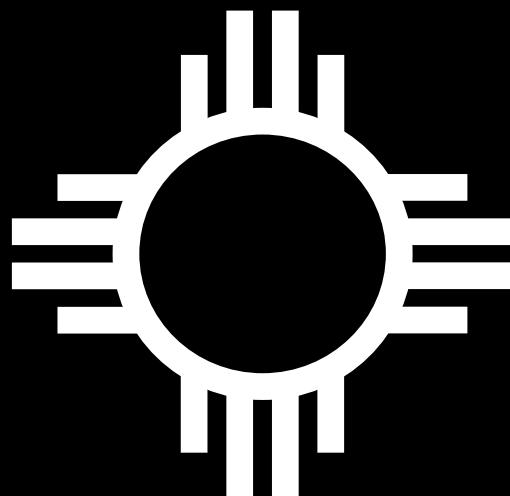


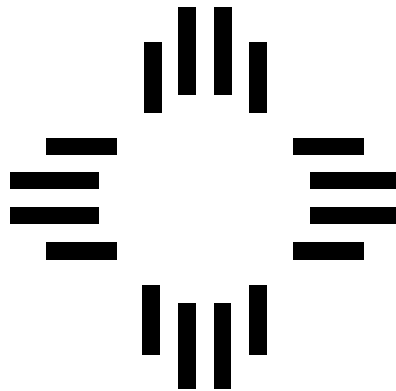
**NEW
MEXICO
REGISTER**



Volume XV
Issue Number 6
March 31, 2004

New Mexico Register

Volume XV, Issue Number 6
March 31, 2004



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
2004

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New Mexico Register

Volume XV, Number 6

March 31, 2004

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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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 available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

Legal Notice

Notice is hereby given that the New Mexico Board of Barbers & Cosmetologists will convene a Rule Hearing to amend:

Title 16, Chapter 34, Part 1 Barbers and Cosmetologists, General Provisions

Title 16, Chapter 34, Part 2 Barbers and Cosmetologists, Licensing

Title 16, Chapter 34, Part 3 Barbers and Cosmetologists, Examinations

Title 16, Chapter 34, Part 4 Barbers and Cosmetologists, Special Licenses

Title 16, Chapter 34, Part 5 Barbers and Cosmetologists, Regular Licenses

Title 16, Chapter 34, Part 6 Barbers and Cosmetologists, Licensing By Reciprocity: Credit For Out Of State Training

Title 16, Chapter 34, Part 7 Barbers and Cosmetologists, Establishments and Enterprises

Title 16, Chapter 34, Part 8 Barbers and Cosmetologists, Schools

Title 16, Chapter 34, Part 9 Barbers and Cosmetologists, Continuing Education

Title 16, Chapter 34, Part 10 Barbers and Cosmetologists, Investigations and Confidentiality

Title 16, Chapter 34, Part 11 Barbers and Cosmetologists, Violations

Title 16, Chapter 34, Part 12 Barbers and Cosmetologists, Record Keeping By The Board Office

Title 16, Chapter 34, Part 13 Barbers and Cosmetologists, Administrative Procedures

Title 16, Chapter 34, Part 14 Barbers and Cosmetologists, Fees

Title 16, Chapter 34, Part 15 Barbers and Cosmetologists, Administrative Penalties And Fines

Title 16, Chapter 34, Part 16 Barbers and Cosmetologists, Parental Responsibility Act Compliance

This Hearing will be held at the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, NM, on May 10, 2004 at 10:00 a.m.

Following the Rule Hearing the New Mexico Board of Barbers and Cosmetologists will convene a regular meeting. In addition to the open meeting, the Board may go into Executive Session to consider issuance, suspension, renewal, or revocation of licenses.

Copies of the proposed rules are available on request from the Board office, P. O. Box

25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-7110.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by April 23, 2004 to allow time for distribution to the Board members. Individuals planning on testifying at the hearing must provide copies of their testimony also by April 23, 2004.

Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board office at (505) 476-7110, no later than April 30, 2004.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

NOTICE OF PUBLIC HEARING

Protective Services (PS) will hold a public hearing in Albuquerque on Monday, April 19, 2004 from 1:00 p.m. to 3:00 p.m. at CYFD-Sandia Room, 1031 Lambertson Place, NE, Albuquerque, NM 87107 (call 505 841-7800 for directions). This hearing will provide information regarding the 2005-2009 five year [Title IV-B Child and Family Services Plan and the 2004 Title XX pre-expenditure report for Social Services](#).

The public is invited to attend to make comment regarding CYFD administered child & adult welfare programs.

The CYFD Lambertson building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearing. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The reports may be reviewed at any Protective Services county office. County office locations may be determined by calling 505-827-8400 for location information. The reports may be reviewed between 8:00 a.m. - 5:00 p.m. (MST) at the PS Director's Office, Room 254, In the P.E.R.A. building, 1120 Paseo De Peralta, Santa Fe, NM. Copies of the reports may be purchased (for the cost of copying) by contacting Mark Ruttkey, Manager, CYFD-PS, P.O. Drawer 5160, Santa Fe, NM 87502-5160, or by calling 505-827-8445. Copies can also be requested through the use of the New Mexico relay system by calling 505-827-7586.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION LOCAL GOVERNMENT DIVISION

Legal Notice of Enhanced 911 Rules and Regulations Public Hearing

Local Government Division, Department of Finance and Administration
Suite 203, Bataan Memorial Building
Santa Fe, New Mexico 87501

Date: March 17, 2004

Release date: For Immediate Release

Contact: Bill Harris, Special Programs Bureau E911 Project Manager (827-4992, or 505-699-8911)

Reference: New Mexico Enhanced 911 Public Rules and Regulations Hearing

Local Government Division, E911 Program office will hold a public E911 Rules and Regulations hearing on Thursday, May 6, 2004 from 9:30 to 11:00 a.m. at the Department of Education, Mabry Hall, 300 Don Gaspar, Santa Fe, NM 87501.

The purpose of the public hearing is to receive public comment on adoption of the revised Enhanced 911 Rules and Regulations (Title 10 Public Safety and Law Enforcement, Chapter 6 Local Government Law Enforcement Agencies, Part 2 Enhanced 911 Requirements). The amendments add enhanced wireless phase I and II requirements, and requires PSAPS within the same county to consolidate within 12 months of adoption of these rules and regulations. This includes procedures for justification of two PSAPS within the same county and exempts the Department of Public Safety and Native American tribes and pueblos. The proposed

amendments can be found at: www.state.nm.us/clients/dfa/files/lgd.

Copies of the proposed revised E911 rules and regulations can be obtained at the Department of Finance and Administration, Local Government Division web site at: www.state.nm.us/clients/dfa/files/lgd. Interested individuals may testify at the public rules and regulations hearing and/or may submit written comments no later than 4:00 p.m., April 27, 2004, to Local Government Division, Room 203, Bataan Memorial Building, Santa Fe, New Mexico 87501, or email to william.harris@state.nm.us. All written and oral testimony will be considered prior to issuance of the final E911 rules and regulations.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or services to attend or participate in the hearing or meeting, please contact Bill Harris, Local Government Division at 505-827-4992 or 505-699-8911. The Department of Finance and Administration requests at least ten (10) working days advance notice to provide requested alternative formats and/or special accommodations.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULEMAKING NOTICE

On Wednesday, April 7, 2004, beginning at 9:00 a.m. at New Mexico Western University/Light Hall Auditorium, Silver City, New Mexico 88062, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Game Commission Affirmation of Otero Mesa Conservation; Department and Interagency Mexican Wolf Management Activities; Revised Fee Schedule for Commercial Activities on Commission-owned Properties; Concept to Enhance Wildlife-associated Recreation Opportunities; Shooting Preserve License Application for Stout Preserve; Hunting Regulation and Associated Rules Development for Game Animals, Game Birds, Quality Hunts, and Manner and Method; Biennial Review of State-listed Species; Gabriel Lopez Revocations; Approval of FY 2003 Audit Report; 2004 Legislative Update Including FY 2005 Budget Allocation; Guide and Outfitter Notice of Contemplated Action Request; Alternatives to Resolve Marquez Wildlife

Area Access Needs; Approval of Lease Agreements for Commercial Activities on Commission-owned Property; Disposition of Richards Avenue Property; and Approval of Transfer Documentation: Eagle Nest Lake State Park. There will also be a closed Executive Session to discuss personnel, litigation and land acquisitions as per 10-15-1 NMSA.

The Commission will open the following rules for amendment or adoption:

* Sections 19.31.8 NMAC, for 2005-2006 and 2006-2007; Upland Game Rule 19.31.5 NMAC, for 2004-2005; Waterfowl Rule 19.31.6, NMAC, for 2004-2005; Manner and Method Rule 19.30.10, NMAC; Boundary Rule 19.30.4, NMAC; Quality Hunt Criteria and Areas Rule 19.30.7, NMAC; and Private Land Elk License Allocation Rule 19.30.5, NMAC, will be opened for development of regulations to Commission action.

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

NEW MEXICO DEPARTMENT OF HEALTH PUBLIC HEALTH DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.30.2 NMAC "Title X Family Planning Services". The Hearing will be held at 9:00 a.m. on Friday, April 30, 2004, in the auditorium of the Harold Runnels Building located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted in order to repeal the established Department of Health's regulation governing Title X services. The intent is that all New Mexico Title X clinic sites will utilize and abide by the federal "Program Guidelines For Project Grants For Family Planning Services" which the Department of Health's Regulation is based on. The federal Guidelines are issued by the United States Department of Health and Human Services, Office of Population Affairs.

Please submit any written comments regarding the proposed action to the attention of:

Margie Montoya
Family Planning Program, PHD, NMDOH
2040 S. Pacheco Street 2nd Floor, Santa Fe,
New Mexico 87505
(505) 476-8875

If you are an individual with a disability who is in need of a special assistance or accommodations to attend or participate in the hearing, please contact Genevieve Lujan (505) 476-8882. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

STATE OF NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

IN THE MATTER OF AMENDING 13.11.2 NMAC, DEFENSE COSTS AND DEDUCTIBLES WITHIN LIMITS

DOCKET NO.
04-00069-IN

NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER

I. SOLICITATION OF COMMENTS

The Superintendent of Insurance is issuing this notice to provide an opportunity for public comment and to create a record for a decision on the proposed amendment of 13.11.2 NMAC, Defense Costs And Deductibles Within Limits. The Superintendent requests written and oral comments from all interested persons and entities on the proposed amendment.

All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Superintendent's reliance on such information is noted in the order the Superintendent ultimately issues.

II. ORDER

IT IS THEREFORE ORDERED that this

Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing be held on Wednesday, May 12, 2004, at 9:30 a.m. in the Fourth Floor Hearing Room of the P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule. All interested persons wishing to present testimony may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before Friday, May 7, 2004. All relevant and timely comments, including data, views, or arguments will be considered by the Superintendent before final action is taken in this proceeding. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also submit a diskette copy of written comments to the Docketing Office or e-mail a copy of written comments to elizabeth.bustos@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Insurance Division Staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*. To obtain a copy of the proposed rule: (1) send the docket number, rule name, and rule number to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying and postage; (2) call the Docketing Office at 505-827-4526 with the docket number, rule name, and rule number (you will be billed \$5.00 to cover the cost of copying and

postage); or e-mail Elizabeth Bustos at elizabeth.bustos@state.nm.us with the docket number, rule name, and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail at no charge). The proposed rule is also available for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

III. ADVISEMENTS

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, NMSA 1978, Section 2-11-1 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ann Echols, on or before Friday, May 7, 2004, at (505) 827-4559. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Echols.

DONE, this day of 2004.

NEW MEXICO PUBLIC REGULATION
COMMISSION

INSURANCE DIVISION

ERIC P. SERNA, Superintendent of
Insurance

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

PUBLIC SCHOOL CAPITAL OUTLAY
COUNCIL

NOTICE OF PROPOSED RULEMAKING

The Public School Capital Outlay Council ("Council") is scheduled to consider the following rulemaking actions at its May 12, 2004 meeting beginning at 9:00 a.m. in Room 317 of the State Capitol, Santa Fe, New Mexico:

[Please see *chart*, pg. 142]

Rule Number	Rule Name	Proposed Action
6.27.1 NMAC	GENERAL PROVISIONS	Amend rule
6.27.2 NMAC	APPLICATION AND GRANT PROCEDURES	Repeal current rule
6.27.2 NMAC	PUBLIC SCHOOL FACILITIES AUTHORITY	Adopt new rule
6.27.3 NMAC	POST-GRANT PROCEDURES	Repeal current rule
6.27.3 NMAC	APPLICATION AND GRANT ASSISTANCE PROCEDURES	Adopt new rule
6.27.4 NMAC	POST-GRANT PROCEDURES	Adopt new rule
6.27.40 NMAC	DEFICIENCIES CORRECTION: GENERAL PROVISIONS AND PRIORITIZATION CRITERIA	Amend and rename rule (proposed amendments will also incorporate Prioritization Criteria)
6.27.41 NMAC	PRIORITIZATION CRITERIA	Repeal rule – provisions will be incorporated in 6.27.40 NMAC
6.27.42 NMAC	DEFICIENCIES CORRECTION: MANAGEMENT AND OVERSIGHT	Amend rule
6.27.43 NMAC	DEFICIENCIES CORRECTION: COUNCIL APPROVAL PROCEDURES	Amend rule

There will be a public hearing regarding the proposed rules on May 5, 2004 at 10:00 a.m. at the State Capitol Building, Room 317, Santa Fe, New Mexico. The proposed rules are posted on the Public School Facilities Authority's website at www.nmschool-buildings.org and have been disseminated to public school districts, charter schools, and other interested parties. Copies may also be obtained by contacting Lena Archuleta, Public School Facilities Authority, 2019 Galisteo, Suite B-1, Santa Fe, NM, 87505 ((505) 988-5989); larchuleta@psfa.k12.nm.us). Written comments regarding the proposed rulemaking should be submitted to Ms. Archuleta at the addresses shown above. Comments may also be telefaxed to Ms. Archuleta at (505) 988-5933. Written comments must be submitted no later than 5:00 p.m. on May 5, 2004, however, submission of written comments as soon as possible is encouraged.

The Council will act on the proposed rules at a public meeting for which notice is given in accordance with the Council's Open Meetings Policy. The agenda will be available at least twenty-four hours prior to the meeting and may be obtained by contacting Ms. Archuleta. Notice of any changes regarding the date, time, and location of the Public School Capital Outlay Council meeting will be provided in accordance with the Council's open meetings policy. The agenda will also be mailed to public school districts and charter schools.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Lena Archuleta at (505) 988-5989 by April 28, 2004. Public documents, including the agenda and minutes, can be provided in various accessible forms. Please contact Lena Archuleta if a summary or other type of accessible form is needed.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 21 CIVIL PENALTY
ASSESSMENTS BY THE STATE
LONG-TERM CARE OMBUDSMAN

9.2.21.1 ISSUING AGENCY:
Aging and Long-Term Services
Department.
[9.2.21.1 NMAC - N, 4/1/2004]

9.2.21.2 SCOPE: This rule
applies to the general public.
[9.2.21.2 NMAC - N, 4/1/2004]

9.2.21.3 S T A T U T O R Y
AUTHORITY: This rule is adopted pur-
suant to the terms of 42 U.S.C. Section
3058g(j), Sections 28-4-6(B), 28-17-5 and
28-17-19 NMSA 1978 and Laws 2004, Ch.
23, Sec. 6(E).
[9.2.21.3 NMAC - N, 4/1/2004]

9.2.21.4 D U R A T I O N :
Permanent.
[9.2.21.4 NMAC - N, 4/1/2004]

9.2.21.5 EFFECTIVE DATE:
April 1, 2004, unless a later date is cited in
the history note at the end of a section.
[9.2.21.5 NMAC - N, 4/1/2004]

9.2.21.6 OBJECTIVE: This
rule establishes a schedule of civil penalties
that will be imposed on persons or entities
that violate Section 28-17-19 NMSA 1978.
[9.2.21.6 NMAC - N, 4/1/2004]

9.2.21.7 DEFINITIONS: The
following terms are used in this rule:

**A. “civil penalty assess-
ment”** means a civil monetary penalty
imposed on a person or entity by the state
long-term care ombudsman pursuant to the
terms of Section 28-17-19 NMSA 1978 and
this rule;

B. “department” means
the aging and long-term services depart-
ment. It is the state department charged,
among other things, with implementing the
requirements of the federal Older
Americans Act of 1965, as amended (42
U.S.C. Section 3001, et seq.);

**C. “long-term care
ombudsman program”** means the program
administered by the state long-term care
ombudsman; and

**D. “state long-term care
ombudsman”** means the office established

pursuant to the terms of 42 U.S.C. Section
3058g and Section 28-17-4 NMSA 1978 to,
among other things, identify, investigate
and resolve complaints that are made by,
or on behalf of, residents of long-term care
facilities and that relate to action, inaction
or decisions that may adversely affect the
health, safety, welfare or rights of the resi-
dents.

