must include the contract fee, start and completion date, and the specific scope of services to be performed.

Entrance (3) and exit conference requirements follow. The IPA or other professional(s) will hold an entrance conference and an exit conference with the agency unless the IPA has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption from the state auditor. The state auditor has the authority to notify the agency or the IPA or other professional(s) that the state auditor should 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(s) and agency must invite the state auditor or his designee to attend all such conferences.

(4) Draft report submission requirements follow. A report of a special audit, performance audit, attestation or forensic audit made pursuant to a contract approved under this section is subject to review by the state auditor unless the agency or IPA applies to the state auditor for an exemption and the state auditor grants the exemption. The report should be submitted to the state auditor for review along with a completed Summary of Findings Form available at www.osanmn. org. The report will not be considered received by the state auditor unless it is accompanied by the required Summary of Findings Form.

(5)Response and release procedures follow. The IPA or other professional is required to respond to all review comments as directed by the state auditor. After its review of the report, the state auditor will authorize the IPA to print and submit the final report. The required number of hardcopies specified in the contract and an electronic version of the report, in PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, must be delivered to the state auditor within the time specified by the state auditor pursuant to the authorization to print and submit the final report. The state auditor will not release the report until the electronic version of the report is received by the state auditor.

> (6)The IPA or

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

Rules applicable to all E. special audits, attestation engagements, performance audits and forensic audits follow.

(1) All reports for special audit, performance audit, attestation or forensic audit engagements related to financial fraud, waste or abuse in government undertaken pursuant to Section 2.2.2.15 NMAC, should report as findings any fraud, illegal acts, noncompliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings should include the following elements: (a) the

condition or description of the situation that exists, including the extent of the condition, like the number of instances the condition was found out of the number of samples tested and the amount of dollars involved compared to the amount of dollars tested and for repeat findings, included here, management progress or lack of progress towards implementing the prior year corrective action plan (if applicable);

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

(c)

(**d**)

the cause of the condition, if it can be determined;

the

effect or impact of the condition; (e)

the IPA or other professional(s)' recommendation addressing each condition and cause;

(**f**)

agency Response (agency's comments about the finding including a specific corrective action plan with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

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.

Requirements (2)regarding access to records and documents follow. 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.

(3) Requirements regarding confidential sources follow. 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.

(4) Requirements regarding confidentiality of files follow. 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 except as provided in Paragraph (6) of this subsection 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.

Disclosure by (5) the state auditor may occur in the following circumstances. The state auditor shall disclose special audit, performance audit, attestation engagement, and forensic audit documentation that are confidential under Subsections (E)(3) and (E)(4) of 2.2.2.15 NMAC, only if and when required by Section 12-6-6 NMSA 1978.

Guidance (6) regarding disclosure by professionals follows. The IPA, performance audit team or forensic audit team shall not disclose information provided to them by the state auditor unless otherwise specified by the state auditor. Disclosure of confidential information by the IPA, performance audit team or forensic audit team may result in legal action by the state auditor, or in the case of an IPA, being restricted pursuant to Subsection E of 2.2.2.8 NMAC.

Report release (7) and confidentiality guidance follow. Agency and local public body personnel shall not release information to the public relating to the special audit, performance audit or attestation engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall follow applicable standards and

2.2.2 NMAC regarding the release of any information relating to the engagement. Applicable standards include but are not limited to Section 1.700.001 AICPA Code of Conduct ET and related interpretations and guidance, and GAGAS 4.30 through 4.32 and GAGAS 4.40 through 4.44. [2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 3-16-15]

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

A. Pursuant to Subsection B of 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 office; local public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts; the annual revenue of a local public body shall be calculated on a cash basis, excluding capital outlay funds, federal and private grants.

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

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

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

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

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

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

shall procure the services of an IPA for the performance of a tier 5 agreed upon procedures engagement in accordance with the tier 5 agreed upon procedures checklist on the state auditor's website.

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

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

(8)

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

C. A local public body that is exempt from financial reporting to the state auditor pursuant to Paragraphs (1) and (2) of Subsection B of 2.2.2.16 NMAC shall submit written certification to the local government division and the state auditor. The certification shall be provided on the form made by the state auditor and available on the state auditor's website at www.osanm.org. The local public body shall certify, at a minimum:

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

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

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

(1) Upon receipt of notification to proceed from the

office, the local public body shall identify all elements or services to be solicited and request quotations or proposals for the applicable agreed upon procedures engagement pursuant to Subsection A of 2.2.2.16 NMAC. A local public body is strongly encouraged to select an IPA on the state auditor's list of audit firms approved to perform audits of New Mexico government agencies. However, a local public body may select an IPA who has submitted the following information and been approved by the office pursuant to applicable procedures described at Subsection B through F of 2.2.2.8 NMAC:

а

New Mexico firm permit to practice; **(b)**

current liability insurance; and

(c)

(a)

a current peer review (if applicable) with a rating of at least "pass with deficiencies." (2) The state

auditor considers IPA services that cost less than \$60,000 excluding gross receipts tax to be small purchases. The local public body may procure professional services for one year only. The local public body may procure the required services using a multiple year proposal (not to exceed three years) in which the cost of service is \$60,000 or less in each year (excluding gross receipts taxes). The local public body is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the local public body on the date the contractor signs the contract. For IPA (3)

services that cost \$60,000 or more excluding gross receipts tax on each year's contract, the local public body shall seek competitive sealed proposals and contract for services in accordance with the Procurement Code (Chapter 13, Article 1 NMSA 1978). Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the local public body as part of the competitive sealed proposal.

(4) The local

public body may request a multiple year proposal to provide services not to exceed a term of three years including all extensions and renewals. The term of the contract shall be one-year with the option to extend for two successive one-year terms at the same price, terms and conditions as stated on the original proposal. Exercising the option to extend shall be by mutual agreement of the parties to the contract and with the approval of the state auditor. In the event that either of the parties to the contract elects not to

extend, or the state auditor disapproves the recommendation for renewal, the local public body shall use the procedures described above in Paragraphs (2) and (3) of Subsection D of 2.2.2.16 NMAC to solicit services. (5) The local public body shall evaluate all competitive sealed proposals or quotations received using an evaluation process, preferably executed by a selection committee. Members of component units such as housing authorities, etc., should be included in the IPA selection process. As part of their evaluation process, local public bodies may and are strongly encouraged to consider the following criteria when selecting an IPA: (a) the capability of the IPA, including: (i) whether the IPA has the resources to perform the type and size of the agreed upon procedures required; **(ii)** the results of the IPA's most recent external quality control review (peer review); and (iii) the organization and completeness of the IPA's proposal or bid for agreed upon procedures services; **(b)** the work requirements and approach of the IPA, including: (i) the IPA's knowledge of the local public body's need and the product to be delivered; (ii) whether the IPA's proposal or bid contains a sound technical plan and realistic estimate of time to complete the agreed upon procedures engagement; (iii) plans for using local public body staff, including internal auditors; and (iv) if the proposal or bid is for a multiple year contract, the IPA's approach for planning and conducting the work efforts of subsequent years; (c) the IPA's technical experience, including: (i) the governmental audit experience of the IPA and the specialization in the local public body's type of government; and (ii) the IPA's attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and agreed upon procedures services. (6) A local public body that does not qualify for the tiered system should submit the completed IPA recommendation form and completed

audit contract to the office by May 15 pursuant to Paragraph (6) of Subsection G

of 2.2.2.8 NMAC. A local public body that does qualify for the tiered system should complete the evaluations for each IPA that responds, make the IPA selection and then submit the completed IPA recommendation form for tiered system local public bodies and the completed and signed agreed upon procedures contract to the state auditor on or before July 1. The blank form and contract that the local public body shall use are available at www.osanm.org. In the event the due date falls on a weekend or holiday, the due date will be the next business day. Local public bodies with a fiscal year end other than June 30 must use an IPA recommendation form and contract due date of one day after the end of the fiscal year. If a completed IPA recommendation form and AUP contract are not delivered to the state auditor by the applicable deadline, the IPA must include a finding of noncompliance with Paragraph (7) of Subsection D of 2.2.2.16 NMAC in the AUP report:

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

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

(c) if the IPA is not on the state auditor's list of audit firms approved to perform audits of New Mexico government agencies, the local public body or the IPA shall submit:

(i)

firm contact information; (ii) a copy of the firm's current New Mexico firm permit to practice; (iii) proof of current liability insurance; (iv) if applicable, a copy of the firm's current peer review with a rating of at least pass with deficiencies; a peer review rating of less than "pass with deficiencies" (under the January 1, 2009 standards) on the IPA's

with deficiencies; a peer review rating of less than "pass with deficiencies" (under the January 1, 2009 standards) on the IPA's peer review will disqualify the IPA from performing New Mexico governmental agreed upon procedures engagements; and (v)

an explanation regarding why the local public body selected an IPA that did not appear on the state auditor's list; (d)

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

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

(**f**)

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

(g) the office may select an IPA for the local public body pursuant to Section 12-6-14 NMSA 1978 and Paragraphs (9) through (13) of Subsection G of 2.2.2.8 NMAC.