[9.2.21.7 NMAC - N, 4/1/2004]

**9.2.21.8 WILLFUL INTER-
FERENCE WITH LONG-TERM CARE
OMBUDSMAN PROGRAM:**

A. Any person or entity
that willfully interferes with the lawful
actions of the long-term care ombudsman
program shall be subjected to civil penalties
up to a maximum of \$5,000 per occurrence
as follows:

(1) failing to allow an ombuds-
man immediate entry into a long-term care
facility: \$500 minimum per occurrence;

(2) imposing unreasonable time
limits or constraints on visiting a long-term
care facility or its residents or employees:
\$500 minimum per occurrence;

(3) failing to provide an ombuds-
man, upon proper written request, immedi-
ate access to readily available medical, per-
sonal, financial or other nonmedical
records, including administrative records,
policies, procedures or documents that con-
cern, involve or pertain to a resident’s diet,
comfort, health, safety or welfare, but not
including internal quality assurance or risk
management reports: \$500 minimum per
occurrence;

(4) failing to provide an ombuds-
man, upon proper written request, access
within twenty-four hours to nonreadily
available medical, personal, financial or
other nonmedical records, including admin-
istrative records, policies, procedures or
documents that concern, involve or pertain
to a resident’s diet, comfort, health, safety
or welfare, but not including internal quali-
ty assurance or risk management reports:
\$500 minimum per occurrence;

(5) failing to honor a legally-exe-
cuted HIPAA-compliant authorization form
from a resident or a resident’s surrogate
decision maker for release of records, or
failing to honor a written authorization form
signed by the state long-term care ombuds-
man or an ombudsman coordinator in accor-
dance with Section 28-17-13(B) NMSA
1978, or requiring redundant or legally-
unnecessary forms to be completed: \$500
minimum per occurrence;

(6) eavesdropping on any private
conversation between an ombudsman and a
resident or any other person: \$500 mini-
mum per occurrence;

(7) failing to provide a quiet pri-
vate place for an ombudsman to meet with a
resident or any other person: \$500 mini-
mum per occurrence;

(8) instructing a resident, employ-
ee or any other person not to file a com-
plaint with the long-term care ombudsman
program, or not to provide information to,
or otherwise cooperate with, the long-term
care ombudsman program: \$2,500 mini-
mum per occurrence;

(9) willfully concealing facts
from, or misrepresenting facts to, an
ombudsman: \$2,500 minimum per occur-
rence;

(10) failing to acknowledge and
act timely upon communications with an
ombudsman relating to an investigation:
\$500 minimum per occurrence; and

(11) any other willful action that
interferes with the lawful actions of the
long-term care ombudsman program: \$250
minimum per occurrence.

B. Factors that will be
considered in imposing civil penalties
greater than the minimum amounts include,
but are not limited to, the following:

(1) whether the interference with
the long-term care ombudsman program
caused actual harm to any resident of the
facility;

(2) the number and amounts of
civil penalties that have been assessed
against a facility or its owners previously;
and

(3) whether the interference with
the long-term care ombudsman program
was based on a facility policy or a policy of
its owners (as opposed, for example, to an
isolated incident caused by a lower-level
employee).

[9.2.21.8 NMAC - N, 4/1/2004]

9.2.21.9 RETALIATION:

A. Any person or entity
that discriminates against, disciplines, or
retaliates against any resident, employee, or
other person for filing a complaint with the
long-term care ombudsman program, or for
providing information to, or otherwise
cooperating with, the long-term care
ombudsman program shall be subjected to
civil penalties up to a maximum of \$10,000
per occurrence as follows:

(1) discharging a resident:
\$10,000 per occurrence;

(2) withholding treatment to, or
medication from, a resident: \$2,500 mini-
mum per occurrence;

(3) isolating a resident or chang-
ing a resident’s room: \$1,000 minimum per
occurrence;

(4) restricting a resident’s ability
to communicate with others: \$1,000 mini-

num per occurrence;

(5) ignoring a resident's request for assistance or delaying response to a request: \$1,000 minimum per occurrence;

(6) taking a resident's property, even if the property has no value: \$1,000 minimum per occurrence;

(7) terminating an employee of a long-term care facility: \$10,000 per occurrence;

(8) suspending, demoting or taking any other action with monetary consequences against an employee of a long-term care facility: \$2,500 minimum per occurrence;

(9) barring a person from a facility: \$1,000 minimum per occurrence; and

(10) instituting any other discriminatory, disciplinary or retaliatory action against a resident, a resident's family member or other representative, an employee, or any other person: \$500 minimum per occurrence.

B. Factors that will be considered in imposing civil penalties greater than the minimum amounts include, but are not limited to, the following:

(1) whether the discrimination, discipline or retaliation caused actual harm to any resident of the facility;

(2) the number and amounts of civil penalties that have been assessed against a facility or its owners previously; and

(3) whether the discrimination, discipline or retaliation was based on a facility policy or a policy of its owners (as opposed, for example, to an isolated incident caused by a lower-level employee). [9.2.21.9 NMAC - N, 4/1/2004]

9.2.21.10 CIVIL PENALTY ASSESSMENT:

A. Upon determining that there has been a violation of Section 28-17-19 NMSA 1978 and this rule, the state long-term care ombudsman may deliver to the person or entity charged with the violation a notice of civil penalty assessment. The notice shall be delivered in person or by certified mail, return receipt requested. The notice shall include:

(1) the name and address of the person or entity to whom the civil penalty assessment is directed;

(2) the date of the civil penalty assessment;

(3) the basis for the civil penalty assessment;

(4) the amount of the civil penalty assessment;

(5) the date the civil penalty assessment is due for payment; and

(6) notice of the right to request a hearing before the department to challenge the civil penalty assessment.

B. Unless a hearing is requested, the civil penalty assessment shall be paid to the department within thirty (30) calendar days from the date of the assessment. Payment shall be in the form of cash, cashier's check or money order.

[9.2.21.10 NMAC - N, 4/1/2004]

9.2.21.11 RECOVERY PROHIBITED:

No person or entity that has been issued a civil penalty assessment shall recover or attempt to recover the assessment or any portion of it, directly or indirectly, from any resident of a long-term care facility or from any person, insurer, governmental agency or other entity that may be responsible for paying for the services rendered to a resident of a facility.

[9.2.21.11 NMAC - N, 4/1/2004]

History of 9.2.21 NMAC: [RESERVED]

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS CHAPTER 2 AGE PART 22 HEARINGS TO CHALLENGE CIVIL PENALTY ASSESSMENTS BY THE STATE LONG-TERM CARE OMBUDSMAN

9.2.22.1 ISSUING AGENCY: Aging and Long-Term Services Department.

[9.2.22.1 NMAC - N, 4/1/2004]

9.2.22.2 SCOPE: This rule applies to the general public and governs the hearings conducted by the aging and long-term services department to address civil penalties that have been assessed on persons or entities by the state long-term care ombudsman. It does not govern other hearings conducted by the department.

[9.2.22.2 NMAC - N, 4/1/2004]

9.2.22.3 STATUTORY AUTHORITY: This rule is adopted pursuant to the terms of 42 U.S.C. Section 3058g(j), Sections 28-4-6(B), 28-17-5 and 28-17-19 NMSA 1978 and Laws 2004, Ch. 23, Sec. 6(E).

[9.2.22.3 NMAC - N, 4/1/2004]

9.2.22.4 DURATION: Permanent.

[9.2.22.4 NMAC - N, 4/1/2004]

9.2.22.5 EFFECTIVE DATE: April 1, 2004, unless a later date is cited in the history note at the end of a section.

[9.2.22.5 NMAC - N, 4/1/2004]

9.2.22.6 OBJECTIVE: This

rule establishes a hearing procedure for a person or entity to challenge a civil penalty assessment that has been issued to it by the state long-term care ombudsman pursuant to the terms of Section 28-17-19 NMSA 1978 and applicable department regulations.

[9.2.22.6 NMAC - N, 4/1/2004]

9.2.22.7 DEFINITIONS: The following terms are used in this rule:

A. "assessed party" means a person or entity that has been issued a civil penalty assessment by the state long-term care ombudsman;

B. "civil penalty assessment" means a civil monetary penalty imposed on a person or entity by the state long-term care ombudsman pursuant to the terms of Section 28-17-19 NMSA 1978 and applicable department regulations;

C. "department" means the aging and long-term services department. It is the state department charged, among other things, with implementing the requirements of the federal Older Americans Act of 1965, as amended (42 U.S.C. Section 3001, et seq.);

D. "hearing officer" means an impartial person designated by the secretary to preside over proceedings under this rule. A hearing officer may be an employee of the department (except for an employee of the long-term care ombudsman program), a policy advisory committee member, or any other impartial person. A hearing officer may be, but is not required to be, an attorney at law;

E. "long-term care ombudsman program" means the program administered by the state long-term care ombudsman;

F. "parties" mean the assessed party and the state long-term care ombudsman;

G. "secretary" means the secretary of the department; and

H. "state long-term care ombudsman" means the office established pursuant to the terms of 42 U.S.C. Section 3058g and Section 28-17-4 NMSA 1978 to, among other things, identify, investigate and resolve complaints that are made by, or on behalf of, residents of long-term care facilities and that relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the residents.

[9.2.22.7 NMAC - N, 4/1/2004]

9.2.22.8 REPRESENTATION:

A. A natural person may appear as a party on his or her own behalf or by an attorney licensed to practice law in New Mexico.

B. The state long-term

care ombudsman, corporations and other legal entities may be represented by a duly authorized officer or employee of the entity or by an attorney licensed to practice law in New Mexico.

C. An attorney for a party must file an entry of appearance at least ten (10) working days before the commencement of any hearing. The attorney of record for a party shall be deemed to continue to be the attorney of record until written notice of withdrawal of representation is provided to the hearing officer and the parties.

[9.2.22.8 NMAC - N, 4/1/2004]

9.2.22.9 REQUEST FOR HEARING:

A. An assessed party may request a hearing before the department. The request for hearing shall be in writing and received by the secretary no later than ten (10) working days from the date that the assessed party receives the civil penalty assessment. The request for hearing shall include:

- (1) the name and address of the assessed party;
- (2) a copy of the civil penalty assessment;
- (3) a brief statement of the factual or legal bases upon which the assessed party challenges the civil penalty assessment; and
- (4) a statement of the relief requested.

B. The assessed party shall send a copy of the request for hearing to the state long-term care ombudsman.

C. The department shall dismiss any request for hearing that is untimely or fails to substantially comply with the terms of this rule.

[9.2.22.9 NMAC - N, 4/1/2004]

9.2.22.10 APPOINTMENT OF HEARING OFFICER: Within five (5) working days of receipt of a timely request for hearing, the secretary will appoint a hearing officer and will send written notice of the appointment to the parties.

[9.2.22.10 NMAC - N, 4/1/2004]

9.2.22.11 NOTICE OF HEARING AND TIME LIMITS FOR HOLDING HEARING:

A. Within ten (10) working days of appointment, the hearing officer will establish the date, time and place of the hearing. The hearing will be no more than one hundred twenty (120) calendar days from the date of the civil penalty assessment unless the parties agree otherwise.

B. The hearing officer will issue a notice of hearing at least thirty (30) calendar days before the hearing date, unless the parties agree to a shorter time-

frame. The notice will be served on the parties by certified mail, return receipt requested. At the discretion of the hearing officer, the notice may be served by regular mail or other appropriate means on any other persons or entities that may have an interest in the proceedings.

C. The notice of hearing shall include:

- (1) the name of the assessed party;
- (2) the name and address of the state long-term care ombudsman;
- (3) the time, date, place, and nature of the hearing; and
- (4) a statement of the legal authority under which the hearing is to be held.

[9.2.22.11 NMAC - N, 4/1/2004]

9.2.22.12 VENUE: Unless the parties agree otherwise, the hearing will be held in the county where the events allegedly occurred that gave rise to the civil penalty assessment or where the long-term care facility in question is located.

[9.2.22.12 NMAC - N, 4/1/2004]

9.2.22.13 POWERS AND DUTIES OF THE HEARING OFFICER: The hearing officer shall have the authority to:

- A.** preside over hearings;
- B.** assure that hearings are properly recorded;
- C.** administer oaths and affirmations to the witnesses;
- D.** issue subpoenas and subpoenas *duces tecum*;
- E.** establish procedural schedules;
- F.** rule on motions and procedural requests;
- G.** require parties to attend hearings, pre-hearing conferences and settlement conferences;
- H.** require parties to produce for examination information or witnesses under their control;
- I.** require parties to express their positions on any issues in the proceedings;
- J.** require parties to submit legal briefs on any issues in the proceedings;
- K.** examine witnesses, and permit parties to examine witnesses;
- L.** determine the admissibility of evidence;
- M.** take official notice of any matter that is among the traditional matters of official or administrative notice in accordance with the terms of this rule;
- N.** recess any hearing from time to time;
- O.** regulate the course of

the proceedings and the conduct of any participants;

P. take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses;

Q. issue a recommended decision on the merits of a case, including findings of fact and conclusions of law;

R. approve settlements or other pre-hearing or post-hearing dispositions of cases by the parties, subject to final approval by the secretary; and

S. take any other action reasonably necessary to conclude the proceedings in a timely and fair manner.

[9.2.22.13 NMAC - N, 4/1/2004]

9.2.22.14 APPLICABILITY OF RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE:

Although formal rules of civil procedure and evidence do not apply, the hearing officer may look to the New Mexico rules of civil procedure and the New Mexico rules of evidence for guidance during the course of the proceedings. In addition, the hearing officer's recommended decision and the secretary's final decision must be supported by a residuum of legally competent evidence as would support a verdict in a court of law.

[9.2.22.14 NMAC - N, 4/1/2004]

9.2.22.15 COMMUNICATIONS WITH SECRETARY AND HEARING OFFICER:

A. No party, representative of a party, or other person shall communicate off the record about the merits of a case with the secretary or the hearing officer unless the communication is in writing and a copy is provided to all parties to the proceedings.

B. The secretary and the hearing officer shall not communicate off the record about the merits of a case with any party, representative of a party, or other person unless the communication is in writing and a copy is sent to all parties to the proceedings.

[9.2.22.15 NMAC - N, 4/1/2004]

9.2.22.16 PRE-HEARING DISCLOSURES AND DISCOVERY:

A. Upon written request of any party, the hearing officer may require parties to comply with reasonable discovery requests. Oral and written depositions are prohibited except to preserve the testimony of persons who are sick or elderly, or persons who will not be able to attend the hearing.

B. At least fifteen (15) calendar days before the hearing, each party shall file the following information with the hearing officer and send copies to the other parties:

(1) the name of each witness that the party will or may call at the hearing;

(2) a summary of the anticipated direct testimony of each witness and, if the testimony includes expert opinions, a list of documents or other information that provides the bases for those opinions;

(3) an estimate of the length of time for the direct testimony of each witness; and

(4) a list of exhibits that will or may be offered into evidence at the hearing. In addition, each party shall provide the other parties, but not the hearing officer, with copies of all exhibits that are identified on the exhibit list but have not been provided previously.

C. Parties are encouraged to enter into stipulations of fact to expedite the hearing process. Any stipulations must be filed jointly with the hearing officer at least ten (10) working days before the hearing.

[9.2.22.16 NMAC - N, 4/1/2004]

9.2.22.17 SUBPOENAS:

A. Pursuant to Section 28-17-19(C) NMSA 1978, upon the written request of a party, the hearing officer may issue subpoenas to compel attendance of witnesses or production of records in connection with proceedings before the department.

B. In order to subpoena a person who is not a party to the proceedings, or an agent or representative of a party, the party requesting the subpoena shall tender witness fees and mileage to the person subpoenaed in accordance with the terms of Rule 1-045 NMRA.

C. The hearing officer may condition a subpoena to permit the inspection and copying of records upon the party requesting the subpoena paying the person subpoenaed the reasonable cost of inspection and copying in advance.

[9.2.22.17 NMAC - N, 4/1/2004]

9.2.22.18 EVIDENCE AND CONDUCT OF HEARING:

A. Hearings will be conducted as follows:

(1) all hearings will be open to the public, unless closing a hearing is necessary to protect the privacy of any person who is entitled to privacy protection under federal or state law;

(2) only relevant and material evidence is admissible at hearings. Evidence will be allowed if it is of a type commonly relied upon by reasonably prudent persons in the conduct of serious affairs;

(3) redundant evidence will be excluded;

(4) witnesses shall be examined orally, under oath or affirmation. The par-

ties and the hearing officer shall have the right to cross-examine witnesses; and

(5) the hearing officer may take official notice of any matter that is among the traditional matters of official or administrative notice, and may take official notice of any matter that is within the department's specialized knowledge. The hearing officer shall inform the parties of any matters officially noticed, and shall afford the parties an opportunity to contest any such matters.

B. The burden of persuasion at the hearing shall be on the state long-term care ombudsman, which must prove its case by a preponderance of the evidence unless the case involves allegations of fraud. In cases involving allegations of fraud, the state long-term care ombudsman must prove its case by clear and convincing evidence.

C. At the hearing, the state long-term care ombudsman shall present its evidence first. If the assessed party wishes to present evidence, it shall proceed second. Thereafter, only the state long-term care ombudsman may present rebuttal evidence. Rebuttal evidence shall be confined to the issues raised in the assessed party's presentation of evidence. Each party will be given an opportunity to offer a final oral or written argument without additional presentation of evidence.

[9.2.22.18 NMAC - N, 4/1/2004]

9.2.22.19 RECORD OF HEARING:

A. Unless a hearing is stenographically recorded and the hearing officer orders otherwise, all hearings shall be recorded electronically by audio or audio-video. Any party desiring a copy of the audio or audio-video shall make a written request to the hearing officer and shall pay the cost of preparing a copy.

B. No later than five (5) working days before a hearing, a party may request that the hearing be stenographically recorded at the cost of the requesting party. The request shall be in writing to the hearing officer and shall certify that the party has hired a certified court reporter and made all necessary arrangements for the court reporter to perform his or her job. In addition, the requesting party shall arrange for the court reporter to deliver two (2) copies of the completed hearing transcript to the hearing officer. A court reporter's transcription becomes official when certified by the hearing officer. The requesting party shall pay the court reporter's fees, including any costs associated with providing the copies of the completed hearing transcript to the hearing officer.

C. Record. The record in a hearing shall consist of the following:

(1) the civil penalty assessment;

(2) the assessed party's request for hearing;

(3) the notice of appointment of the hearing officer;

(4) the notice of hearing;

(5) all pleadings and orders;

(6) any written information requested by the hearing officer and provided to him or her by the parties before the hearing;

(7) all exhibits;

(8) all stipulations;

(9) all statement of matters officially noticed by the hearing officer;

(10) the electronic audio or audio-video recording, or the court reporter's written transcription of the hearing prepared in accordance with this rule;

(11) the hearing officer's recommended decision;

(12) any motions for reconsideration and rulings thereon; and

(13) the secretary's final decision.

[9.2.22.19 NMAC - N, 4/1/2004]

9.2.22.20 HEARING OFFICER'S RECOMMENDED DECISION:

A. The hearing officer shall present a written recommended decision to the secretary after the close of the hearing, and shall send copies to the parties. The recommended decision shall be based solely on the record and shall include proposed findings of fact and conclusions of law.

B. Any motions for reconsideration shall be submitted to the hearing officer within five (5) working days from the date of service of the hearing officer's recommended decision. Such motions shall be decided without a hearing unless the hearing officer orders otherwise.

[9.2.22.20 NMAC - N, 4/1/2004]

9.2.22.21 SECRETARY'S FINAL DECISION:

A. The secretary shall issue a final written decision within ten (10) working days of the receipt of the hearing officer's recommended decision or ruling on a motion for reconsideration. Based upon the evidence in the record, the secretary may affirm, reverse or modify the hearing officer's recommended decision as modified by any subsequent rulings of the hearing officer. The secretary's final decision shall inform the parties of their right to seek judicial review.

B. The secretary shall send copies of the final decision to the parties by certified mail, return receipt requested.

C. When the secretary's final decision affirms a civil penalty assessment by the state long-term care ombudsman, the assessed party shall pay the civil penalty to the department within thirty (30)

calendar days from the date of the decision. Payment shall be in the form of cash, cashier's check or money order.
[9.2.22.21 NMAC - N, 4/1/2004]

9.2.22.22 APPEAL: A person who is aggrieved by the secretary's final decision may appeal to the district court in accordance with the provisions of Section 39-3-1.1 NMSA 1978 and Rule 1-074 NMRA. The date of filing of the secretary's final decision starts the time limit for appeal.
[9.2.22.22 NMAC - N, 4/1/2004]

9.2.22.23 NO AUTOMATIC STAY PENDING JUDICIAL REVIEW: The filing of a notice of appeal shall not stay the enforcement of the secretary's final decision. Upon a showing of substantial hardship and irreparable harm, the secretary may grant a stay of the final decision pending appeal. The district court may also grant a stay in accordance with the provisions of Rule 1-074 NMRA.
[9.2.22.23 NMAC - N, 4/1/2004]

9.2.22.24 ENFORCEMENT OF ORDERS AND PAYMENT IN DEFAULT: Whenever an assessed party is in default of a civil penalty assessment, the state long-term care ombudsman may file an action in district court solely for the purpose of entry of judgment and enforcement of the civil penalty. The district court shall accept the civil penalty assessment without reviewing the basis for it and shall enter an appropriate judgment or order to enforce the civil penalty assessment.
[9.2.22.24 NMAC - N, 4/1/2004]

History of 9.2.22 NMAC: [RESERVED]

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

Explanatory paragraph: This is an amendment to 16.30.3 NMAC, Sections 11 and 13, effective April 15, 2004. Paragraphs (1) and (2) of Subsection A of 16.30.3.11, were amended to increase renewal fees.

16.30.3.11 REGISTRATION RENEWAL:

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

(1) in state
.....[~~\$150.00~~] \$225.00

(2) out of state [~~\$250.00~~]
\$325.00
[16.30.3.11 NMAC - Rp 16 NMAC 30.3.11, 9/6/2001; A, 9/15/2003; A, 4/15/2004]

16.30.3.13 RENEWAL OF AN EXPIRED CERTIFICATE:

~~**A.** In the event a registrant fails to timely renew his or her certificate, the registrant shall be required to pay to the board both the annual fee and a late fee. The late fee shall be fifty dollars (\$50.00) for the first late month (January), after which the late fee shall equal one (1) year's registration fee (one hundred twenty five dollars (\$125.00) for out of state registrants and seventy five dollars (\$75.00) for in-state residents)~~

~~**B.** In no event shall the annual fee and the late fee exceed twice the regular renewal fee for each year the registrant remains in default, for a period not to exceed three (3) years, after which time an expired certificate becomes inactive.~~

~~**C.** The former registrant shall complete continuing education requirements as stated in paragraph 7 of Subsection B of 16.30.3.11 NMAC. At the board's discretion, the former registrant may be required to present evidence to the board of continued proficiency, complete additional requirements, and appear personally before the board in order that the board may determine whether to renew the lapsed certificate.]~~

A. A registrant whose license has expired for no more than one (1) month shall be required to pay the registration fee and a late fee of fifty (\$50) dollars.

B. A reinstatement applicant whose license has been expired for more than one (1) month shall be required to:

(1) pay a registration fee and a penalty equal to one (1) year's registration fee for each year expired but in no case shall the penalty exceed three times the annual registration fee;

(2) submit a signed and notarized reinstatement affidavit; and

(3) complete continuing education requirements as stated in Paragraph (7) of Subsection B of 16.30.3.11 NMAC; at the board's discretion, the former registrant may be required to present evidence to the board of continued proficiency, complete additional requirements, and appear personally before the board in order that the board may determine whether to renew the lapsed certificate.

[16.30.3.13 NMAC - Rp 16 NMAC 30.3.11.3, 9/6/2001; A, 9/15/2002; A, 4/15/2004]

NEW MEXICO OFFICE OF THE STATE AUDITOR

NOTICE:

The Office of the State Auditor is repealing 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies* effective March 31, 2004. 2.2.2 NMAC will be replaced with 2.2.2 NMAC, *Requirements for Contracting and Conducting Audit of Agencies*, which will become effective March 31, 2004.

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, 2113 Warner Circle, Santa Fe, NM 87505-5499
[2.2.2.1 NMAC - Rp 2.2.2.1 NMAC, 3-31-04]

2.2.2.2 SCOPE: Agencies as defined by the Audit Act and independent public accountants interested in conducting financial and compliance audits of agencies of the state of New Mexico.
[2.2.2.2 NMAC - Rp 2.2.2.2 NMAC, 3-31-04]

2.2.2.3 STATUTORY AUTHORITY: The Audit Act Section 12-6-12, requires the state auditor to promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with auditing standards generally accepted in the United States of America. The regulations become effective upon filing in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978). The Audit Act (12-6-1 through 12-6-14, NMSA 1978) provides the state auditor with authority to conduct financial and compliance audits in accordance with governmental auditing, accounting and financial reporting standards, local, state and federal laws, rules, and regulations. The Audit Act also gives the state auditor the authority to perform special audits of the financial affairs and transactions of an agency, in whole or in part, in situations deemed necessary.

[2.2.2.3 NMAC - Rp 2.2.2.3 NMAC, 3-31-04]

2.2.2.4 DURATION:

Permanent

[2.2.2.4 NMAC - Rp 2.2.2.4 NMAC, 3-31-04]

2.2.2.5 EFFECTIVE DATE:

March 31, 2004, unless a later date is cited at the end of a section.

[2.2.2.5 NMAC - Rp 2.2.2.5 NMAC, 3-31-04]

2.2.2.6 OBJECTIVE:

The objective is to establish procedures and requirements for the contracting and conducting of state governmental audits in the state of New Mexico.

[2.2.2.6 NMAC - Rp 2.2.2.6 NMAC, 3-31-04]

2.2.2.7 DEFINITIONS:

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

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

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

D. "CHE" means commission on higher education

E. "CFR" means code of federal regulations

F. "CPE" means continuing professional education

G. "COSO" means committee on sponsoring organizations of tread-way commission

H. "DFA" means department of finance and administration

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

J. "FDIC" means federal deposit insurance corporation

K. "FDS" means financial data schedule

L. "GAAP" means

accounting principles generally accepted in the United States of America

M. "GAGAS" means generally accepted governmental auditing standards

N. "GASB" means governmental accounting standards board

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

P. "GSD" means general services department

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

R. "IPA" means independent public accountant

S. "IRC" means internal revenue code

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

U. "NMAC" means New Mexico administrative code

V. "NMSA" means New Mexico statutes annotated

W. "Office" means office of the state auditor

X. "OMB" means office of management and budget

Y. "PED" means public education department

Z. "PHA" means public housing authority

AA. "REAC" means real estate assessment center

BB. "REC" means regional education cooperative

CC. "RSI" means required supplemental information

DD. "State auditor" means the elected state auditor of the state of New Mexico, personnel of his office designated by him or independent auditors designated by him

EE. "SAS" means statement on auditing standards

FF. "UFRS" means uniform financial reporting standards

GG. "U.S. GAO" means U.S. general accounting office

[2.2.2.7 NMAC - Rp 2.2.2.7 NMAC, 3-31-04]

2.2.2.8 THE AUDIT CONTRACT:

A. Section 12-6-3, NMSA 1978, (Annual and Special Audits) mandates that: (1) the financial affairs of every agency be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him, or by independent auditors approved by him; (2) the comprehensive annual financial report for the state be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by inde-

pendent auditors approved by him; (3) the audits be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. Section 12-6-14 NMSA 1978 (Contract Audits) states that "the state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however that an agency subject to oversight by the state public education department or the commission on higher education shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section." Section 61-28B-13, the 1999 Public Accountancy Act states, "A firm must hold a permit issued pursuant to the provisions of the 1999 Public Accountancy Act [61-28B-1 to 61-28B-29 NMSA 1978] in order to provide attest services." Only firms that are registered and in good standing with the board shall audit financial statements. 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 and who have complied with all the requirements of this rule including:

(1) Section 2.2.2.14 NMAC, continuing education and quality control requirements;

(2) Subsection I of 2.2.2.8 NMAC, independence requirements; and

(3) For an IPA who has previously audited agencies under this rule, they must have previously complied in the past with:

(a) Section 2.2.2.9 NMAC, report due dates; and

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

B. The state auditor shall notify each agency, in writing, whether the audit is to be conducted by the state auditor or an IPA.

C. If the audit is to be conducted by an IPA, the agency shall comply

with the following procedures to obtain audit services:

(1) The agency shall identify all elements or services to be solicited upon receipt of notification, and request quotations or proposals for each identifiable element:

- (a) financial statement audit;
- (b) federal single audit;
- (c) financial statement preparation;

(d) GASB 34 and 35 implementation; and

(e) other (i.e., housing authority, charter school, foundations and other component units).

(2) Audit services costing **no more than \$20,000 (excluding gross receipts tax)** should be considered small purchases. The agency is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. A multi-year proposal (not to exceed three years) exceeding \$20,000 for all three years is not considered a small purchase.

(3) For audit services costing **over \$20,000 (excluding gross receipts tax)**, the agency shall seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (13-1-1 to 13-1-199 NMSA 1978); New Mexico general services department (GSD) rule 1.4.1 NMAC, *Procurement Code Regulations*, if applicable; and New Mexico department of finance and administration (DFA) rule 2.40.2 NMAC, *Governing the Approval of Contracts for the Purchase of Professional Services*. In addition, if the agency intends to allocate a portion of the audit cost to federal funds as direct or indirect charges, the agency should comply with procurement requirements stated in the federal office of management and budget's, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, (OMB A-102 Common Rule). Institutions of higher education and state and local hospitals should comply with procurement standards stated in OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*.