E. In the event the local public body's recommendation and related contract have been submitted without errors or omissions, but were not approved by the state auditor pursuant to Subsection H of 2.2.2.8 NMAC, the state auditor will promptly communicate the decision, including the reasons(s) for disapproval, to the agency; at which time, the agency shall promptly submit a different recommendation. This process will continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the local public body may submit a written request to the state auditor for reconsideration of the disapproval. The local public body shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation. The state auditor may hold an informal meeting to discuss the request. The state auditor may set the meeting in a timely manner with consideration given to the agency's circumstances; any contract amendments will be processed in accordance with Subsection R of 2.2.2.8 NMAC.

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

(1) The IPA will provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. The IPA will provide an electronic copy of the dated signed engagement letter to the office within 30 days of execution. Failure to submit the copy of the engagement letter could result in a contract restriction. See Paragraph (5) of Subsection R of 2.2.2.8 NMAC for applicable restrictions on the engagement letter.

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

(3) The IPA

will hold an entrance conference and an exit conference with the local public body unless the IPA has submitted a written request to the office for an exemption from this requirement and has obtained written approval of the exemption from the office. Unless the cost of the AUP is \$5,000 or less, the exit conference must be held in person: a telephone or webcam exit conference will not meet this requirements. The office has the authority to notify the agency or IPA that the state auditor should 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 must invite the state auditor or his designee to attend all such conferences.

(4)The report should be submitted to the office for review along with a completed Summary of Findings Form available at www.osanm.org. The report will not be considered received by the office unless it is accompanied by the required Summary of Findings Form. Once the report is officially released to the agency by the state auditor (by an authorizing letter) and the required waiting period of five calendar days has passed or has been waived by the local public body, the agreed upon procedures report shall be presented by the IPA, to a quorum of the governing authority of the local public body at a meeting held in accordance with the Open Meetings Act, if applicable.

G. Progress payment requirements follow.

(1) Progress payments up to 90% of the contract amount do not require state auditor approval and may be made by the local public body if the local public body ensures that progress payments made do not exceed the percentage of work completed by the IPA. If requested by the state auditor, the local public body shall provide the office a copy of the approved progress billing(s). (2) Final payment from 91% to 100% may be made by the local public body only after the state auditor has stated in a letter to the entity that the agreed upon procedures report has been released by the state auditor and the engagement letter and management representation letter have been received by the state auditor.

H. Report due date, notification letters and confidentiality requirements follow.

For local (1)public bodies with a June 30 fiscal yearend, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 must submit the agreed upon procedures report no later than five months after the fiscal year-end. An organized bound hard copy of the report should be submitted. Reports submitted via fax or email will not be accepted. A copy of the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the office is closed due to inclement weather, the report is due the following business day by 5:00 p.m. If the report is mailed to the state auditor, it should be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report should be postmarked by the following workday. The state auditor will grant no extensions of time to the established regulatory due dates. (2) As soon as the

auditor becomes aware that circumstances exist that will make the local public body's agreed upon procedures report be submitted after the applicable due date shown in Paragraph (1) above, the auditor shall notify the state auditor and oversight agency of the situation in writing. This notification shall consist of a letter with official signatures, not an email. However, a scanned version of the official letter sent via email that contains the required signatures is acceptable. There must be a separate notification for each late agreed upon procedures report. The notification must include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the local public body. If the IPA will not meet the expected report submission date, then the IPA should send a revised notification letter. In the event the contract was signed after the report due date, the notification letter must still be submitted to the office explaining the reason the agreed upon procedures report will be submitted after the report due date. A copy of the letter must be sent to the LGD, if LGD oversees the local public body. The late report notification letter is not required if the report was submitted to the office for review by the

deadline, and then rejected by the office, making the report late when submitted. (3) Local public body personnel shall not release information to the public relating to the agreed upon procedures engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At

all times during the engagement and after the agreed upon procedures report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the agreed upon procedures engagement.

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

J. Review of agreed upon procedures reports and related work papers follow. Agreed upon procedures reports will be reviewed by the office for compliance with the professional services contract: unfinished or excessively deficient reports will not be considered received. Such reports will be returned to the firm and a copy of the rejection letter will be sent to the local public body. If the office rejects and returns a substandard agreed upon procedures report to the firm, the report will be considered late if the revised report is not submitted by the due date, and the firm must include a finding for noncompliance with the due date. The firm should submit an electronic version of the corrected rejected report for office review. The name of the electronic file should be "Corrected Rejected Report' followed by the agency name and fiscal year. The office encourages early submission of reports to avoid findings for late reports; after its review of the agreed upon procedures report for compliance with the professional services contract, the office will authorize the IPA to print and submit the final report. The required number of hardcopies specified in the professional services contract and an electronic version of the agreed upon procedures report, in PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, all must be delivered to the office within five business days. The office will not release the agreed upon procedures report until the electronic version of the report is received by the office. The office will provide the local public body with a letter authorizing the release of the report after the required five day waiting period, and final payment to the IPA; released reports may be selected by the office for comprehensive report and work paper

reviews. After a comprehensive review is completed, the office will issue a letter to advise the IPA about the results of the review. The IPA is required to respond to all review comments as directed. If during the course of its review, the office finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with the provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

(1) as instructed by the office, the IPA may be required to correct the working papers and reissue the agreed upon procedures report to the agency, and any others receiving copies; (2) the IPA's

future engagements may be limited in number pursuant to Subsections E and F of 2.2.2.8 NMAC; or

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

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

K. IPA independence follows. IPA's that perform agreed upon procedure engagements under the tiered system must maintain independence in mind and appearance, in all matters relating to the engagement.

(1) An IPA who performs the local public body's annual agreed upon procedures engagement shall not enter into any special audit or nonaudit service contract with that local public body without the prior written approval of the state auditor. To obtain this approval, the IPA should follow the requirements set forth at Paragraph (1) of Subsection M of 2.2.2.8 NMAC.

(2)Except as provided in Paragraph (2) of Subsection D of 2.2.2.15 NMAC, a local public body and an IPA who does not perform that local public body's annual financial audit shall submit a copy to the state auditor of each professional services contract entered into between the local public body and the IPA for a special audit, agreed upon procedure or any other nonaudit services. The contract shall not require approval by the state auditor but shall be submitted to the state auditor within 30 days of execution. [2.2.2.16 NMAC - Rp, 2.2.2.16 NMAC, 3-16-15]

HISTORY of 2.2.2 NMAC: Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5-14-71; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5-27-71; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the State of New Mexico, filed 6-1-72; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6-1-72; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2-28-74; SA Rule No. 74-2, Rotation of Assignments, filed 2-28-74; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11-3-78; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5-28-80; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12-17-82; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4-10-84; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1-28-85; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgments and Compensated Absences, filed 4-16-80; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6-12-85; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6-17-85; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6-17-85; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1-20-86; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3-20-86; SA Rule No. 86-3, Professional Services Contracts, filed 7-9-86; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-13-87; SA Rule 87-2, Approval of Audit Contracts, filed 4-2-87; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8-14-87; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-10-88; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-10-89; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-1-90; SA Rule

90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5-7-90; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-13-91; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-6-92; SA Rule 93-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-93; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-94; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5-16-94; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-16-95; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4-2-96.