(4) In accordance with Section 13-1-150 NMSA 1978 (Multi-term Contracts), the agency may, and is strongly encouraged to, request a multi-year proposal to provide services, not to exceed a term of **three** years including all extensions and renewals. The term of the contract shall be one-year with the option to extend for two successive one-year terms at the **same price, terms and conditions as stated on**

the original proposal. Exercising the option to extend must be by mutual agreement of the parties to the contract and with the approval of the state auditor. In the event that either of the parties to the contract elects not to extend or the state auditor disapproves the recommendation for renewal, the agency shall use the procedures in Paragraphs (2) and (3) of Subsection C 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 C of 2.2.2.8 NMAC using a two-step evaluation process, preferably executed by a selection committee. Members of component units such as charter schools, housing authorities, etc., should be included in the IPA selection process. Each IPA shall initially be evaluated on the basis of experience and qualifications. After the initial top three selections, the IPAs shall be evaluated on the basis of cost. The agency shall use the evaluation form attached to this rule as Appendix B to document this process.

(6) After completing the evaluations for each IPA, and making the IPA selection, each agency shall submit the information listed below to the state auditor on or before May 31, together with its IPA recommendation. (Agencies with a fiscal year end other than June 30 must use a due date 30 days before the end of the fiscal year).

(a) A cover letter indicating the name of the firm being recommended, the oversight agency approval signature, and an indication of whether the proposal is "annual" or "multi-year";

(b) The fully completed and signed evaluation form for the IPA being recommended. If you are in year 2 or 3 of a multi-year proposal, submit a copy of part II of the evaluation form from the previous year; and

(c) A list of professional services contracts the agency had with any IPA on the state auditor's approved list during the previous calendar year.

(d) Agencies that are subject to the oversight of the state public education department (PED) or the commission on higher education (CHE) have the additional requirement of submitting their IPA recommendation to PED or CHE for approval prior to submitting their recommendation to the state auditor (Section 12-6-14, NMSA 1978). An agency may use the sample cover letter in Appendix A to document the required oversight agency approval.

(7) The state auditor may notify the appropriate oversight agency when an agency has failed to submit a timely auditor recommendation.

(8) If the agency fails to make a recommendation by the deadline, the state

auditor may conduct the audit.

(9) Per Section 12-6-14, NMSA1978, "The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit."

(10) The agency shall retain all procurement documentation, including completed evaluation forms, for three years.

(11) In the event the agency's recommendation is not approved by the state auditor, the state auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a different recommendation. This process will continue until the state auditor approves a recommendation. During this process, whenever a recommendation is not approved, the agency may petition the state auditor, within 15 days or prior to June 1, (whichever comes first) for reconsideration, wherein the petitioner presents evidence in support of its recommendation. The state auditor will set the time and place for an informal administrative hearing in a timely manner with consideration given the petitioner's circumstances.

D. The state auditor will use **discretion** and may not approve:

(1) an audit contract recommendations that does not serve the best interest of the public or the agency because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) the IPA has conducted the audit of the same agency for six consecutive years. The IPA shall not conduct the agency audit for a two-year period after conducting the agency audit for a period of six consecutive years;

(c) lack of competence or staff availability;

(d) circumstances that may cause untimely delivery of the audit report;

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

(f) terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) lack of compliance with the Procurement Code or this rule; or

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

(2) audit contract recommendations of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit report on time;

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

(d) performed nonaudit services for an agency 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 I of 2.2.2.8 of NMAC);

(f) failed to respond, in an acceptable manner, to an audit report or working paper review;

(g) indicated a lack of independence in fact or appearance;

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

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

(j) otherwise, in the opinion of the state auditor, shown himself or herself to be unfit to be awarded a contract;

(3) any audit which the state auditor decides to perform himself or with contracted IPAs [consistent with the October 6, 1993 stipulated order *Vigil v. King* No. SF 92-1487(C)], and pursuant to Section 12-6-3 NMSA 1978 (Annual and Special Audits), even if previously designated an agency for audit by an IPA.

E. The state auditor shall provide audit contract forms which must be used by the agency. **Only** forms provided by the **state auditor** will be accepted and shall:

(1) be completed and returned with the number of required copies **within fifteen (15) calendar days** as stated in the approval letter of IPA selection;

(2) bear original signatures;

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

(4) include the amount for each portion of the audit which covers the elements or services as well as the portion of the audit which covers federal funds.

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

G. A breach of any terms of the contract shall be grounds for immediate termination of the contract. **The injured party may seek damages for such breach from the offending party.** Any

IPA who knowingly makes false statements, assurances, or disclosures will be disqualified from conducting audits of agencies in New Mexico.

H. The IPA shall notify the agency and the state auditor, **in writing**, of any changes in staff assigned to perform the audit. The IPA must update the firm profile to reflect the staffing changes. The IPA shall not subcontract any portion of the services to be performed under the audit contract without the **prior written approval** of the state auditor. 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.

I. **Government Auditing Standard 2003 Revision** general standard related to independence is: "In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, should be **free both in fact and appearance from personal, external, and organizational impairments to independence.**" (GAGAS 3.03) The standard describes two overarching principles an audit organization must consider before agreeing to perform nonaudit services in order to avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the auditor is not independent in conducting audits. Audit organizations should not provide nonaudit services that involve performing management functions or making management decisions and they should not audit their own work or provide nonaudit services in situations where the nonaudit services are significant/material to the subject matter of the audit. (GAGAS 3.13)

(1) The GAGAS Amendment No. 3, **Independence**, was implemented early by the state auditor and applied to all New Mexico audits covered by the Audit Act effective for fiscal years ending June 30, 2002, and thereafter.

(2) This standard places responsibility on each auditor and the audit organization to maintain independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The following is substantially an excerpt from the AICPA fact sheet summarizing the key provision of the new GAGAS standards.

(a) The state auditor **will not** approve any contract for nonaudit services to be provided by the same IPA who performs the agency's annual audit for the following services: maintaining or preparing

the audited agency's basic accounting records; taking responsibility for basic financial or other records that the audit organization will audit; posting transactions (whether coded or not coded) to the agency's financial records or to other records that subsequently provide data to the agency's financial records; recommending a single individual for a specific position; conducting an executive search or a recruiting program for the audited agency; and operating or supervising the operation of the agency's information technology system; or preparing indirect cost proposals or cost allocation plans.

(b) Consideration and performance of nonaudit services that do not violate the two overarching principles shall be documented by the audit firm in accordance with the requirements of GAGAS 3.17. See also the GAO, **Government Auditing Standards Answers to Independence Standard Questions**, Question 46, that **requires documentation of the safeguards** when an audit firm prepares the trial balance, financial statements and notes and then also performs the audit.

(c) The state auditor **may** approve a contract for the following "nonroutine" nonaudit services to be provided by the same IPA who performs the agency's annual audit in circumstances where the **two overarching principles (above) are not violated and the seven required safeguards are met.** Safeguard (1) requires the IPA to document its consideration of the nonaudit service, and document its rationale that providing the nonaudit service does not violate the two overarching principles. Safeguard (2) requires the IPA to establish and document an understanding with the audited agency regarding the objectives, scope of work, and product or deliverables of the nonaudit service, before performing the nonaudit services. The IPA should also document an understanding with management that management is responsible for the substantive outcomes of the work. Safeguard (3) requires the IPA to preclude personnel who provided the nonaudit services from planning, conducting, or reviewing audit work related to the nonaudit service. (There is an exemption from this safeguard when the nonaudit services are the preparation of a trial balance, draft statements, and notes from appropriate books and records that balance, per Question 46 of the GAO, **Government Auditing Standards Answers to Independence Standard Questions**). Safeguard (4) precludes the IPA from reducing the scope and extent of the audit work beyond the level that would be appropriate if the nonaudit work was performed by another unrelated party. Safeguard (5) requires the IPA's quality control system for compliance with inde-

pendence requirements to include policies and procedures to assure consideration of the effect on the ongoing, planned, and future audits when deciding whether to provide nonaudit services and a requirement to have the understanding with management of the audited agency documented. The understanding should be communicated to management in writing. Documentation must specify management's responsibility for the nonaudit service, management's qualifications to conduct the required oversight, and that management's responsibilities were performed. Safeguard (6) requires that in cases where nonaudit services by their nature impair the audit organization's ability to meet either or both of the overarching principles for certain types of audit work, the audit organization should communicate to management of the audited agency, before performing the nonaudit service, that the audit organization would not be able to perform subsequent audit work related to the subject matter of the nonaudit service. Safeguard (7) requires that for audits selected in the peer review, all related nonaudit services should be identified to the audit organization's peer reviewer and the related safeguard documentation made available for peer review.

(i) Basic accounting services that **may** be allowed: (a) preparing draft financial statements based on management's chart of accounts and trial balance and any adjusting, correcting, and closing entries that have been approved by management; preparing draft notes to the financial statements based on information determined and approved by management; (b) preparing a trial balance based on management's chart of accounts; (c) maintaining depreciation schedules for which management has determined the method of depreciation, rate of depreciation, and salvage value of the asset; and/or (d) proposing adjusting and correcting entries that are identified during the audit so long as management makes the decision on accepting the entries.

(ii) Payroll services that **may** be allowed are: (a) computing pay amounts for the agency's employees based on agency maintained and approved time records, salaries or pay rates, and deductions from pay; (b) generating unsigned payroll checks; and (c) transmitting client approved payroll to a financial institution provided management has approved the transmission and limited the financial institution to make payments only to previously approved individuals.

(iii) Preparing routine tax filings in accordance with federal tax laws and rules and regulations **may** be allowed.

(iv) Human resource

services that **may** be allowed to assist management in its evaluation of potential candidates are limited to activities such as: (a) serving on an evaluation panel to review applications; and (b) interviewing candidates to provide input to management in arriving at a listing of best qualified applicants to be provided to management.

(v) Providing information technology services **may** be allowed if limited to services such as advising on system design, system installation, and system security if management acknowledges responsibility for the design, installation, and internal control over the agency's system and does not rely on the auditor's work as the primary basis for determining: (a) whether to implement a new system; (b) the adequacy of the new system design; (c) the adequacy of major design changes to an existing system; or (d) the adequacy of the system to comply with regulatory or other requirements.

(vi) Providing appraisal or valuation services **may** be allowed if limited to services such as: (a) reviewing the work of the agency or a specialist employed by the agency where the agency or specialist provides the primary support for the balances recorded in financial statements or other information that will be audited; or (b) valuing an agency's pension, other post-employment benefit, or similar liabilities provided management has determined and taken responsibility for all significant assumptions and data.

(vii) Contracts for gathering and reporting unverified external or third-party data to aid legislative and administrative decision-making **may** be allowed.

(viii) Services advising an agency regarding its performance of internal control self-assessments **may** be allowed.

(ix) Services assisting a legislative body by developing questions for use at a hearing **may** be allowed.

(3) The IPA shall provide with the annual firm profile a list of all contracts (except for the annual financial and compliance audit of the agency) entered into with any New Mexico governmental agency. The list should include the following information for special audits, or nonaudit services provided during the preceding calendar year: contract date; contract amount; and a description of the services provided.

(4) In accordance with Section 12-6-12, NMSA 1978, the agency and IPA shall not enter into any financial, special audit or any other nonaudit service contract without the **prior written approval** of the state auditor. The contract fee, start and completion date and scope of services to be performed should be included when submit-

ting nonaudit service contracts to the state auditor for approval. The agency and IPA must provide the state auditor with a copy of any report generated.

J. The state auditor will approve progress and final payments as follows:

(1) Section 12-6-14, NMSA 1978 (Contract Audits) provides that state auditor may approve progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(2) Progress payments up to 79% **do not** require state auditor approval, providing the agency certifies receipt of services. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Progress payments from 80% to 90% **do** require state auditor approval after being approved by the agency.

(3) The state auditor may allow only the first 50% of progress payments to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A of 2.2.2.9 NMAC.

(4) Section 12-6-14, NMSA 1978 (Contract Audits), provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has stated, in writing, that the audit has been conducted in a competent manner in accordance with contract provisions and this rule. The state auditor's determination with respect to final payment shall be stated in the letter accompanying the release of the report to the agency. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 B, NMSA 1978, and this rule and will be reported as an audit finding of the agency. Violation of this statute may subject the auditor to removal from the list of approved auditors.

(5) Section 12-6-14, 1978 NMSA (Contract Audits) also provides that "no payment of public funds may be made to an independent auditor unless a contract is entered into and approved."

K. Financial statements:

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts **rounded to the nearest dollar**.

(2) **The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records**, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as

requested to meet the 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 should provide the adjusting entries to the agency to reconcile the report to the books.

(4) If the IPA prepared the financial statements, in conformance with Subsection I of 2.2.2.8 NMAC for management's review and approval, including documenting the safeguards as required by GAGAS 3.17, the fact that the auditor prepared the financial statements must be disclosed in the concluding paragraphs of the audit findings and recommendations section of the audit report; however, this is not a finding. As indicated in the GAO, *Government Auditing Standards Answers to Independence Standard Questions*, Question 46, "**Maintaining the audited entity's books and records is the responsibility of its management.** Accordingly, management is responsible for ensuring that these books and records adequately support the preparation of financial statements in accordance with generally accepted accounting principles and that records are current and in balance."

L. Working papers:

(1) The working papers are to be retained for a minimum of three years from the date shown on the opinion letter of the audit report, or longer if requested by the federal oversight or cognizant agency or the state auditor. The state auditor shall have access to the working papers at the discretion of the state auditor.

(2) When requested by the state auditor, all working papers or clear legible copies shall be delivered to the state auditor.

(3) The working papers of a predecessor IPA are to be made available to a successor IPA in accordance with SAS No. 84. Any costs incurred will be borne by the requestor. If the successor IPA finds that the predecessor IPA's working papers do not comply with applicable auditing standards and this rule, or do not support 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 noted are of such significance to deem 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 of the following actions may be taken:

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

(b) the state auditor may deny or

limit the issuance of future audit contracts; and/or

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

M. Auditor communication:

(1) The *Government Auditing Standards 2003 Revision* Sections 4.6 through 4.13 provide guidance regarding auditor communication requirements in financial audits performed in accordance with GAGAS. GAGAS broadens the parties with whom auditors must communicate during the planning stages of the audit. Section 4.6 states "Auditors should communicate information regarding the nature, timing, and extent of planned testing and reporting and the level of assurance provided to officials of the audited entity and to the individuals contracting for or requesting the audit." Auditors should specifically communicate this information during the planning stages of a financial audit:

(a) any potential restriction of the auditors' report;

(b) the nature of any additional testing of compliance and internal control required by laws and regulations or otherwise requested like:

(i) planned testing of compliance with applicable state and federal laws and regulations shown in Subsections H and I of 2.2.2.10 NMAC;

(ii) planned tests of compliance with laws, regulations, and internal control related to single audit requirements that exceed the minimum GAGAS requirements (GAGAS 4.12); or

(iii) any agreed upon procedures [for example the HUD requirement for a separate attestation engagement required in Subparagraph (c) of Paragraph (5) of Subsection B of 2.2.2.12 NMAC.

(c) The communication should explain whether the auditors are planning on providing opinions on compliance with laws and regulations and internal control over financial reporting. Such tests are not usually sufficient in scope to opine on compliance or internal control over financial reporting, but contribute to the evidence supporting the auditors' opinion on the financial statements.

(d) To fulfill these communication requirements, IPAs shall prepare a **written and dated engagement letter** during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a photocopy of the signed letter as part of the audit documentation (GAGAS 4.07). The appropriate officials of the agency may include:

(i) the head of the audit-

ed entity;

(ii) the audit committee or board of directors or equivalent oversight body; and

(iii) the individual who possesses a sufficient level of authority and responsibility for the financial reporting process, such as the chief financial officer. (GAGAS 4.08)

(e) In situations where auditors are performing the audit under a contract with a party other than the officials of the audited entity, or pursuant to a third party request, auditors should also communicate with the individuals contracting for or requesting the audit, such as contracting officials or members or staff of legislative committees. (GAGAS 4.09)

(2) Within 10 days of the entrance conference, the IPA shall submit to the state auditor a copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates, which will facilitate meeting the audit due date in Subsection A of 2.2.2.9 NMAC.

(3) All communication with management and the agency oversight officials regarding any instances of noncompliance and/or internal control weaknesses must be communicated in writing. The auditor should obtain **responses in writing** to facilitate effective communication. Any instances of noncompliance and/or internal weaknesses that are not eliminated after clear communication with management must be included as findings per Section 12-6-5, NMSA 1978. Separate management letter comments shall **not** be used as a substitute for such findings.

(4) Financial control division mandates that each state agency, with the help of its independent auditor, identify a schedule of deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline cannot extend beyond December 15. Once the agency and auditor have certified to the financial control division of the department of finance and administration that the agency's books and records are ready and available for audit, if the auditor or agency find that the scheduled audit deliverables or agreed upon milestones are not accomplished timely and there is a possibility the audit report will be late, the auditor or agency shall immediately write a dated letter to the state auditor describing the problems. The financial control division of the department of finance administration must be sent a photocopy of the letter.

N. Amendment of any of

the contract provisions will be made upon forms used in the normal course of business by the agency. **Delivery dates are not subject to amendment.** Work performed beyond the original proposed work, such as preparation of: financial statements, for management's review and approval; supporting schedules; or special procedures, shall be allowed only in compliance with the auditor independence requirements of Subsection I of 2.2.2.8 NMAC and will be negotiated and compensated only upon amendment of the original contract if they were not specifically included in the original contract. **All amendments must be approved by the state auditor.** The audit engagement letter shall not be interpreted as amending the contract. No fee contingencies will be included in the engagement letter. The original contract and the contract amendments approved by the state auditor constitute the entire agreement. Any amendments to the contract must be in compliance with the New Mexico Procurement Code, Sections 13-1-1 to 13-1-199, NMSA 1978.

O. The state auditor may terminate an audit to be performed by an IPA after determining that the audit has been unduly delayed or for any other reason and perform the audit entirely or partially with IPAs contracted by him [consistent with the October 6, 1993, stipulated order *Vigil v. King* No. SF 92-1487(C)]. The notice of termination of the contract will be in writing. [2.2.2.8 NMAC - Rp 2.2.2.8 NMAC, 3-31-04]

2.2.2.9 REPORT DUE DATES:

A. The auditor shall deliver the annual audit report to the state auditor on or before the date specified in the audit contract. If a due date falls on a weekend or holiday, the audit report is due the following workday. If the report is mailed to the state auditor, it should be post marked no later than the due date to be considered filed timely. **The state auditor will grant no extensions of time to deliver the audit reports.** If a copy of the dated signed engagement letter has not been submitted to the state auditor, the audit report will not be accepted. If a copy of the signed management representation letter does not accompany the audit report, it will not be accepted by the office. As soon as the auditor becomes aware that an agency's financial records are incomplete or require adjustment that will make the audit report late, the auditor shall notify the state auditor of the situation in writing. The office will then notify the appropriate oversight agency. **At the time the audit report is due, if the agency's financial records are still incom-**

plete or require significant adjustment, the auditor shall issue the audit report with the appropriate opinion rendered, no later than the due date specified by this rule. The auditor shall not allow the agency additional time to complete its accounting function when such an allowance will cause the audit to be late. The IPA or agency may consult the state auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the auditor to go beyond the scope of auditing standards generally accepted in the United States of America, or the audit report due date, to assure an unqualified opinion.

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

(a) regional education cooperatives, cooperative educational services and independent housing authorities **September 30;**

(b) hospitals **October 15;**

(c) school districts, counties, and higher education **November 15;**

(d) municipalities, special districts, and local workforce investment boards **December 1;**

(e) councils of governments **December 15;**

(f) state agency reports are due no later than 60 days after the financial control division of the department of finance and administration provides the state auditor with notice that the agency's books and records are ready and available for audit. The financial control division mandates that each agency, with the help of its independent auditor, identify a schedule of audit deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline **cannot extend beyond December 15.** (Section 12-6-3 C, NMSA 1978 as amended by House Bill 219)

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

(h) separate audit reports (if applicable) for component units (e.g., housing authorities, charter schools, hospitals, foundations, etc.) are due the **same date the primary government's audit report is due.**

(2) Audit reports for agencies that have submitted auditor recommendations after the due dates specified above, will be due 30 days after the auditor recommendation has been approved by the state auditor.

(3) If an audit report is not deliv-

ered on time to the state auditor, the auditor must include this instance of noncompliance with the Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. The finding should be reported as an instance of noncompliance in the agency's internal controls over financial reporting.

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

C. **All audit reports must be paginated.** The IPA shall deliver to the state auditor one of the following **finalized** versions of the report: a hard copy; an e-mail copy; or the required number of copies indicated in the audit contract on or before the delivery due date. Unfinished reports will not satisfy this requirement. Along with the audit report the IPA shall submit to the state auditor a **copy of the management representation letter (SAS AU 333)** with a copy of the "passed audit adjustments" attached. See Paragraph (2) of Subsection K of 2.2.2.10 NMAC for further explanation of the "passed audit adjustments." If a hardcopy or an e-mail copy is submitted, once the state auditor has accepted it, the required number of hardcopies must be received by the state auditor **before** the release of the audit report. 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. Release of the audit report to the agency prior to it being officially released by the state auditor will result in an audit finding. Every member of the agency's governing authority shall receive a copy of the audit report.

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

E. IPAs are encouraged to deliver completed audit reports before the due date to facilitate the review process performed by the state auditor. [2.2.2.9 NMAC - Rp 2.2.2.9 NMAC, 3-31-04]

2.2.2.10 GENERAL CRITERIA:

A. Audit scope:

(1) The audit shall cover the whole reporting agency, the primary government and any component units of the primary government.

(a) Entities must be included as component units within the financial state-

ments of the primary government, if the primary government is financially accountable for the entity (GASB 14 paragraph 10) or if the nature and significance of the entity to the primary government warrants inclusion (GASB 39 paragraphs 5 and 6). The primary government and/or its auditors must determine whether an operation is a component unit of the primary government, as defined by GASB Statements No. 14 and No. 39. The flowchart at GASB 14 paragraph 132 is helpful. All agencies that meet the criteria of GASB 14 or GASB 39 to be a component unit of the primary government **must be included in the financial reports 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 exemption must include evidence supporting the request. The approval of the state auditor for the exemption is required prior to issuing the report. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government. (GASB 14 paragraphs 44 through 50).

(b) If a primary government has no component units that fact should be disclosed in the summary of significant accounting policies description of the reporting entity.

(c) **The state auditor requires the component unit(s) to be audited by the same auditor who audits the primary government.** Requests for exemption from this requirement must be submitted by the agency to the state auditor in writing. If the request to use a different auditor for the component unit is approved, the following requirements must be met:

(i) the primary auditor must agree to use the information from the work of the component unit auditor;

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

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

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

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

(vi) any separately issued component unit audit report must be submitted to the state auditor for the review

process described in 2.2.2.13 NMAC.

(d) The level of planning materiality required by the state auditor for **component units** is at the **individual fund level**. College and university component units have a different materiality level. See Paragraph (3) of Subsection E of 2.2.2.12 NMAC.

(e) Supplemental information (SI) pertaining to component units included in the scope of the audit and therefore the auditor opinion (as allowed by SAS 98) are:

(i) component unit fund financial statements and related combining statements for agencies that have implemented GASB 34, if separately issued financial statements of the component units are not available (AAG-SLV 3.20); and

(ii) individual fund budget comparison schedules if separately issued financial statements are not available, when a legally adopted budget exists for a fund. The office interprets a "legally adopted budget" to exist any time an entity receives federal funds, state funds, or any other "appropriated" funds;

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

(a) For agencies that have implemented GASB Statement 34, the level of planning materiality required by the state auditor is at the **individual fund level**. The state auditor requires that the budget comparison statements be audited and be included as part of the basic financial statements whenever possible and consistent with GASB 34 footnote 53 and AAG-SLV 11.13. The scope of the audit includes the following statements and schedules which the auditor is required to audit and give an opinion on:

(b) The basic financial statements consisting of:

(i) the government-wide financial statements;

(ii) fund financial statements;

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

(iv) notes to the financial statements.

(c) The auditor must audit the following required supplemental information, if applicable, and include it in the auditor's opinion (AAG-SLV 14.51). RSI budgetary comparison schedules 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 (*Proposed Statement of GASB Budgetary Comparison Schedules-Perspective Differences an amendment of GASB Statement No. 34*).

(d) The auditor must audit the following supplemental information if applicable and include it in the auditor's opinion:

(i) component unit fund financial statements and related combining statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.20);

(ii) combining financial statements; and

(iii) individual fund budget comparison statements for remaining funds that have a legally adopted budget (**including major funds other than general fund and special revenue funds, non-major governmental funds, and proprietary funds**) that did not appear as basic financial statement budget comparisons for the general fund or major special revenue funds, or as required supplemental information (RSI) as described above.

(e) The auditor should apply certain limited procedures to the following RSI (if applicable) and report deficiencies in, or the omission of, required information in accordance with the requirements of SAS AU 558.06:

(i) The management discussion and analysis (MD&A);

(ii) RSI data required by GASB Statements 25 and 27 regarding pension plans and postemployment health-care plans administered by defined benefit pension plans; and

(iii) schedules derived from asset management systems (GASB 34 paragraphs 132 and 133).

B. House Joint Memorial 24 (Pertaining to GASB Statements 34 and 35) of the Forty-Fifth Legislature - First Session 2001:

(1) "Whereas, the governmental accounting and standards board has adopted Statements 34 and 35, which effectively change governmental accounting for all governmental agencies in New Mexico; and

(2) Whereas Statements 34 and 35 change the format and contents of government financial statements and also include a government's infrastructure that may now be depreciated; and

(3) Whereas, the American Institute of Certified Public Accountants will be forthcoming with an audit guideline that will compel certified public accountants to render an adverse opinion on an audit of the financial statements of an agency that does not fully implement Statements 34 and 35 within established staggered timelines; and

(4) Whereas, the federal govern-

ment uses the audits of government agencies as one of several criteria to evaluate fund proposals submitted by government agencies; and

(5) Whereas, investment firms, banks and other investors use audits of government agencies to assess a bond rating and interest and ultimately to decide whether to invest in state, county, municipal or other governmental indebtedness, and

(6) NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that all state agencies, state oversight agencies, school districts, colleges and universities and any other agencies that receive governmental funds take action to institute the Governmental Accounting Standards Board Statements 34 and 35 to ensure timely and accurate implementation; and

(7) BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the state auditor for distribution to all government agencies."

C. 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.

D. Legislation can designate a fund as reverting or non-reverting. The IPA must review the law which 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 versus non-reverting nature of an appropriation. The financial statements must disclose the specific legislation that makes a fund or appropriation non-reverting. If non-reverting appropriations 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 Paper "Calculating Reversions to the State General Fund."

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

(1) Generally Accepted **Government Auditing Standards** (GAGAS) issued by the U.S. general accounting

office, latest edition and amendments;

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

(3) **OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations** (June 2003 revision) which raised the threshold for Single Audit from \$300,000 to \$500,000 of federal expenditures;

(4) SOP 98-3, **Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards**, latest edition;

(5) AICPA Audit and Accounting Guide, **Audits of State and Local Governmental Units** (GASB 34 Edition), issued September 1, 2002;

(6) 2.2.2 NMAC, **Requirements for Contracting and Conducting Audits of Agencies**, latest edition.

F. The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the **Codification of Governmental Accounting and Financial Reporting Standard (GASB)**, latest edition (see Appendix C). Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB and other applicable pronouncements issued by the financial accounting standards board (FASB).

G. IPAs who perform government audits are expected to maintain professional libraries with current editions of the above publications. The audit guides published by practitioners publishing company (PPC) are practice aides only and are not considered to be authoritative.

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

(1) Procurement Code (13-1-1 to 13-1-199 NMSA 1978);

(2) Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978);

(3) Personnel Act (10-9-1 to 10-9-25 NMSA 1978);

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

(5) Public School Finance (22-8-1 to 22-8-42 NMSA 1978);

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

(7) Public Employees Retirement Act (10-11-1 to 10-11-38 NMSA 1978);

(8) Educational Retirement Act

(22-11-1 to 22-11-45 NMSA 1978);

(9) Sale of Public Property (13-6-1 to 13-6-4 NMSA 1978);

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

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

(12) Budget Compliance (6-3-1 to 6-3-25 NMSA 1978);

(13) Lease Purchase Agreements; (6-6-11 to 6-6-12, Montano v. Gabaldon, 108 NM 94, 766 P.2d 1328, 1989);

(14) 1 NMAC 1.2.1, Accounting and Control of Fixed Assets of State Government (2.20.1.1 to 2.20.1.18) (updated for GASB 34 if applicable);

(15) 2.2.2 NMAC, **Requirements for Contracting and Conducting Audits of Agencies**;

(16) Article IX of the State Constitution limits on indebtedness;

(17) Governmental Conduct Act (10-16-1 to 10-16-18 NMSA 1978);

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

(19) Appropriations contained in the General Appropriation Act of 2003 cannot be used to pay credit card invoices (except for gasoline credit cards used solely for operation of official vehicles and telephone credit cards used solely for official business) per Laws of 2003, Chapter 76, Section 3, Subsection K. FCD of DFA recommended that all agencies that have credit cards issued by oil companies replace them with Wright Express fuel cards from GSD and that agencies holding house credit cards from vendors use instead the state's procurement card available through the office of the state controller. Procurement cards designed and implemented by FCD of DFA, can be used under House Bill 219 (laws of 2003) amendment to Section 6-5-10, NMSA 1978.

I. Federal compliance:

(1) The following government pronouncements establish requirements and give guidance for "Yellow Book" and/or Single Audit.

(a) **Single Audit Amendments of 1996**; (Public Law 104-156);

(b) **Generally Accepted Government Auditing Standards** (GAGAS) issued by the U.S. General Accounting Office, latest edition and amendments;

(c) OMB Circular A-21, **Cost Principles for Educational Institutions**, latest edition;

(d) OMB Circular A-87, **Cost Principles for State, Local, and Indian Tribal Governments**, latest edition;

(e) OMB Circular A-102, **Grants and Cooperative Agreements with State and Local Governments**, latest edition;

(f) OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, latest edition;

(g) OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, (June 27, 2003 revision);

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

(i) OMB *Catalog of Federal Domestic Assistance* (CFDA), latest edition;

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

(a) Employee fringe benefits are presumed by the IRS to be income to the employee unless they are specifically excluded from income by the tax code. Any employee fringe benefits not excluded from income by the tax code must be reported on the employee's W-2. Examples of such fringe benefits could be: meal allowances paid to employees for meals away from home when overnight travel is not involved; discounted housing like school district teacherages, dues for membership in clubs organized for business, pleasure, recreation, or other social purpose (except Rotary & 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 & 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 "non-qualified vehicle" must be included on the employee's W-2. There are three rules the IRS allows to be used for valuing personal use of an employer's vehicle: automobile lease valuation rule; cents-per-mile rule; and the commuting rule (\$3 per day). For more detailed information regarding valuation of personal use of vehicles see IRS Pub. 15-B, Reg 1.61-21.

(b) Personal service contractors (1099 employees) who are retired employees of the governmental agency they work

for must be able to meet the IRS tests to qualify as contract labor. In the event a personal services contractor is in substance an employee, the governmental agency could be liable for the employee's share of FICA and employer FICA match on the contract payments. Public employees retirement association (PERA) could expect excess retirement payments back. (Section 10-11-8(C) NMSA 1978)

(c) For more information regarding these and other IRS issues please contact the federal, state and local government specialist with the IRS in Albuquerque, NM, at 505-837-5541.

J. Audit findings:

(1) Section 12-6-5, NMSA 1978 (Reports of Audits) states each report shall set out in detail, in a separate section, any violation of law or **good accounting practices** found by the audit or examination. Therefore, all findings should be included in the annual audit report. **"There is no level of materiality in government auditing and all violations must be disclosed because 'public monies' are involved."** There is also no level of materiality for reporting findings of component units that do not receive public funds.