History of Repealed Material:

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies -Repealed 3-30-01. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 3-29-02. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 4-30-03. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 3-31-04. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 5-13-05. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 3-16-06. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 4-16-07. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 4-15-08. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 2-27-09. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 2-12-10. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 2-28-11. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 2-15-12. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 2-28-13. 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 2-28-14.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies -Repealed 3-16-15.

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an emergency amendment to 18.3.7 NMAC, Section 14, effective 03/02/2015.

18.3.7.14 MAINTENANCE, PRESERVATION, AND RETENTION **OF RECORDS:**

Motor carriers operating Α. pursuant to a certificate or permit shall maintain:

(1) complete accounts;

(2) records of all services performed for others, such as work orders, invoices, bills of lading, warehouse receipts, dispatch sheets, and claim registers:

(3)records of numbers of runs made and numbers of passengers transported;

records (4) of equipment, such as driver inspection reports, repair and maintenance records, equipment lists, titles and registration certificates;

	(5)	driver
qualification files;		
	$(\cap$	1

(6) drivers records of duty status; (7)records and

forms evidencing driver drug and alcohol testing;

[(7)] <u>(8)</u> copies of equipment leases or leases of certificates; [(8)] (9) records of all complaints indicating dissatisfaction with rates, service, safety, equipment or driving practices; and

[(9)] (10) driver contracts as provided by Section 65-2A-24 B and C NMSA 1978.

Motor carriers operating R pursuant to a certificate or permit shall retain records for the previous three complete calendar years.

С. All municipal taxicab services must maintain records documenting response times as required by Paragraphs (7) and (8) of Subsection G of 18.3.2.9 NMAC.

D. All required records are subject to inspection by the commission as provided in Sections 65-2A-4 and 65-2A-29 NMSA 1978, and shall be maintained so that they are reasonably accessible. A motor carrier operating pursuant to a certificate or permit shall take reasonable

steps to protect required records from destruction and physical hazards. A motor carrier operating pursuant to a certificate or permit shall notify the commission if records are substantially damaged or destroyed before the end of the retention period.

If a motor carrier E. transfers its certificate or permit in accordance with these rules, the transferee of the certificate or permit shall maintain the records of the transferor as required by these rules.

[18.3.7.14 NMAC - Rp, 18.3.7.14 NMAC, 2-13-15; E/A 3-2-15]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.1 NMAC, Section 9, effective March 16, 2015. In 15.2.1.9 NMAC, Subsections A, B and Paragraphs (1) through (16) and (18) through (22) of Subsection C were not published as there were no changes.

DUE PROCESS AND 15.2.1.9 **DISCIPLINARY ACTION:**

PROCEEDINGS BY C. THE COMMISSION:

(17)

Orders. (a)

Except as otherwise provided by these rules, the commission shall issue its final order not later than [60] 30 days after the date the commission votes on the ultimate issues in the proceeding. A final order of the commission must be in writing and be signed by at least one member of the members of the commission who voted in favor of the action taken by the commission. A final order must include findings of facts and conclusions of law, separately stated.

(b)

The commission staff shall mail or deliver a copy of the order to each party or the party's representative. (c) А

final order of the commission takes effect on the date the order is issued, unless otherwise stated in the order.

(d)

If the commission finds than an imminent peril to the public health, safety, or welfare requires an immediate final order in a proceeding, the commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a

prerequisite to appeal.

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 03/15/2001; A, 03/31/2003; A, 05/30/2003; A, 06/15/2004; A, 06/30/2009; A, 09/15/2009; A, 12/1/2010; A, 05/01/2013; A, 01/01/2014; A, 03/16/2015]

NEW MEXICO RACING **COMMISSION**

Explanatory paragraph: This is an amendment to 15.2.6 NMAC, Section 9, effective March 16, 2015. In 15.2.6.9 NMAC, Subsections A through O were not published as there were no changes.

15.2.6.9 **MEDICATIONS** AND PROHIBITED SUBSTANCES:

The "uniform classification guidelines for foreign substances and recommended penalties and model rule", [January 2014,version 7.0] December 2014, version 8.0 and "arci controlled therapeutic medication schedule", version 2.1 revised April 17, 2014 (furosemide has been modified in the "arci controlled therapeutic medication schedule, refer to Subsection E of 15.2.6.9 NMAC for current rule) as issued by the association of racing commissioners international, are incorporated by reference. Upon a finding of a violation of any medication and prohibited substances rule, which includes the possession of contraband as listed in 15.2.6.9 NMAC, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures as determined by the New Mexico racing commission.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 04/30/2012; A, 07/31/2012; A, 12/14/2012; A, 05/01/2013; A/E, 05/02/2013; A, 09/30/2013; A, 04/01/2014; A, 05/16/2014; A, 08/15/2014; A, 09/15/2014; A, 03/16/2015]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

This is an amendment to 16.19.5 NMAC, Section 7, effective 03-22-2015.

16.19.5.7 DEFINITIONS: As used in the internship program.

A. "Approved training area" means a place for instructing an intern for licensure subject to requirements of the board.

B. "Approved program" means a program of training as outlined by the "standards of practice."

C. "Computed time" means that time credited towards the training period which begins from the date of intern registration and continues under the requirements of the approved program. Computed time shall consist of a maximum of 48 hours per week acquired in the internship program; including those hours acquired in an academic clinical pharmacy program, extern program, radiopharmacy program, or a "demonstration project" approved by the board. Any internship acquired and submitted to the board prior to July 30, 1986, under the November 1980 amended 16.19.5 NMAC INTERNSHIP TRAINING PROGRAM, shall be credited toward the required internship hours, under this regulation.

D. "Intern" means a pharmacy student or a graduate from an accredited college of pharmacy and registered in an approved program of supervised training.

E. "Intern certificate of registration" means that certificate furnished by the board upon approval of, application for registration of intern, received from the intern applicant.

F. "Training period" means 1500 hours if in the doctor of pharmacy program of structured internship experience under the instruction of a licensed pharmacist that is a board approved or college approved preceptor, said hours to be acquired after the satisfactory completion of [15] <u>30</u> semester hours in a college of pharmacy curriculum, or its equivalent.

G. "Structured internship experience" may be obtained through academic internship hours for a minimum of 1500 internship hours satisfactorily completed and documented in an academic setting in the doctor of pharmacy program.

H. "Preceptor" means a licensed pharmacist who meets those requirements for the supervision and training of an intern as stipulated in Subsection D of 16.19.5.8 NMAC of this regulation. I. "Supervision" means that the preceptor shall maintain personal contact with the intern and shall be responsible for the required training at all times during the training period. [08-27-90; 16.19.5.7 NMAC - Rn, 16 NMAC 19.5.7, 03-30-02; A, 12-19-13; A, 03-22-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

This is an amendment to 16.19.6 NMAC, Section 23, effective 03-22-2015. In 16.19.6.23 NMAC, Subsection A through C and E through H were not published as there were no changes.

16.19.6.23 PRESCRIPTIONS:

D. Exchange of prescription information between pharmacies for the purpose of refilling is authorized under the following conditions only.

(1) The original prescription entry shall be marked in the pharmacy computer system. Pharmacies not using a computer shall mark the hard copy.

(2) The prescription shall indicate that it has been transferred and pharmacy location and file number of the original prescription. (3) In addition

to all information required to appear on a prescription, the prescription shall show the date of original fillings as well as the number of valid refills remaining.

(4) Transfer of controlled substances Schedules III, IV, and V shall not be allowed electronically except as permitted by federal law. Any manual transfer must be within any rule adopted by the federal DEA under Title 21 CFR 1306.26.