(2) **Generally Accepted Government Auditing Standards**, Sections 4.14-4.15, require the "auditors to consider the results of previous audits and attestation engagements and follow up on known significant findings and recommendations that directly relate to the objectives of the audit being undertaken." This follow up includes findings reported in financial, special and internal audits. In addition to this standard, the IPA will report the status of **all** prior-year findings by reference number (i.e., 01-1, 01-2, 02-1, 03-1) and descriptive title in the audit report as being resolved or repeated in the current-year audit report.

(3) Current-year:

(a) All current-year audit findings shall have a reference number and a short title that identifies the finding (i.e., 04-1, 04-2, 04-3).

(b) A memorandum on potential 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** and should comply with good accounting practices. If applicable, the agency should also prepare a corrective action plan. The agency shall respond, in writing, to the IPA's memorandum of findings within 10 workdays. Responses to the audit findings should be included in the audit report. Lack of agency responses within the 10 days does not warrant delay of the audit. If the responses are not received, indicate that they were not

received and the reason why after each finding.

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

(i) condition (quantity where possible-number of instances, dollar amounts, etc.);

(ii) criteria (which must include specific reference to the law, regulation, or other guidance that was violated);

(iii) effect;

(iv) cause;

(v) recommendation;

and
(vi) agency response (i.e., agency comments and a specific corrective action plan).

(4) Failure to file the audit report by the due date set in 2.2.2.9 NMAC is considered noncompliance with this rule and shall be a current-year finding. This finding should be reported as an instance of non-compliance in the agency's internal controls over financial reporting.

(5) If an agency has entered into any professional services contract with an IPA without written state auditor approval, this should be reported as a finding of non-compliance with Subsection I of 2.2.2.8 NMAC.

(6) Component unit findings must be reported in the primary government's financial audit report.

(7) A release of the audit report, by the IPA or agency, prior to being officially released by the state auditor is a violation of state statute and will require an additional finding in the audit report.

K. Exit conference and related confidentiality issues:

(1) The IPA must hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.) if applicable. If component unit representatives cannot attend the combined exit conference, a separate exit conference must be held with the component unit's governing authority and top management. The date of the conference(s) and the names and titles of personnel attending must be stated in a concluding paragraph of the audit findings and recommendations section of the audit report.

(2) The IPA shall deliver to the agency a draft audit report (stamped "Draft"), **a list of the "passed audit adjustments,"** and a copy of all of the adjusting entries at the exit conference. The draft audit report shall include the dependent auditor's report, a complete set of financial statements, notes to the financial

statements, audit findings that include responses from agency management, status of prior-year audit findings, and the reports on compliance and internal control required by government auditing standards and the Single Audit Act. Subsection BB of 2.2.2.10 NMAC, SAS 89 Audit Adjustments, provides an explanation regarding the list of "passed audit adjustments." The agency will have at least ten (10) workdays to review the draft audit report and respond to the IPA regarding any issues that need to be resolved prior to submitting the report to the state auditor. The audit report shall be delivered to the state auditor **with copies of the management representation letter and the list of "passed audit adjustments"** attached, on or before the due date specified in Subsection A of 2.2.2.9 NMAC. **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 is also submitted to the office.**

(3) The audit process will not have been completed at the time of the exit conference. **Neither the IPA nor agency personnel shall release any information to the public relating to the audit at the time of the exit conference or at any other time until the audit report becomes public record.** Agencies subject to the Open Meetings Act (Act) who wish to have a quorum of the governing board present at the exit conference will have to schedule the exit conference during a closed meeting in compliance with the Act in order to avoid disclosing audit information that is not yet public record, in a public meeting.

(a) Pursuant to the Open Meetings Act (10-15-1 to 10-15-4 NMSA 1978), any closed meetings shall be held only after reasonable notice to the public.

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

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

(d) Once the finalized version of the audit report is officially released to the agency by the state auditor (by an authorizing letter) and the required ten day waiting period has passed, the audit report **shall** be

presented to a quorum of the governing authority of the agency for approval at a public meeting.

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

(1) Auditing standards related to fraud have been updated. SAS 99 *Consideration of Fraud in a Financial Statement Audit*, is effective for fiscal periods beginning on or after December 15, 2002 (FY04). This SAS significantly changes what auditors must do in order to fulfill their responsibility to plan and perform the audit to provide reasonable assurance that the financial statements are free of material misstatement, whether caused by error or fraud (SAS AU Sec. 110.02). There are two types of misstatements of the financial statements, those caused by fraudulent financial reporting and those caused by misappropriation of assets. New procedures are required on every audit and auditors must:

(a) exercise an attitude of professional skepticism (a questioning mind and critical assessment of audit evidence) throughout the entire engagement;

(b) brainstorm as a team about how fraud could occur in the agency;

(c) obtain information needed to identify the risks of material misstatement due to fraud by:

(i) inquiring of management and others within the entity about the risks of fraud;

(ii) considering the results of the analytical procedures performed in planning the audit;

(iii) considering fraud risk factors: incentives/pressures to perpetrate fraud; opportunities to carry out the fraud; or attitudes/rationalizations to justify a fraudulent action;

(iv) considering other information including inherent risks at the individual account balance or class of transaction level;

(d) assess identified risks after taking into account an evaluation of the agency's programs and controls;

(e) respond to the risk assessment results;

(i) in the overall conduct of the audit:

(ii) in the nature, timing, and extent of the auditing procedures to be performed; and

(iii) by performing procedures addressing the risk due to fraud involving management override of controls;

(f) evaluate audit evidence;

(i) assess fraud risk throughout the audit;

(ii) at the end of the audit evaluate whether accumulated results

of procedures affect the fraud risk assessment;

(iii) consider whether identified misstatements may be indicative of fraud, and if so evaluate their implications;

(g) communicate about fraud to management, the audit committee, and others (SAS 99 paragraph 79 through 82 and Paragraph (2) of Subsection L of 2.2.2.10 NMAC; and

(h) document the auditor's consideration of fraud.

(2) GAGAS 4.17 states that "auditors should design the audit to provide reasonable assurance of detecting material misstatements resulting from violations of provisions of contracts or grant agreements that have a direct and material effect on the determination of financial statement amounts or other financial data significant to the audit objectives. If specific information comes to the auditors' attention that provides evidence concerning the existence of possible violations of provisions of contracts or grant agreements that could have a material indirect effect on the determination of financial statement amounts or other financial data significant to the audit objectives, auditors should apply audit procedures specifically directed to ascertain whether violations of provisions of contracts or grant agreements have occurred or are likely to have occurred. Auditors should be alert to situations or transactions that could be indicative of **abuse**, and if indications of abuse exist that could significantly affect the financial statement amounts or other financial data, auditors should apply audit procedures specifically directed to ascertain whether **abuse** has occurred and the effect on the financial statement amounts or other financial data." "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. ...If indications of possible abuse exist that significantly affect the financial statement amounts or other financial data, the auditors should extend the audit steps and procedures as necessary to (1) determine whether the abuse occurred and, if so, (2) determine its effect on the financial statement amounts or other financial data. Auditors should consider both **quantitative and qualitative factors** in making judgments regarding the materiality of possible abuse and whether they need to extend the audit steps and procedures. ...Auditors are not expected to provide reasonable assurance of detecting abuse."

(3) Every agency and IPA, pursuant to Section 12-6-6, NMSA 1978 (Criminal Violations), shall notify the state

auditor immediately, in writing, upon discovery of any possible criminal statute violation in connection with its financial affairs. The notification shall include an estimate of the dollar amount involved, and a complete description of the violation, including names of persons involved and any action taken or planned. The state auditor will determine whether a special audit is warranted based upon the **written** information provided. If warranted, the state auditor will conduct the special audit. The IPA shall not enter into **any financial or special** audit contract unless selected through a process consistent with the Procurement Code and subject to the **prior written approval** of the state auditor. A copy of the report shall be provided to the state auditor.

(4) The state auditor shall immediately report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

M. Compensated absences:

(1) Vacation pay and other compensated absences should be computed in accordance with the requirements of GASB Statement No. 16, **Accounting for Compensated Absences**, and be reported in the financial statements.

(2) The statement of net assets, governmental activities column should report both the current (**amount expected to be paid out over the next year**) and long-term portions of the compensated absence liability because the government-wide financial statements report all liabilities. Per GASB 34 paragraph 31 "liabilities whose average maturities are greater than one year should be reported in two components--the amount **due within one year** and the amount due in more than one year."

(3) The fund financial statements should report the portion of the compensated absence liability that is expected to be liquidated using expendable available financial resources (NCGAS 4 paragraph 5) if the amount is material, in the fund responsible to pay for the liability.

(a) State agencies:

(i) **The state of New Mexico does not budget in the current year, funds to pay for any portion of the compensated absence liability at the end of the fiscal year.** Those payments are provided for in future budgets. Funds that are not budgeted are not an available financial resource. (NCGAS 1 paragraph 86 and GASB Cod. Sec. C60.111)

(ii) If the prior year financial statement showed the current portion of compensated absences and the amount was material, there should be a prior period adjustment and related fund balance restatement to correct the error.

(b) Non-state agencies: If the

agency does budget funds in the current year to pay compensated absence balances, the portion of the liability that is expected to be liquidated using expendable available financial resources, if material, should be recorded in the fund responsible to pay the liability.

(4) The notes to the financial statements should disclose the accounting treatment applied to compensated absences.

(5) GASB 34 paragraph 119 requires the following disclosures of the agency's long-term compensated absences (and other long term liabilities) presented in the statement of net assets: beginning and end-of-year balances; increases and decreases shown separately; the portion due within one year; and which governmental funds typically have been used to liquidate the liabilities in prior years.

N. Special revenue funds authority: The authority for creation of special revenue funds must be shown in the audit report (i.e., cite the statute number, executive order, resolution number, or other specific authority) in the divider page or notes to the financial statements.

O. Public monies:

(1) Definition - All monies coming into all agencies i.e., vending machines, fees for xerox copies, telephone charges, etc., shall be considered public monies and be accounted for. For state agencies, all revenues generated must be authorized by legislation. (Section 6-4-2, NMSA 1978 and MAPS Section 3.3)

(2) Compliance - Article VIII, Section 4 of the New Mexico Constitution states that "all public money not invested in interest-bearing securities shall be deposited in national banks in this state, in banks or trust companies incorporated under the laws of the state, in federal savings and loan associations in this state, in savings and loan associations incorporated under the laws of this state whose deposits are insured by an agency of the United States and in credit unions incorporated under the laws of this state or the United States to the extent that such deposits of public money in credit unions are insured by an agency of the United States, and the interest derived therefrom shall be applied in the manner prescribed by law." Attorney General Opinion No. 70-98 states that such investment of public funds is limited to those interest-bearing securities as may be provided by statute. See the following authorizing statutes:

(a) Chapter 6, Article 10, Public Money, NMSA 1978: Section 6-10-10, NMSA 1978 allows certain agencies to invest in repurchase agreements with certain stipulations and prerequisites. However, the state public education department's, **Public School, Accounting and**

Budgeting Supplement (PSAB) Supplement 8, Section III.B indicates there is no statutory authority for school districts to participate in repurchase agreements. The auditor should perform compliance testing to ensure the agency is following New Mexico Constitution and applicable statutes; and

(b) Chapter 22, Article 8, Public School Finance, NMSA 1978.

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

(a) name of depository (i.e., bank, credit union) or state treasurer CAS fund number;

(b) account name;

(c) type of account (checking, savings, investment);

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

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

(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** to the financial statements that discloses the collateral pledged by each bank and savings and loan association (S&L) that is a depository for public funds. The schedule should disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, CUSIP number, **fair market value** and maturity date. The schedule should also disclose the name of the custodian and the place of safekeeping for all collateral.

(b) If the pledged collateral in an aggregate amount is not equal to one half of the amount of public money in each account (Section 6-10-17, NMSA 1978), there should be a finding in the audit report. No security is required for the deposit of public money that is insured by the federal deposit insurance corporation (FDIC) or the national credit union shares insurance fund (NCUSIF) according to Section 6-10-16, NMSA 1978. The **supplementary schedule** of collateral requirements should be calculated separately for each bank and disclosed in the report as follows:

(i) Total amount of deposit in bank or credit union

\$300,000

(ii) Less: FDIC or NCUSIF coverage*

100,000

public funds 200,000 requirement (Section 6-10-17, NMSA 1978) <u>100,000</u> (v) Pledged Security <u>100,000</u> (vi) Over (Under) § <u>0</u>	(iii) Total uninsured (iv) 50% collateral (v) Pledged Security (vi) Over (Under)
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[*The FDIC issued an advisory opinion (FDIC 94-24) on June 13, 1994, stating that public funds are entitled to \$100,000 insurance for time or savings deposits and \$100,000 for demand deposits deposited within the state in compliance with 12 CFR Subsection 330.14(b)]

(c) Repurchase agreements must be covered by 102% of pledged collateral per Section 6-10-10 H, NMSA 1978. Disclosure similar to that shown above is also required for the 102% of pledged collateral.

(d) The value of collateral consisting of obligations of the state of New Mexico, its agencies, institutions, counties, municipalities or other subdivisions shall be par value. All other securities shall be accepted as security at market value. (Section 6-10-16 C, NMSA 1978)

(e) State agency cash on deposit with the state treasurer does not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the agency notes to the financial statement should refer the reader to the state treasurer's separately issued financial statements which do disclose the collateral pledged to secure state treasurer cash and investments.

(f) If an agency has other "authorized" bank accounts pledged collateral information should be obtained from the bank and disclosed in the agency financial statement notes. The state treasurer monitors pledged collateral related to most state agency bank accounts. In the event pledged collateral information specific to the agency is not available, the following note disclosure should be made. Detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, the state treasurer's office collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(5) Applicable standards:

(a) If the bank balances of deposits as of the balance sheet date are entirely insured or collateralized with securities held by the agency or by its agent, **in the agency's name**, that fact should be stated. If not, disclosures should be made in

accordance with GASB Statements No. 3 and 31.

(b) GASB Statement No. 40, **Deposit and Investment Risk Disclosures**, is effective for financial statements for periods beginning after June 15, 2004 (FY05). Earlier application is encouraged. The statement reduces the existing custodial credit risk disclosures which result from federal banking reforms adopted since the release of Statement 3.

(c) SAS No. 101, **Auditing Fair Value Measurements and Disclosures**, was issued January 2003 and is effective for audits of financial statements for periods beginning on or after June 15, 2003 (FY04). The standard requires the auditor to:

(i) obtain audit evidence providing reasonable assurance that fair value amounts and disclosure are in accordance with GAAP;

(ii) understand the agency's process for determining fair value and its controls over that process in order to develop an effective audit approach;

(iii) evaluate whether fair value amounts and disclosures are in accordance with GAAP;

(iv) evaluate: management's intent and ability to carry out planned actions related to the use of fair value amounts and disclosures; the related requirements of presentation and disclosure; and how changes in fair values are reported in the financial statements;

(v) when there are no market prices available, evaluate whether the agency's valuation method used to determine fair value is appropriate;

(vi) evaluate if the agency is applying fair value measurements consistently;

(vii) consider whether to engage a specialist; and

(viii) determine that the audit committee is informed about management's process used to arrive at sensitive accounting estimates, including fair value estimates, and about the basis for the auditor's conclusions about the reasonableness of those estimates.