(5) A pharmacy may not refuse to transfer original prescription information to another pharmacy who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be done in a timely manner.

[16.19.6.23 NMAC - Rp, 16 NMAC 19.6.23, 03-30-02; A, 06-30-06; A, 03-22-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

This is an amendment to 16.19.12 NMAC, Sections 9 and 12, effective 03-22-2015.

16.19.12.9REGISTRATIONFEES:A.A.Registration byexamination\$200.00B.Registration byreciprocity\$200.00

Registration as an intern [\$30.00]

<u>\$25.00 per year</u>

C.

D. Registration as a pharmacy technician \$30.00 [03-07-80...08-27-90; A, 07-15-97; A, 07-

[03-07-80...06-27-90; A, 07-15-97; A, 07-31-98; 16.19.12.9 NMAC - Rn, 16 NMAC 19.12.6, 03-30-02; A, 12-15-02; A, 09-30-03; A, 03-22-15]

16.19.12.12 LICENSE/ REGISTRATION RENEWAL:

Pharmacist license Α. renewal for active \$200.00 bi-ennially B. Pharmacist license renewal for in-active \$70.00 bi-ennially C. Intern renewal [\$30.00] \$25.00 per year Duplicate license for D. interns and pharmacists \$10.00 Controlled substance E. registration \$60.00 F. Duplicate license for controlled substance \$10.00 G. Pharmacy technician renewal \$30.00 bi-ennially H. Pharmacist clinician \$70.00 bi-

ennially

I. Pharmacist license renewal for active pharmacists with 50 or more years of service - \$70.00 bi-ennially

J. Note: Waiver of license renewal fees: The board of pharmacy waives the renewal fee set forth in regulation 16.19.12.12 for individuals who are currently serving in the United States military in an active war zone or who serve in direct support of operation in active war zones.

[03-07-80...08-27-90; A, 07-31-98; A, 11-

14-98; 16.19.12.12 NMAC - Rn, 16 NMAC 19.12.12, 03-30-02; A, 12-15-02; A, 09-30-03; A, 07-15-04; A, 12-15-05; A, 01-31-07; A, 03-22-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

This is an amendment to 16.19.29 NMAC, Sections 2, 3, 6-9, 11-15 and repeal Section 10, effective 03-22-2015.

16.19.29.2 **SCOPE:** All persons [or entities] that dispense controlled substances pursuant to prescriptions from practitioners and practitioners who dispense controlled substances directly to a patient under their care.

[16.19.29.2 NMAC - N, 07-15-04; A, 03-22-15]

16.19.29.3 **STATUTORY** AUTHORITY: [Section 30-31-16 of the Controlled Substance Act. 30-31-1 through 30-31-42 NMSA 1978] Sections 30-31-1 through 30-31-41 of the Controlled Substance Act, NMSA 1978, authorizes the board of pharmacy to promulgate [regulations] rules and charge reasonable fees regarding controlled substances. Section 30-31-16 of the Controlled Substance Act, NMSA 1978 authorizes the board to collect information regarding controlled substances. [16.19.29.3 NMAC - N, 07-15-04, A, 03-

22-15]

16.19.29.6 **OBJECTIVE:** The objective of Part 29 of Chapter 19 is to promote the public health and welfare by detecting and preventing substance abuse and misuse, and encouraging appropriate treatment of pain and other conditions for which controlled substances are prescribed. The purpose of the [system] program is to improve access to controlled substances prescription information for legitimate medical needs by allowing a practitioner or a pharmacist to obtain a patient's pharmaceutical history related to controlled substances. The program's objectives will include education of the public and health care professionals regarding the nature and extent of the problem of drug abuse, appropriate prescribing and use of controlled substances, and the medical treatment options for abusers of controlled substances and pain management. [16.19.29.6 NMAC - N, 07-15-04; A, 03-22-15]

DEFINITIONS: 16.19.29.7 "Board" means the New Mexico board of pharmacy, herein referred to as the board. "Controlled [A.] <u>B.</u> substance" has the meaning given such term in 30-31-2 NMSA.

[B.-"Board of pharmacy" means the state agency responsible for the functions listed in 16.19.29.8 NMAC.] "Patient" means C. the ultimate user of a drug for whom a prescription is issued and for whom a drug is dispensed.

"Dispenser" means D. the person who delivers a Schedule II - V controlled substance as defined in Subsection F of this section to the ultimate user, but does not include the following: a licensed (1)

hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;

a practitioner, (2) or other authorized person who administers such a substance; or

(3)a practitioner who dispenses to the patient no more than twelve (12) dosage units or seventy-two (72) hours' worth (whichever is less) of such a substance or;

[(3)] (4) a wholesale distributor of a Schedule II - V controlled substance:

[(4)] (5) clinics, urgent care or emergency departments dispensing [no more than 12 dosage unitsto an individual patient within a 72 hourperiod] to the patient no more than twelve (12) dosage units or seventy-two (72) hours' worth (whichever is less) of such a substance or;

[(5)] <u>(6)</u>

a veterinarians or veterinary clinics dispensing to non-human patients.

E. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity.

F. "PMP director" means the individual authorized by the board to administer the prescription monitoring program (PMP).

G. "PMP report" means a compilation of data generated from the PMP concerning a patient, a dispenser, a practitioner, or a Schedules II - V controlled substance.

"Practitioner" means a person maintaining licensure pursuant to state law that allows him or her to prescribe medications in accordance with that licensure.

[E.] <u>I.</u> "Prescription monitoring program" (PMP) means a program as described in 16.19.29.6 NMAC which includes a centralized system to collect, monitor, and analyze electronically, for Schedules II - V controlled substances,

prescribing and dispensing data submitted by [pharmacies and dispensingpractitioners,] dispensers of which the data is to be used to support efforts in education, research, enforcement and abuse prevention.

"Schedule[H, HI, IV [F.] <u>J.</u> and V] II - V controlled substance" means [substance that are] a substance listed in Schedules II, III, IV, and V [of the schedules provided under] as set forth in Sections 30-31-5 [to] through 30-31-10 of the [NMSA] Controlled Substance Act, NMSA 1978 or the federal controlled substances regulation (21 U.S.C. 812).

"Report" means a [G. compilation of data concerning a patient, a dispenser, a practitioner, or a controlled substance.]

"State" means the state K of New Mexico. [16.19.29.7 NMAC - N, 07-15-04; A, 06-11-11; A, 08-31-12; A, 10-24-14; A, 03-22-15]

16.19.29.8 [REQUIREMENTS FOR THE PRESCRIPTION MONITORING PROGRAM] MANDATORY REPORTING OF PRESCRIPTION INFORMATION TO THE PMP:

Α. The board shall monitor the dispensing of all Schedule [H, HI, IVand V] II - V controlled substances by all [pharmacies] dispensers licensed to dispense such substances to patients in this state.

B. Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a drug included under Subsection A of this section. [Informationto be reported shall conform to the standards developed by the Americansociety for automation in pharmacy (ASAP) and published in the "ASAP telecommunications format for controlled substances", 2009 4.1 edition.] Information to be submitted for each prescription as well as the standards for how this information shall be formatted, not contrary to law, is defined in the PMP data reporting manual available on the state PMP website at http:// nmpmp.org shall include at a minimum: dispenser (1) drug enforcement agency (DEA) number; (2) date prescription filled; prescription (3) number; whether the (4) prescription is new or a refill; (5) national drug code (NDC) code for drug dispensed; (6) quantity dispensed; (7)

patient name;

New Mexico Register / Volume XXVI, Number 5 / March 16, 2015

11	(8)	patient
address;	(9)	patient date of
birth;	(10)	
DEA number;	(10)	prescriber
-	(11)	date
prescription issue	ed by pres	criber;
	(12)	and payment

classification.

C. Each dispenser shall submit the information in accordance with transmission methods and frequency established by the board; but shall report at least [every seven days] within one (1) business day of the prescription being filled. The [executive] PMP director shall have the authority to approve submission schedules that exceed [seven days] one (1) business day. [A record of each controlled substance prescription dispensed must be transmittedto the boards' agent electronically.]

D. Corrections to information submitted to the PMP must be addressed including:

(1) file upload or "outstanding uncorrected errors" as defined in the PMP data reporting manual; (2) prescriptions that were not dispensed to the patient must

be voided from the PMP; (3) incorrect

submitted to the PMP must be corrected as soon as possible after the dispenser has been notified.

[16.19.29.8 NMAC - N, 07-15-04; A, 06-11-11; A, 08-31-12; A, 03-22-15]

16.19.29.9 [ACCESS TO] DISCLOSURE OF PRESCRIPTION INFORMATION: [Practitioners registered]

with the program may designate one delegate per practice site to register with the program for the purpose of requesting and receiving reports for the practitioner.]

A. Prescription information submitted to the board shall [be confidential and] not be subject to [public or openrecords laws,] Sections 14-2-1 through 14-2-12 of the Inspection of Public Records Act, NMSA 1978, and shall be confidential except as provided in Subsections [C, D and E] C through G of 16.19.29.9 NMAC.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as <u>provided</u> in Subsection [C, D, and E] C through G of [this] 16.19.29.9 NMAC.

C. After receiving a complaint, the board inspectors shall review the relevant prescription information. If there is reasonable cause to believe a violation of law or breach of professional

standards may have occurred, the board shall notify the appropriate law enforcement or professional licensing, certification or regulatory agency or entity, and provide prescription information required for an investigation.

[**D**: The board willestablish written protocols for reviewingthe prescription data reported. Theseprotocols will be reviewed and approved bythe board as needed but at least once everycalendar year. These protocols will defineinformation to be screened, frequency and thresholds for screening and the parametersfor using the data. Data will be used tonotify providers, patients and pharmaciesto educate, provide for patient management and treatment options.]

[E-] D. The board shall be authorized to provide [data in the prescription monitoring program] PMP information to the following persons: (1) persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(2) [an individual who request's their own prescription monitoring information in accordancewith procedures established under 61-11-2.D NMSA, 1978 and Subsection G of 16.19.6.23 NMAC] a delegate designated by a practitioner; a practitioner, who must also maintain an active account, can designate only one delegate for the purpose of requesting and receiving PMP reports for that practitioner;

(3) [New-Mexico medical board, New Mexicoboard of nursing, New Mexico board of veterinary medicine, New Mexico board of dental health care], state licensing boards, including the medical board, board of nursing, board of veterinary medicine, board of dental health care, board of examiners in optometry, osteopathic examiners board, acupuncture & oriental medicine board, and podiatry board, [for their licensees] as the PMP information relates to their licensees;

(4) professional licensing authorities of other states if their licensees practice in [the] this state or prescriptions provided by their licensees are dispensed in [the] this state;

(5) local, state and federal law enforcement or prosecutorial officials engaged in an ongoing investigation of an individual in the enforcement of the laws governing licit drugs;

(6) <u>the state</u> human services department regarding medicaid program recipients;

(7) <u>a state</u> metropolitan, <u>magistrate and</u> district, [state] or federal [court(s) under] court as required by a grand jury subpoena or criminal court order;

(8) state drug

court personnel as authorized by the PMP director;

[(8)] (<u>9</u>) personnel of the board for purposes of administration and enforcement of this [regulation,] rule or of 16.19.20 NMAC [or];

[(9)] (10) the [controlled substance] <u>prescription</u> monitoring program of another state or group of states with whom the state has established an interoperability agreement;

(11) a living individual who request's his or her own PMP report in accordance with procedures established under Subsection D of Section 61-11-2 of the Pharmacy Act, NMSA 1978 and Subsection H of 16.19.6.23 NMAC, or an agent authorized by the living individual along with a valid HIPAA release form or court issued subpoena, or;

[(10)] <u>(12)</u>

a parent to have access to the prescription records about his or her minor child, as his or her minor child's personal representative when such access is not inconsistent with state or other laws;

[(11) the board shall use de-identified data obtained from the prescription drug monitoring database to identify and report to state and local publichealth authorities the geographic areasof the state where anomalous prescribingdispensing or use of controlled substances is occurring.

(12) the board shall share prescription drug monitoringdatabase data with the department of healthfor the purpose of tracking inappropriate prescribing and misuse of controlled substances, including drug overdose.]

E. The board shall use de-identified data obtained from the PMP database to identify and report to state and local public health authorities the geographic areas of the state where anomalous prescribing dispensing or use of controlled substances is occurring.

F. The board shall share <u>PMP database data with the department</u> <u>of health for the purpose of tracking</u> <u>inappropriate prescribing and misuse of</u> <u>controlled substances, including drug</u> <u>overdose.</u>

[F-] <u>G.</u> The board shall provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients and persons who have received prescriptions from dispensers.

<u>H.</u> PMP information gained from other states' prescription monitoring programs shall not be subject to civil subpoena, nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason.

[16.19.29.9 NMAC - N, 07-15-04; A, 06-11-11; A, 08-31-12; A, 03-22-15]

16.19.29.10 [**REPORTS:** A written request will be filed with the board prior to release of a report.

A: Persons listed in Paragraphs (1) through (10) of Subsection E of 16.19.29.9 NMAC must submit a written request listing the information for the report.

B: Reports will be prepared and delivered to the requestingperson via U.S. mail, facsimile, or otherelectronic means.

C: Reports may be provided by secured electronic means after verification of electronic request.

D. The program will produce reports for the board that evaluate the effectiveness of the program and assist in identifying diversion of controlled substances. The program will produce statistical reports to evaluate the dispensing of controlled substances and utilization of the program. These reports will be able to provide data on:

(1) number of solicited reports from prescribers for a specified time period;

(2) number of solicited reports from a specified prescriber for a specified time period; (3) number of solicited reports from pharmacies for a

specified time period; (4) number of solicited reports from a specified pharmacyfor a specific time period; (5) number of solicited reports from other unauthorizedindividuals for a specified time period; (6) number of individuals receiving a prescription for a specified schedule for a specified time-

 period;

 (7)
 threshold

 report of number of individuals receiving a

 prescription for a specified schedule from 6

 or more prescribers or 6 or more pharmacies

 within a specified time period;

 (8)
 number of

 solid dosage units for a specified schedule

 for pain relievers, tranquilizers, stimulants

 and sedatives for a specified time period;

(9) list of individual prescriptions for a specified zipcode or state code;

(10) number of prescriptions for a specified zip-code; (11) number of dosage units for a specified drug and specified zip-code.

E: The board shall receive a quarterly program outcomes report from staff or contractors. A statistical analysisof the data that does not include protected information should be reported on the website or in the newsletter.] [RESERVED] [16.19.29.10 NMAC - N, 07-15-04; A, 06-11-11; Repealed, 03-22-15]

16.19.29.11AUTHORITY TOCONTRACT:The board [is authorizedto] may contract with another agencyof this state or with a private vendor, asnecessary, to ensure the effective operationof the [prescription monitoring program]PMP. [Any contract] A contractor shall[be bound to] comply with the provisionsregarding confidentiality of prescriptioninformation in 16.19.29.9 NMAC [of thisregulation] and shall be subject to thepenalties specified in [16.19.29.12 NMAC-of this regulation for unlawful regulations]16.19.29.14 NMAC.

[16.19.29.11 NMAC - N, 07-15-04; A, 03-22-15]

16.19.29.12 REGISTRATION FOR ACCESS TO PRESCRIPTION INFORMATION:

[A. Practitioners with individual drug enforcement administration (DEA) issued numbers will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the practitioner. One subaccount per practitioner account is authorized for an agent of the practitioner. The agent designated by the practitioner will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the agent.

B: Pharmacies with DEA issued numbers will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password willbe issued. Pharmacies will designate one individual who will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password willbe issued to the individual. Pharmacies will not be permitted to obtain a subaccount.

C: All registrations will be renewed every three years by completingand submitting a new application.