(6) State treasurer external investment pool (local government investment pool):

(a) Cities, counties, and other non-state agencies that have investments in the state treasurer external investment pool (the local government investment pool) must include the following disclosures in the notes to their financial statements (GASB Statement No. 31 paragraph 15):

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

(ii) the state treasurer local government investment pool is not

SEC registered. Section 6-10-10 I, NMSA 1978, empowers the state treasurer, with the advice and consent of the state board of finance, to invest money held in the short-term investment fund in securities that are issued by the United States government or by its departments or agencies and are either direct obligations of the United States or are backed by the full faith and credit of the United States government or are agencies sponsored by the United States government. The Local Government Investment Pool investments are monitored by the same investment committee and the same policies and procedures that apply to all other state investments;

(iii) the pool does not have unit shares. Per Section 6-10-10.IF, 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 fund amounts were invested; and

(iv) participation in the local government investment pool is voluntary.

(b) GASB 40 paragraph 7 requires governments to disclose the credit quality ratings of external investments pools...in which they invest. If a credit quality disclosure is required and the investment is unrated, the disclosure should indicate that fact.

P. 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/or actual and budgetary comparison schedules shall include the amount of **fund balance** required to balance the budget.

(b) If the agency prepares its budget on the cash basis, the statement of revenues and expenditures budget and/or actual and budgetary comparison schedules shall include the amount of **prior-year cash balance** required to balance the budget.

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures should be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation should be included in the notes to the financial statements. If the required budgetary comparison is presented as RSI (for reasons described below) the reconciliation should appear in either a separate schedule or in notes to RSI according to the AICPA Audit and Accounting Guide **Audits of State and Local Governments GASB 34 Edition**, (AAG-SLV 11.14).

(3) Budget comparison statements and schedules must show the original and final appropriated budget, 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 budget 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) Required supplemental information section is the place where the budget comparison schedules should appear for the general fund and major special revenue funds if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for only those specific funds. An example of this "perspective difference" would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budget comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budget comparison data. See GASB Statement No. 41, *Budgetary Comparison Schedules -Perspective Differences*, paragraphs 3 and 10.

(c) Supplemental information (SI) is the place where all other budget comparison information should appear except the general and major special revenue fund budget comparisons. Nonmajor governmental funds and proprietary funds that have legally adopted budgets should have budget comparisons appearing in the SI section of the report. It is a requirement of the state auditor that budget 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 and/or RSI see Example 14A.12 in the AICPA, *Audit and Accounting Guide, GASB 34 Edition*.

Q. Appropriations to agencies: The budget comparison presented in the financial statements must be at least at the same appropriation level as the approved budget to demonstrate compliance with legal requirements. If actual expenditures exceed budgeted expenditures within a category that fact must be reported in a finding. 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. Revenue categories of appropriations to state agencies are listed below. See

Paragraph (6) of Subsection A of 2.2.2.12 NMAC for a list of the old and new budget categories for state agencies. The budget comparison statements for state agencies must be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency's appropriation.

- (1) state general fund;
- (2) other state funds;
- (3) internal service funds/inter-agency transfers; or
- (4) federal funds.

R. Deferred compensation plans:

(1) GASB Statement No. 32, *Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*, was issued to reflect a change in the legal status of Internal Revenue Code (IRC) Section 457. The provisions of IRC Sections 457 deferred compensation plans were amended to state that a plan shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan are held in trust for the exclusive benefit of participants and their beneficiaries. Previously, the amounts deferred under an IRC Section 457 plan were legally the property of the sponsoring employer government. Under these requirements, the government no longer owns the amounts deferred by employees or related income on those amounts.

(2) The change in the law required existing plans to establish a trust to hold IRC Section 457 plan assets by January 1, 1999. Sponsor governments had adopted the provisions of GASB Statement No. 32 for periods beginning after December 31, 1998, or in the period the government complied with the law change, if earlier. A government is considered to hold plan assets in a fiduciary capacity only if it (1) has significant administrative responsibility for the plan or (2) performs the investment function for the plan.

(3) GASB 32 has been amended by GASB 34. See GASB 34 paragraphs 69 through 72 and Examples E-1 and E-2 for guidance on reporting fiduciary funds.

(4) GASB Statement No. 32 does not require specific note disclosures.

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

(1) SAS No. 55, *Consideration of Internal Control in a Financial Statement Audit*, and SAS No. 78, *Consideration of Internal Control in a Financial Statement Audit, an Amendment to SAS No. 55*, SAS No. 94, *The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit and Governmental Auditing Standards*, Section

4.28 to 4.36, provide guidance to IPAs related to consideration of internal control as part of an audit. SAS No. 78 replaced the SAS No. 55 definition and description of internal control with the definition and description from *Internal Control-Integrated Framework*, published by the committee on sponsoring organizations of the treadway commission (the COSO Report). SAS No. 78 describes internal control as consisting of five interrelated components: control environment; risk assessment; control activities; information and communication; and monitoring. SAS No. 94, *The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit* amended SAS No. 55 further. "Information technology (IT) encompasses automated means of originating, processing, storing, and communicating information, and includes recording data devices, communication systems, computer systems (including hardware and software components and data), and other electronic devices. An entity's use of IT may be extensive; however, the auditor is primarily interested in the entity's use of IT to initiate, record, process, and report transactions or other financial data. ...Controls in systems that use IT consist of a combination of automated controls (for example, controls embedded in computer programs) and manual controls." In obtaining an understanding of the internal controls of an entity that uses IT, "the auditor considers how an entity's use of IT and manual procedures may affect controls relevant to the audit. The auditor then assesses control risk for the assertions embodied in the account balance, transaction class, and disclosure components of the financial statements." The FY04 implementation of SAS 99 has an extensive impact on the auditor's consideration of internal controls and risk assessment. See Paragraph (1) of Subsection L of 2.2.2.10 NMAC above for related details. The proposed SAS, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement (Assessing Risks)*, which will become effective for audits of fiscal year ended June 30, 2005, will require the auditor to obtain an understanding of the industry, regulatory, and other external factors, the nature of the entity, etc. GAGAS Section [3.42 (b)] already requires staff members to collectively possess "general knowledge of the environment in which the audited entity operates and the subject matter under review." The GAGAS standards go beyond the AICPA SAS requirements. Auditors must: consider the results of previous audits and attestation engagements; and detect material misstatements resulting from violations of contract provisions or

grant agreements or from **abuse**. [(GAGAS 4.05 (b) and (c)]

(2) All financial audits performed under this rule are **required to include tests of internal controls** (manual and/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.**

(3) The IPA is required to document:

(a) the understanding of internal control (SAS 94 paragraph 61);

(b) risk assessment (SAS 94 paragraph 83);

(c) tests of controls (SAS No. 96);

(d) and the following SAS 99 considerations:

(i) brainstorming; procedures used to obtain information to identify and assess the risks of material misstatement due to fraud;

(ii) specific risks of material misstatement due to fraud and the related auditor response to those risks;

(iii) if improper revenue recognition is not identified, the reasons supporting the auditor's conclusion;

(iv) results of procedures performed to further address the risk of management override of controls;

(v) other conditions and analytical relationships that caused the auditor to believe that additional auditing procedures or other responses were required and any further responses the auditor concluded were appropriate, to address such risks or other conditions;

(vi) and the nature of the communications about fraud made to management, the audit committee, and others.

(4) Reporting weaknesses in internal controls: Section 12-6-5, NMSA 1978, requires the annual financial and compliance audit of agencies to "set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination." Therefore, any instance of weakness in internal control defined by GAGAS 5.13 and SAS AU 325.21 must be reported.

T. Lease purchase agreements:

(1) The New Mexico supreme court has held that it is unconstitutional for agencies to enter into lease purchase agreements after January 9, 1989, unless special revenue funds are the designated source of payments for the agreement. (Any agreements executed prior to that date may not be

extended or amended without compliance with the guidelines of **Montano v. Gabaldon**, 108 N.M. 94, 766 P.2d 1328).

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

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

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

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

(a) modified accrual basis of accounting for fund financial statements:

(i) at the time of the lease purchase, the aggregate purchase liability should be reported as an expenditure and as other financing source in the governmental fund that acquired or constructed the general asset. (NCGAS 5 paragraph 14 and AAG-SLV 7.34)

(ii) Subsequent governmental fund lease payments should be recognized as expenditures in the accounting period in which the fund liability is incurred, if measurable. (NCGAS 1 paragraph 8 (a) and AAG-SLV 8.69)

(b) Full accrual basis of accounting for government-wide statements:

(i) At the time of the lease purchase, record the capitalized asset

and related credit to net assets-invested in capital assets, net of related debt. The amount recorded is generally the lesser of the net present value of the minimum lease payments or the fair value of the leased property excluding executory costs and profit. (NCGAS 5 paragraph 16 and AAG-SLV 7.33)

(ii) The leased property is amortized in accordance with the government's normal depreciation policy for owned assets of the same type, but the amortization period is limited to the lease term, rather than the useful life of the asset. (AAG-SLV 7.33)

(iii) At the time of the lease purchase, record the liability for the current and long-term portions of the minimum lease payments due, with the related debit to net assets-invested in capital assets net of related debt. (AAG-SLV 7.32)

U. Interfund activity:

(1) According to the AICPA Audit and Accounting Guide, *Audits of State and Local Government (GASB 34 Edition)*, Section 9.31, the pre-GASB 34 reporting model interfund transaction classifications were:

- (a) quasi-external transactions;
- (b) reimbursements;
- (c) residual equity transfers;
- (d) operating transfers;
- (e) interfund loans; and
- (f) intra-entity transactions and

balances.

(2) Under the GASB 34 reporting model those interfund "activities" have become, respectively:

(a) "Interfund services provided and used" which is a narrower definition than quasi-external transactions because the amounts should approximate their external exchange value which was not a requirement under the pre-GASB 34 model;

(b) interfund reimbursements;

(c) interfund transfers;

(d) interfund transfers;

(e) interfund loans; and

(f) Intra-entity activity and balances.

(3) GASB 34 reciprocal interfund activity is the internal counterpart to exchange and exchange-like transactions. It includes interfund loans and interfund services provided and used.

(4) GASB 34 nonreciprocal interfund activity is the internal counterpart of nonexchange transactions.

(a) Nonreciprocal interfund activity includes interfund transfers for which there is no equivalent flow of assets in return. Payments in lieu of taxes are included in this category. According to GASB 34 paragraphs 112(b)(1) and 410(a), such transfers between funds within the primary government should be reported as follows:

(i) in governmental funds, transfers should be reported as other financing uses in the funds making transfers and as other financing sources in the funds receiving transfers;

(ii) in government-wide financial statements, transfers between funds should be reported in a separate category as the final item before change in net assets; and

(iii) in proprietary funds, transfers should be reported after nonoperating revenues and expenses.

(b) GASB 34 paragraphs 61 and 318 indicate that transfers between funds of the primary government and funds of a component unit should be reported as follows:

(i) Transfers between the primary government and discretely presented component units are required to be reported as external transaction, revenues and expenses, in the primary government's financial statements and in the component unit's separately issued financial statements.

(ii) Transfers between the primary government and a blended component unit should be reported in the separately issued reports of the component unit as revenues and expenses. But when the blended component unit is included in the primary government's financial statements, those revenues and expenses should be reclassified and shown as transfers.

(c) Nonreciprocal interfund activity also includes interfund reimbursements that are repayments from a fund responsible for an expenditure or expense to the fund that originally paid for them. Reimbursements should not be displayed in the financial statements.

V. Required auditor's reports:

(1) Auditor reports should follow the examples contained in the AICPA, *Audit and Accounting Guide Audits of State and Local Governments (GASB 34 Edition)*, issued September 1, 2002. Appendix 14A-Illustrative Auditor's Reports provides report illustrations. Example 14A.12 illustrates how to opine on the basic financial statements and the combining and individual fund financial statements presented as supplementary information. Guidance provided in Chapter 14, Footnote 31 applies when the government presents budgetary comparison information as basic financial statements as required by this rule, instead of as RSI. All independent auditors' reports should include a statement regarding the conduct of the audit being in accordance with auditing standards generally accepted in the United States of America and with applicable *Government Auditing Standards* per GAGAS 5.05. The state

auditor requires the reports required by GAGAS, OMB Circular A-133, and HUD Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards (UFRS) to be **included under one report cover** with the independent auditor's report, rather than presented under separate report covers. The reports referred to in these sections are the: Report on compliance and internal control over financial reporting based on an audit of financial statements performed in accordance with government auditing standards, (GAGAS 5.08 and 5.12); independent auditors' report including the SAS 29 opinion on the schedule of expenditures of federal awards and the HUD financial data schedule (FDS); the report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133, the Schedule of Findings and Questioned Costs (A-133 .505); and the audited HUD Financial Data Schedule (FDS). The report must also contain a table of contents and official roster. An **exemption** from the "one report cover" rule must be obtained from the state auditor in order to present any of the above information under a separate cover.

(2) The proposed SAS, *Performing Audit Procedures in Response to Assessed Risk and Evaluating the Audit Evidence Obtained* says: 69. "In evaluating whether the financial statements are presented fairly in all material respects in conformity with GAAP, the auditor should consider the effects both individually and in the aggregate, of misstatements that are corrected by the entity. ...The consideration and aggregation of misstatements should include likely misstatements (the auditor's best estimate of the total misstatements in the account balances or classes of transactions that he or she has examined), not just known misstatements (the amount of misstatements specifically identified). Likely misstatements should be aggregated in a way that enables the auditor to consider whether, in relation to individual amounts, subtotals, or totals in the financial statements, they materially misstate the financial statements taken as a whole." 81. "If the auditor concludes, based on accumulation of sufficient audit evidence, that effects of likely misstatements, individually or in the aggregate, cause the financial statements to be materially misstated, the auditor should request management to eliminate the misstatement. If the material misstatement is not eliminated, the auditor should issue a qualified or an adverse opinion on the financial statements. Material misstatements may be eliminated by, for example, application of appropriate accounting principles, other adjustments in amounts, or the addi-

tion of appropriate disclosure of inadequately disclosed matters. Even though the effects of likely misstatements on the financial statements may be immaterial, the auditor should recognize that an accumulation of immaterial misstatements in the balance sheet could contribute to material misstatements of future financial statements." Current standards (SAS AU 350.30) require the auditor to project misstatements resulting from audit sampling applications and all known misstatements from nonsampling applications and consider them in the aggregate along with other audit evidence when evaluating whether the financial statement taken as a whole may be materially misstated.

(3) Proper implementation of GASB 34 and/or GASB 35 will impact the auditor's opinion in the independent auditor's report.

(a) An adverse opinion shall result if anything less than a full set of financial statements, as required by GASB 34 and/or GASB 35, are presented.

(b) An adverse opinion shall result if the old model is presented instead of the new model under GASB 34 and/or GASB 35.

(c) A modified opinion may result if a component unit fails to implement GASB 34 and/or GASB 35 in the same fiscal period as the primary government.

(d) An adverse opinion will result if infrastructure is excluded from the government-wide statements and it is significant.

(4) GAAP includes GASB 34 and/or 35 once the implementation date for the entity passes. "Rule 203 of the Code of Professional Conduct of the AICPA states: 'A member shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or (2) state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies designated by council to establish such principles that has a material effect on the statements or data taken as a whole.'" (SAS AU Sec 508.14)

W. Service organizations:

(1) SAS No. 88 amends SAS No. 70, *Reports on the Processing of Transactions by Service Organizations*, to help IPAs determine what additional information they might need when auditing the financial statements of an agency that uses a service organization to process transactions. SAS No. 70 provides guidance an IPA

should consider when auditing the financial statements of an agency that uses a service organization to process transactions. SAS No. 70 provides guidance an IPA who issues reports on the processing of transactions by a service organization for use by other IPAs.

(2) SAS No. 70 (AU 324.03) defines a service organization as an organization that is engaged to provide either or both of the following services:

(a) execution of transactions and maintenance of the related accountability; and

(b) recording of transactions and processing of related data.

(c) The following are examples of service organizations:

(i) tax collection authorities;

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

(iii) regional educational service centers;

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

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

(vi) potentially public housing authority fee accountants.