D: All registrants to the prescription monitoring program willcomplete a web based training program approved by the board.]

A. Persons authorized for access to PMP information as listed in Paragraphs (1) through (7) of Subsection D of 16.19.29.9 NMAC must apply for access as described at the PMP website located at http://nmpmp.org or as otherwise indicated. Persons granted access must maintain individual accounts and shall not share access information with other persons.

<u>B.</u> All persons authorized for access to PMP information and applying for such access to the PMP shall successfully complete a web based training program as determined by the PMP director.

<u>C.</u> Persons reporting prescription information to the PMP, but not authorized for access to PMP information must also apply for access as described at the PMP website located at http://nmpmp. org or as otherwise indicated.

D. The PMP director shall have the authority to set account access and registration renewal requirements necessary for accounts to be considered active and shall also have authority to cancel inactive accounts.

[16.19.29.12 NMAC - N, 07-15-04; 16.19.29.12 NMAC - N, 06-11-11; A, 08-31-12; A, 03-22-15]

16.19.29.13 INFORMATION EXCHANGE WITH OTHER PRESCRIPTION MONITORING PROGRAMS:

A. The [New Mexico] board [of pharmacy] may provide [prescription monitoring] <u>PMP</u> information to other states' prescription monitoring programs and such information may be used by those programs consistent with the provisions of [the] this rule.

B. The [New Mexico] board [of pharmacy] may request and receive [prescription monitoring] <u>PMP</u> information from other states' prescription monitoring programs and may use such information under provisions of this rule.

C. The [New Mexico] board [of pharmacy] may develop the capability to transmit information to and receive information from other prescription monitoring programs employing the standards of interoperability.

D. The [New Mexico] board [of pharmacy is authorized to] may enter into written agreements with other states' prescription monitoring programs or other [entities] persons hosting compatible information sharing technologies for the purpose of describing the terms and conditions for sharing of [prescription] PMP information under this section. [16.19.29.13 NMAC - N, 07-15-04; 16.19.29.13 NMAC - N, 06-11-11; A, 03-22-15]

16.19.29.14PENALTIES:A.A dispenser whoknowingly fails to submit prescription

monitoring information to the board as required by this [regulation] <u>rule</u> or knowingly submits incorrect prescription information shall be subject to disciplinary proceedings as defined in [61-11-20-NMSA] <u>Section 61-11-20 of the Pharmacy</u> Act, NMSA 1978.

B. Prescription information submitted to the [New Mexico prescriptionmonitoring program] PMP is protected health information. [Registrants] Persons with access to the PMP [are required to] shall exercise due diligence in protecting this information and access it only as necessary in the course of legitimate professional regulatory, or law enforcement duties.

C. [Individual registrants] <u>A person</u> found to be in violation of this section may be subject to one or more of the following actions.

(1) Termination of access to [the program] <u>PMP</u> information.

(2) A complaint may be filed with <u>his or her</u> appropriate professional [regulatory] <u>licensing</u> entities. [16.19.29.14 NMAC - Rn, 16.19.29.12 NMAC, 06-11-11; A, 08-31-12; A, 03-22-15]

16.19.29.15SEVERABILITY:If any provisions of this [regulation]rule or its application [thereof] to anyperson or circumstance is held invalid orunenforceable, the [invalidity does not-affect other provisions or applicationsof the regulation which can be given-effect without the invalid provisions orapplications, and to this end the provisions-of this regulation are severable] remainder.of this rule shall not be affected and shall bevalid and enforceable.[16.19.29.15 NMAC - Rn, 16.19.29.13NMAC, 06-11-11; A, 03-22-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

This is an amendment to 16.19.36 NMAC, Sections 2, 6, 7, 11, 13 and 15, effective 03-22-2015.

16.19.36.2 SCOPE: All facilities as defined in Paragraph (1), (2), (5) [and-(7)] <u>through (11) and (15)</u> of Subsection B of 61-11-14 NMSA 1978, and all persons or entities that own or operate, or are employed by a facility for the purpose of providing pharmaceutical compounded sterile preparations or services. [16.19.36.2 NMAC - N, 06-28-14; A, 03-22-15]

16.19.36.6 OBJECTIVE: The objective of Part 36 of Chapter 19 is to establish standards to ensure that the citizens of New Mexico receive properly compounded contaminant-free sterile preparations <u>properly compounded in accordance with all applicable USP/NF</u> <u>General Chapters numbered below 1000</u>. [16.19.36.6 NMAC - N, 6-28-14; A, 03-22-15]

16.19.36.7DEFINITIONS:A."Air changes perhour" (ACPH) means the number of timesa volume of air equivalent to the roompasses through the room each hour.

B. "Ante-area" means an ISO Class 8 or better area where personnel hand hygiene and garbing procedures, staging of components, order entry, CSP labeling, and other high-particulate generating activities are performed. It is also a transition area that:

(1) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

(2) reduces the need for the heating, ventilating, and air-conditioning (HVAC) control system to respond to large disturbances.

C. "Aseptic technique" means proper manipulation of preparations to maintain sterility.

D. "Batch" means more than one unit of a compounded preparation that is intended to have uniform character and quality within specified limits, prepared in a single process, and completed during the same and limited time period.

[**Đ**:] **<u>E</u>. "Beyond-use date"** (BUD) means the date, or as appropriate, date and time, after which a compounded preparation is not to be used and is determined from the date and time the preparation is compounded.

[E:] <u>F.</u> "Biological safety cabinet" (BSC) means a ventilated cabinet that provides ISO Class 5 environment for CSP's, provides personnel, preparation, and environmental protection having an open front with inward airflow for personnel protection, downward highefficiency particulate air (HEPA)-filtered laminar airflow for preparation protection, and HEPA-filtered exhausted air for environmental protection.

[F:] <u>G.</u> **"Buffer area"** means an area where the primary engineering control (PEC) is physically located. Activities that occur in this area include the staging of components and supplies used when compounding CSP's.

[G-:] H. "Certification" means independent third party documentation declaring that the specific requirements of USP/NF <797> (USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations) have been met.

[H-] L. "Cleanroom" means a room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

[H:] J. "Closed system vialtransfer device" means a vial-transfer system that allows no venting or exposure of substances to the environment.

[J:] <u>K.</u> "Compounded sterile preparations" (CSP's) include, but are not limited, to the following dosage forms which must be sterile when administered to patients:

(1) parenteral preparations; aqueous (2) bronchial and nasal inhalations; baths and (3) soaks for live organs and tissues; (4) injections (e.g. colloidal dispersions, emulsions, solutions, suspensions); irrigations for (5) wounds and body cavities; ophthalmic (6) drops and ointments; and tissue (7)implants.

[K-] L. "Compounding aseptic containment isolator" (CACI) means an enclosed ISO Class 5 environment workspace for compounding of hazardous sterile preparations, provides personnel protection with negative pressure and appropriate ventilation and provides preparation protection by isolation from the environment and high-efficiency particulate air (HEPA)-filtered laminar airflow. Air exchange with the surrounding

240

environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

[L.] M. "Compounding

aseptic isolator" (CAI) means an enclosed ISO Class 5 environments for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment should not occur unless the air has first passed through a microbial retentive filter (HEPA minimum).

[M.] N. "Critical area" means an ISO Class 5 environment.

[N.] O. "Critical site" means a location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

[Θ :] <u>P</u>. "Direct compounding area" (DCA) means a critical area within the ISO Class 5 primary engineering control (PEC) where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

[P:] Q. "Disinfectant" means an agent that frees from infection and destroys disease-causing pathogens or other harmful microorganisms, but may not kill bacterial and fungal spores. It refers to substances applied to inanimate agents, usually a chemical agent, but sometimes a physical one.

[Q-] R. "Hazardous drugs" means drugs classified as hazardous if studies in animals or humans indicate exposures to them have a potential for causing cancer, development or reproductive toxicity or harm to organs. (Reference current NIOSH publications).

[R-] S. "Home care" means health care provided in the patient's home (not a hospital or skilled nursing facility) by either licensed health professionals or trained caregivers. May include hospice care.

[S-] <u>T.</u> "Immediate use" means administration begins not later than one hour following the start of the compounding procedure. For those events in which delay in preparation would subject patient to additional risk and meeting USP/ NF <797> (*Immediate-Use CSP Provision*) criteria.

[**F**:] <u>U</u>. "ISO 5" means air containing no more than 100 particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (3520 particles per cubic meter).

[U-] V. "ISO 7" means air containing no more than 10,000 particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (352,000 particles per cubic meter).

[V.] <u>W.</u> "ISO 8" means air containing no more than 100,000 particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (3,520,000 particles per cubic meter).

[\\.] X. "Laminar airflow" means a non-turbulent, non-mixing streamline flow of air in parallel layers.

[X-] Y. "Laminar airflow workbench" (LAFW) means a ventilated cabinet for compounding of sterile preparations. Provides preparation protection with high-efficiency particulate air (HEPA) filtered laminar airflow, ISO Class 5. Airflow may be horizontal (back to front) or vertical (top to bottom) in direction.

[Y.] <u>Z.</u> "Media-fill test" means a test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as soybean-casein digest medium is substituted for the actual drug product to simulate admixture compounding. The issues to consider in the development of a mediafill test are media-fill procedures, media selection, fill volume, incubation, time, and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

[Z.] <u>AA.</u> "Multiple-dose container" means a multiple-unit container for articles or preparations intended for parenteral administration only and usually containing antimicrobial preservatives. Once opened or entered, a multiple dose container with antimicrobial preservative has a BUD of 28 days unless otherwise specified by the manufacturer.

[AA.] <u>BB.</u> "Negative pressure room" means a room that is at a lower pressure than the adjacent spaces and therefore, the net flow of air is *into* the room.

[BB:] <u>CC.</u> "Parenteral product" means any preparation administered by injection through one or more layers of skin tissue.

[CC.] <u>DD.</u> "Personal protective equipment" (PPE) means items such as gloves, gowns, respirators, goggles, face shields, and others that protect individual workers from hazardous physical or chemical exposures.

[DD.] <u>EE.</u> "Pharmacy

bulk packages" means a container of a sterile preparation for parenteral use that contains many single doses. Contents are intended for use in a pharmacy admixture program and are restricted to use in a suitable ISO Class 5 environment.

[EE.] FF. "Plan of care" means an individualized care plan for each patient receiving parenteral products in a home setting to include the following:

(1) description of actual or potential drug therapy problems and their proposed solutions;

(2) a description of desired outcomes of drug therapy provided;

(3) a proposal for patient education and counseling; and
 (4) a plan
 specifying proactive objective and
 subjective monitoring (e.g. vital signs, laboratory test, physical findings, patient response, toxicity, adverse reactions, and noncompliance) and the frequency with

which monitoring is to occur. [FF:] <u>GG.</u> "Positive pressure room" means a room that is at a higher pressure than the adjacent spaces and, therefore, the net airflow is *out* of the room.

[GG.] <u>HH.</u>

"Preparation" means a CSP that is a sterile drug or nutrient compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber; the article may or may not contain sterile products.

[HHF:] IL. "Primary engineering control" (PEC) means a device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding CSP's. Such devices include, but may not be limited to, laminar airflow workbenches (LAFW's), biological safety cabinets (BSC's), compounding aseptic isolators (CAI's), and compounding aseptic containment isolators (CACI's).

[H:] J.J. "Process validation" means documented evidence providing a high degree of assurance that a specific process will consistently produce a preparation meeting its predetermined specifications and quality attributes.

[JJ-] <u>KK.</u>"Product" means a commercially manufactured drug or nutrient that has been evaluated for safety and efficacy by the FDA. Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

[KK.] <u>LL.</u> "Quality assurance" means a program for the

systematic monitoring and evaluation of the various aspects of a service or facility to ensure that standards of quality are being met.

[LL.] MM. "Ouality control" means a system for verifying and maintaining a desired level of quality in a preparations or process, as by planning, continued inspection, and corrective action as required.

"Secondary [MM.] NN. engineering control" means the ante area and buffer area or cleanroom in which primary engineering controls are placed.

[NN.] <u>OO.</u> "Segregated compounding area" means a designated space, either a demarcated area or room, that is restricted to preparing low-risk level CSP's with 12-hour or less BUD. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of CSP's and shall be void of activities and materials that are extraneous to sterile compounding.

"Single-[00.] <u>PP.</u> dose container" means a single-dose, or a single-unit, container for articles or preparations intended for parenteral administration only. It is intended for a single use. Examples of single-dose containers include prefilled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

[PP.] <u>Q</u>Q. "Standard operating procedure" (SOP) means a written protocol detailing the required standards for performance of tasks and operations within a facility.

"Sterile" [QQ.] RR. means free from bacteria or other living microorganisms.

"Sterilization

[RR.] SS. by filtration" means passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

[SS.] TT. "Sterilizing grade membranes" means membranes that are documented to retain 100% of a culture of 107 microorganisms of a strain of Brevundimonas (Pseudomonas) diminuta per square centimeter of membrane surface under a pressure of not less than 30 psi. Such filter membranes are nominally at 0.22 µm or 0.2 µm porosity, depending on the manufacturer's practice.

[TT.] UU. "Terminal sterilization" means the application of a lethal process (e.g., steam under pressure or autoclaving) to sealed containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10⁻⁶, or a probability of less than one in one million of a non-sterile unit.

[UU.] <u>VV.</u>

"Unidirectional flow" means airflow moving in a single direction in a robust and uniform manner and at sufficient speed to

reproducibly sweep particles away from the critical processing or testing area. "USP" means [VV.] <u>WW.</u>

United States pharmacopeia.

[WW. "USP/NF standards" means United States pharmacopeia/national formulary USP General Chapters <797> Pharmaceutical Compounding- Sterile Preparations.]

[16.19.36.7 NMAC - N, 06-28-14; A, 03-22-15]

16.19.36.11 DOCUMENTATION **REQUIRED:**

Α. Written policies, procedures and SOPs consistent with USP/NF <797> (General Chapter <797> Pharmaceutical Compounding-Sterile Preparations) standards as well as those required below, must be established, implemented, followed by facility personnel, and available for inspection and review by authorized agents of the board of pharmacy.

B. Written policies and procedures must be submitted to the state board of pharmacy prior to the issuance of any license. These records must include but are not limited to:

(1)cleaning. disinfection, evaluation, validation, testing, certification, and maintenance of the sterile compounding area;

(2) personnel qualifications, training, assessment and performance validation; (3) operation, maintenance, validation, testing, and certification of facility and equipment; (4) SOP's for compounding, storing, handling, and dispensing of all components used and all compounded sterile preparations; SOP's for (5) proper disposal of physical, chemical, and infectious waste; (6) quality control guidelines and standards; (7)quality assurance guidelines and standards; SOP's for (8) determination of stability, incompatibilities, and drug interactions;

error (9) prevention and incident reporting policies and procedure as per 16.19.25 NMAC.

C. All records required by this part shall be kept by the facility for at least three years and shall be readily available for inspection by the board or boards' agent.

[16.19.36.11 NMAC - N, 06-28-14; A, 03-22-15]

REQUIREMENTS 16.19.36.13 FOR TRAINING: All personnel, including pharmacists, pharmacists

who supervise compounding personnel, pharmacists interns and pharmacy technicians, shall have completed didactic and experiential training with competency evaluation through demonstration and testing (written or practical) as required by USP/NF <797> (USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations) and as outlined by the pharmacist-in-charge and described in the site policy and procedures or training manual, prior to compounding sterile preparations.

preparations.		
А.	Instruc	tional topics
shall include:		-
	(1)	aseptic
technique;	(-)	useptie
teeninque,	(2)	critical area
contamination fac		critical area
containination fac	,	·····
., .	(3)	environmental
monitoring;		0
	(4)	facilities;
	(5)	equipment
and supplies;		
	(6)	sterile
pharmaceutical ca	lculation	s and
terminology;		
	(7)	
sterile pharmaceu	tical com	pounding
documentation;		
,	(8)	quality
assurance procedu		quanty
ussurance proceed	(9)	proper
gowning and glov		
	(10)	the handling
. f		
of cytotoxic and h		
1 (1	(11)	general
conduct in the cor		
В.	Trainir	
be obtained throug		
completion of a si		
on-the-job didacti		
program (not trans	sferable t	o another
practice site).		
	[(1) —	-completion
of a site-specific,	structured	l on-the-job
didactic and exper	riential tr	aining program
(not transferable t		
		- completion of
a board approved		
	(3)	
by university of N		
pharmacy.]		co conege or
	Dl	
<u>C.</u>		acy technicians
shall complete 10		
experiential training		
preparations in ac		
<u>11-11.1 of the Pha</u>		
prior to compound	ling steri	le preparations.

prior to compounding sterile preparations. Documentation of experiential training as defined in Subsection A of this section is transferrable to another practice site.

[C.] D. Experiential training shall include those areas of training as outlined in USP <797> (USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations) with

appropriate observational assessment and testing of performance as outlined in USP <797> (USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations) including glove fingertip and media fill tests.

[D.] <u>E.</u> All personnel, including pharmacists compounding sterile [chemotherapy] hazardous drugs, pharmacists supervising compounding personnel, pharmacy interns compounding sterile [chemotherapy] hazardous drugs, and pharmacy technicians compounding sterile [ehemotherapy] hazardous drugs, shall have completed [a board approved] course in chemotherapy drug preparation as well as training in compounding sterile preparations as listed in H1 above, priorto compounding sterile chemotherapypreparations.] didactic and experiential training with competency evaluation through demonstration and written or practical testing as required by USP/NF in addition to training in sterile non-hazardous preparations as listed above. Training will be conducted as outlined by the pharmacistin-charge and described in the site policy and procedures or training manual and shall be completed prior to compounding sterile hazardous preparations.

[E.] <u>F.</u> Frequency of training and assessment shall be conducted as required by USP <797> (USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations) to assure continuing competency and include: (1) initial training before compounding sterile preparations; (2)annual refresher training and assessment in didactic topics; annual testing (3)

of glove fingertip and media fill for low and medium risk compounding;

six-month (4) testing of glove fingertip and media fill testing for high risk compounding.

[**F**.] <u>G.</u> Documentation of training: Written documentation of initial and in-service training, the results of written or practical testing, and process validation of compounding, personnel shall be retained for three years and

contain the following information:

name of (1)person receiving the training or completing the testing or process validation;

date(s) of the (2)training, testing, or process validation; (3)general

description of the topics covered in the training or testing or of the process validated;

(4) name of person supervising the training, testing, or process validation;

> (5) signature

of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel. [16.19.36.13 NMAC - N, 06-28-14; A, 03-

22-15]

16.19.36.15 QUALITY ASSURANCE OF COMPOUNDED **STERILE PREPARATIONS:**

A. There shall be a documented, ongoing performance improvement control program that monitors personnel performance, equipment, and facilities:

(1) all aspects of sterile product preparation, storage, and distribution, including details such as the choice of cleaning materials and disinfectants and monitoring of equipment accuracy shall be addressed in policy and procedures;

(2) if non-sterile to sterile bulk compounding of more than 25 units of compounded sterile preparations is performed using non-sterile chemicals, containers, or devices, and the results of appropriate end product testing must be documented prior to the release of the product from quarantine; the test must include appropriate tests for particulate matter and pyrogens;

there shall (3) be documentation of quality assurance audits at regular, planned intervals, including infection control and sterile technique audits; a plan for corrective action of problems identified by quality assurance audits shall be developed which includes procedures for documentation of identified problems and action taken; a periodic evaluation as stated in the policy and procedures of the effectiveness of the quality assurance activities shall be completed and documented;

(4) the batch label of each sterile compounded product shall contain:

(a)

[patient name;] drug product name(s), diluent names(s), and amount(s) of each; [if **(b)**

batch filling,] batch lot or control number; (c)

[solution, ingredient names, amounts;] final concentration(s), and volume when appropriate, solution ingredient names and amounts;

(d)

[expiration date and time, when applicable;] beyond use date, and time when applicable; **(e)**

route of administration when applicable; (f)

[directions for use including infusion rates, specific times scheduled, when appropriateand applicable] date of preparation; (g)

facility identifier; name or initials of person preparing the product and, if prepared by supportive personnel, the name or identifying initials and the name or initials of the pharmacist that completed the final check;

(h)

when appropriate, ancillary instructions such as storage instructions or cautionary systems, including hazardous material warning labels and containment bags; and **(i)** device instructions when needed. (5) the patient specific label of a CSP shall contain: (a) patient name; **(b)** solution, ingredient names, amounts; (c) beyond use date, and time when applicable; (**d**) route of administration; **(e)** directions for use, including infusion rates, specific times scheduled, when appropriate and applicable; (f) identifier of person preparing the product and, if prepared by supportive personnel (i.e., pharmacist intern or pharmacy technician), the identifier of the pharmacist that completed the final check; (g)

when appropriate, ancillary instructions such as storage instructions or cautionary systems, including hazardous material warning labels and containment bags; and

(h)

device instructions when needed; (i)

if dispensed for other than inpatient use, the label shall include all other required information.

B. There shall be a mechanism for tracking and retrieving products which have been recalled. [When] If batch preparation of <u>compounded</u> sterile [products] preparations is being performed, a [worksheet (log)] record must be maintained for each batch. [This worksheet shall consist of formula, components, compounding directions or procedures, a sample label and evaluation and testingrequirements, if applicable, and shall beused to document the following:

(1) all solutions and ingredients and their corresponding amounts, concentrations and volumes; (2) component-

manufacturer and lot number;

(3)lot or control number assigned to batch;

(4) 1.4	(*)
(4) date of	(i)
preparation;	results of applicable quality control
(5) expiration	procedures.
date of batch prepared products;	[16.19.36.15 NMAC - N, 09-07-14; A, 03
(6) identity of	22-15]
personnel in preparation and pharmacist	
responsible for final check;	
(7) comparison	
of actual yield to anticipated yield, when	End of Adopted Dules Section
	End of Adopted Rules Section
appropriate.]	
(1) A formulation	
record shall provide a consistent source	
document (recipe) for CSP preparation and	
shall include the following:	
<u>(a)</u>	
name, strength, dosage form, and final	
volume of the compounded preparation;	
(b) all	
ingredients and their quantities;	
equipment needed to prepare the CSP, when	
appropriate, and mixing instructions;	
<u>(d)</u>	
other environmental controls, such as	
the duration of mixing and other factors	
pertinent to consistent preparation of the	
CSP;	
<u>(e)</u>	
beyond use dating, the container for	
dispensing, storage requirements, and	
quality control procedures; and	
<u>(f)</u>	
information need for proper labeling (e.g.	
sample label).	
(2) The	
compounding record for each CSP batch	
shall verify accurate compounding in	
accordance with the formulation record and	
shall include:	
<u>(a)</u>	
reference to the formulation record for the	
CSP;	
(b)	
name, strength, volume, manufacturer,	
and manufacturer's lot number for each	
component;	
<u>(c)</u>	
name, strength, and volume of the finished	
<u>CSP;</u>	
(d)	
reconciliation of actual yield with	
anticipated yield, and total number of CSP	
units produced;	
-	
(e)	
identifier of person preparing the product	
and, if prepared by support personnel (i.e.,	
pharmacist intern or pharmacy technician),	
the identifier of the pharmacist that	
completed the final check;	
(f) date	
of preparation;	
<u>(g)</u>	
batch lot or control number assigned;	
<u>(h)</u>	
assigned beyond use date, and time when	
appropriate;	
	1

New Mexico Register Submittal Deadlines and Publication Dates Volume XXVI 2015

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

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 505-476-7875.