(3) When a governmental agency uses a service organization (as defined by AU 324.03), its transactions are processed through another organization's financial reporting system and are subject to that organization's controls. If the use of the service organization is significant to planning and performing the audit, the IPA should obtain an understanding of the client's financial reporting system and internal controls for information produced by the service organization in accordance with SAS No. 70. **The understanding obtained should be documented.**

(4) SAS No. 98, *Omnibus Statement on Auditing Standards-2002*, amended SAS No. 70 to require a service auditor to inquire of management about subsequent events.

X. Disposition of property:

(1) Sections 13-6-1 and 13-6-2, NMSA 1978, and the Procurement Code, govern the disposition of obsolete, worn-out or unusable tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least thirty days prior to any such disposition of property, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action must be sent to the state auditor.

(2) In the event a computer is

included in the planned disposition, the agency shall "sanitize" all licensed software and any electronic media pertaining to the agency. Hard drive erasure certification is still required even if the asset originally cost less than \$1,000 and was not included in the fixed asset inventory. According to the May 5, 2002 memorandum from the chief information technology security and privacy office on this subject, "ordinary file deletion procedures do not erase the information stored on hard disks or other magnetic media. Sanitizing erases or overwrites totally and unequivocally, all information stored on the media. There are three basic approaches:

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

(b) overwriting stored data a minimum of five times; or

(c) reformatting the drives ("F diskling").

(3) The agency will certify in writing the proper erasure of the hard drive and submit the certification along with the notification of the proposed disposition of property to the state auditor at least thirty days prior to taking action. The IPA shall test for compliance with this requirement. **This is a special requirement of the state auditor** and it applies even if the original purchase price of the computer was less than \$1,000.

Y. Joint powers agreement:

(1) All joint powers agreements must be listed in a supplementary schedule in the audit report. The schedule should include the following information for each agreement:

(a) participants;

(b) party responsible for operations;

(c) description;

(d) beginning and ending dates of agreement;

(e) total estimated amount of project and portion applicable to agency;

(f) amount agency contributed in current fiscal year;

(g) audit responsibility;

(h) fiscal agent if applicable; and

(i) name of government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under joint powers agreements see Subsection Z of 2.2.2.10.NMAC (self-insurance).

Z. Self insurance: Those agencies that have self-insurance agreements should disclose the data in the notes to the financial statements. The note should include the name of the agency that is providing the insurance and the amount of con-

tribution by the agency to the fund during the year. Reserves should be reviewed to determine if the reserves are actuarially sound. There should be full disclosure in the notes to the financial statements.

AA. Nonexchange transaction asset and revenue recognition: GASB Statement No. 33 establishes accounting and financial reporting standards for the nonexchange transactions of state and local governments. It is effective for fiscal years starting after June 15, 2000. A nonexchange transaction occurs when a government (including the federal government) either gives value to another party without directly receiving equal value in exchange or receives value from another party without directly giving equal value in exchange. There are four types of nonexchange transactions: derived tax revenues (income and motor fuel taxes); imposed nonexchange revenues (property tax, fines and penalties, and property forfeitures); government-mandated nonexchange transaction revenues (federal programs that state or local governments are mandated to perform, state programs that local governments are mandated to perform); and voluntary nonexchange transactions (grants, entitlements, and donations by nongovernmental entities, including private donations). On both the accrual and modified accrual basis of accounting, revenue recognition is required for nonexchange transactions in the financial statements unless the transaction is not measurable (reasonably estimable). For guidance in applying the accrual basis of revenue recognition see GASB 33 paragraphs 16 through 28. For guidance in applying the modified accrual basis of revenue recognition, see GASB 33 paragraphs 29 and 30. Implementation of GASB 34 requires revenue recognition on both bases of accounting: full accrual basis in the government-wide statements; and modified accrual basis in the fund financial statements. Common application issues are listed below.

(1) **The account receivable asset amount recognized under both the accrual and modified accrual bases of accounting should be the same amount.** What changes is the amount of revenue recognized. Any "unavailable" amount of revenue should be reclassified from revenue to "deferred revenue" for the modified accrual basis. (AAG-SLV 6.17)

(2) Property taxes are an example of "imposed nonexchange" revenue. According to GASB 33 paragraph 18, "Governments should recognize revenues from property taxes, net of estimated refunds and estimated uncollectible amounts, in the period for which the taxes are levied, even if the enforceable legal claim arises or the due date for payment occurs in a different period." For modified

accrual presentation, property tax revenues are recognized when they become available. Available means, due or past due and receivable within the current period, usually within 60 days. (NCGAI 3 paragraph 8) An agency that receives a portion of another government's derived tax or imposed nonexchange revenues (sales or property taxes) should record revenues, and the provider government should record expenses (or expenditures), when all eligibility requirements have been met per GASB 36 paragraph 13. See GASB 36 paragraphs 16 and 17 for specific examples of revenue recognition for "shared" tax revenue and "locally imposed" tax revenue.

(3) There will be no direct increases to contributed capital under GASB 33, all inflows from nonexchange transactions must be reported as revenue. (GASB 33 paragraph 93)

BB. SAS 89 audit adjustments: The engagement letter should state that management is responsible for adjusting the financial statements to correct material misstatements. In the representation letter, management should affirm to the auditor that the effects of any uncorrected financial statement misstatements aggregated by the auditor are immaterial, both individually and in total. In such cases, a summary of any misstatements that management did not correct in their financial statements must be included in or attached to the management representation letter. The auditor is required to inform those who have oversight of the financial reporting process about uncorrected misstatements aggregated by the auditor during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements taken as a whole. Passed audit adjustments are those determined by the auditor that did not get included in the audited financial statements. **The auditor must present this list of "passed adjustments" to the agency management and governing board representatives at the exit conference. A copy of the management representation letter and the list of "passed adjustments" must be attached to the audit report when it is submitted to the state auditor for review.** In the event no audit adjustments were omitted from the financial statements a memo stating that there were "no passed adjustments" should take the place of the list of "passed adjustments."

CC. GASB 34 implementation issues:

(1) In the year GASB 34 is implemented, note disclosure must be made reconciling the GASB 34 beginning net assets back to the prior year audited ending fund

balances. **This is a special requirement of the state auditor.**

(2) Agency funds are excluded from the statement of changes in fiduciary net assets (GASB 34 paragraph 110) because they have no "net assets." Therefore, it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the agency funds be included as supplemental information (SI) for all agencies that have agency funds. See also Subparagraph (e) of Paragraph (3) of Subsection C of 2.2.2.12 NMAC for more information regarding the presentation of school district agency fund statements of changes in assets and liabilities for agency funds.

DD. Accounting for Forfeited Property:

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

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

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

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

[2.2.2.10 NMAC - Rp 2.2.2.10 NMAC, 3-31-04]

2.2.2.11 THE MANAGING AND LEGISLATING FOR RESULTS IN GOVERNMENT ACT:

A. The Managing and

Legislating for Results in Government Act (AGA) (Chapter 15, Laws of 1999) as amended by senate bill 561 in the 2004 Regular Session provides a general process for implementation of performance-based budgeting over a four-year period (FY00 through FY04).

B. For agencies whose 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, CHE and PED and preparation guidelines are issued by the oversight agency.

C. The auditor's responsibilities for performing procedures and reporting on required supplemental information (RSI) is provided in SAS No. 52, **Omnibus Statement on Auditing Standards** 1987 (AICPA, Professional Standards, vol. 1, AU 558, **Required Supplemental Information**). The auditor ordinarily should apply the following limited procedures to RSI.

(1) Inquire of management about the methods of preparing the information, including:

(a) whether it is measured and presented within prescribed guidelines;

(b) whether methods of measurement or presentation have been changed from those used in the prior period and the reasons for any such changes; and

(c) any significant assumptions or interpretations underlying the measurement or presentation.

(2) Compare the information for consistency with:

(a) management's responses to foregoing inquiries;

(b) audited financial statements; and

(c) other knowledge obtained during the audit.

(3) Consider whether to include representations on RSI in the management representation letter.

D. Apply additional procedures, if any, that other AICPA SASs, SAS, interpretations, audit and accounting guides, or statements of position prescribe for specific types of RSI.

E. Make additional inquires if applying the foregoing procedures causes the auditor to believe that the information may not be measured or presented within applicable guidelines.

F. The IPA should report on the performance data in either an agency-prepared or auditor submitted document when:

(1) the required performance data is omitted;

(2) the auditor concludes that the

measurement or presentation of the performance data departs materially from prescribed guidelines;

(3) the auditor is unable to complete the prescribed procedures; and

(4) the auditor is unable to remove substantial doubts about whether the performance data conforms to prescribed guidelines.

G. The IPA generally has no reporting requirement; however, the IPA may disclaim an opinion on the information.

[2.2.2.11 NMAC - Rp 2.2.2.11 NMAC, 3-31-04]

2.2.2.12 SPECIFIC CRITERIA: The applicable specific criteria should be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, the appropriate state statutes should be reviewed in planning governmental audits.

A. PERTAINING TO AUDITS OF STATE AGENCIES:

(1) Due dates for agency audits: House Bill 219 amended Section 12-6-3, NMSA 1978 so that by statute, state agency reports are due no later than 60 days after the financial control division of the department of finance and administration provides the state auditor with notice that the agency's books and records are ready and available for audit. The financial control division mandates that each agency, with the help of its independent auditor, identify a schedule of deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline cannot extend beyond December 15. This requirement does not prevent the auditor from performing interim audit work prior to receipt of the DFA notice of agency preparedness. Once the agency and auditor have certified to the financial control division of the department of finance and administration that the agency's books and records are ready and available for audit, if the auditor or agency find that the scheduled audit deliverables or agreed upon milestones are not accomplished timely and there is a possibility the audit report will be late, the auditor or agency shall immediately write a dated letter to the state auditor describing the problems. The financial control division of the department of finance and administration must be sent a photocopy of the letter.

(2) Materiality at the individual fund level means at the individual central accounting system (CAS) fund level for

state agencies. The individual CAS funds should be shown in the combining financial statements and opined on in the independent auditors' report.

(3) Encumbrances reconciliation: DFA maintains an encumbrance system for all state agencies under its jurisdiction. The agency is responsible for preparing a list of its valid encumbrances at year-end and reconciling the list to with DFA's year-end encumbrance list. The differences in the reconciliation must be disclosed in the notes to the financial statements, by category of expenditure and by appropriation level.

(4) Special, deficiency, and specific appropriations:

(a) Special, deficiency, and specific appropriations must be disclosed in the financial statements. The original appropriation, expenditures to date, outstanding encumbrances and unencumbered balances should be shown in a supplementary schedule or in a note to the financial statements. **This is a special requirement of the state auditor.**

(b) Any special, deficiency, and specific appropriation balances that are not reverted at the balance sheet date must be presented as unearned or deferred revenue or as: reserved fund balance in the fund financial statements; and restricted net asset in the statement of net assets. The accounting treatment of any balances should be fully explained in the supplementary schedule or in a note to the financial statements regarding the special appropriations.

(5) Net assets/fund balance:

(a) The government-wide statement of net assets and the proprietary fund balance sheet should show net assets as: (1) invested in capital assets, net of related debt; (2) restricted; and/or (3) unrestricted. GASB 34 paragraphs 33 through 37 explain the components of net assets. Net assets are restricted when constraints placed on net asset use are either: externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or imposed by law through constitutional provisions or enabling legislation. Note that restricted net assets are not the equivalent of reserved fund balances. Encumbrances should not be shown as restricted net assets.

(b) Governmental fund financial statement fund balances should be segregated into reserved fund balances and unreserved and legally designated fund balances (GASB 34 paragraph 84). In general, an agency should show reserved fund balance related to encumbrances, inventories, and petty cash. All other reservations must be specifically required or authorized by legislation. The notes to the financial statements must disclose the specific legal authority for all reservations of fund balance. Reserved

fund balances of the combined nonmajor funds should be displayed in sufficient detail to disclose the purposes of the reservations (i.e., reserved for debt service or reserved for encumbrances). Unreserved fund balances of nonmajor funds should be displayed by fund type on the face of the balance sheet.

(c) The statement of fiduciary net assets (fiduciary fund financial statement) should show net assets as "held in trust for ..." (GASB 34 paragraph 108 and Example E-1)

(6) Books of record:

(a) DFA maintains a central accounting system (CAS) of state accounts for cash and budgetary control purposes. There is a three-volume set of DFA model accounting practices (MAPs) available that describes state agency accounting policies, procedures, document processing and GASB 34 implementation. They provide excellent guidance for an auditor regarding policy and procedure requirements and should be available at each state agency.

(b) The legislature made changes to the appropriation levels as part of the implementation of the Accountability in Government Act. DFA made corresponding changes to the CAS chart of accounts which are described in the crosswalk below. There are five appropriation unit codes instead of the previous eleven. Statements of revenues and expenditures should continue to be presented in accordance with GAAP by function or program classification. Budget comparison statements must be presented using the level of appropriation reflected in the agency appropriation for the current-year.

New appropriation code	Old appropriation name	Old appropriation unit
200	personal services	000
200	employee benefits	010
400	in-state travel	020
400	maintenance and repairs	030
400	supplies	040
300	contractual services	050
400	operating costs	060
400	other costs	070
400	capital outlay	080
400	out-of-state travel	095
500	other financing uses	150
600	refunds, reversions, annuity	160

The updated revenue codes follow a format that facilitates GASB 34 revenue classification:

Revenue Code	Type of Revenue
XXX3	program charges for services
XXX4	program operating revenue
XXX5	program capital contrib/grants
XXX6	general revenue
XXX7	addition to employee retirement plan
XXX8	other financing sources
XXX9	special items/extraordinary
XXX0	transfers

For more detail about the chart of accounts see the DFA website.

(7) Reversions to state general fund:

(a) All reversions to the state general fund must be identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund FY 03). The gross amount of the appropriation and the gross amount of the reversion must be shown separately.

(b) Section 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 forty five days** of release of the audit report for that fiscal year.” Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(8) Nonreciprocal (not payments for materials or services rendered) interfund (internal) activity includes (a) transfers (redefined to include activities previously known as “operating transfers” and “residual equity transfers” and (b) reimbursements (GASB 34 paragraph 410):

(a) Intra-agency transfers between funds within the agency should offset. Reasons for intra-agency transfers should be fully explained in the notes to the financial statements. In the separate audit report of the state agency these 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) should be segregated from intra-agency transfers and should be fully explained in the notes to the financial statements along with the agency number and cash account to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than notes, but agency and cash account numbers must be shown. The IPA is responsible for performing audit procedures on all such inter-agency transfers.

(c) Inter-agency transfers between legally separate component units and the primary government the state:

(i) The AICPA Audit and Accounting Guide, *Audits of State and Local Governments (GASB 34 Edition)*, lists some examples of potential component units (blended and/or discrete) of a state in Section 12.02: school districts; colleges and universities;

utilities; hospitals and other health care organizations; and public employee retirement systems.

(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. (GASB 34 paragraph 318)

(iii) All resource flows between a discretely presented component unit of the state and other funds of the state are required to be reported as external transactions-revenues and expenses in the primary government’s financial statements and the component unit’s separately issued financial statements. (GASB 34 paragraph 318)

(d) All transfers to and from CAS fund 853, the state general fund appropriation account, must be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections.

(e) Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements should not be reported as interfund activity in the financial statements.

(9) General services department (GSD) capital projects: GSD records the state of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency must capitalize those assets based on actual amounts expended, in accordance with GSD instructions issued in NMAC 1.2.1.10, *Valuation of Assets* (2.20.1.10 NMAC).

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

(11) Capital assets inventory:

(a) The Audit Act (12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment whose cost is over \$1,000. Neither the statute nor Rule 1

NMAC 1.2.1 (2.20.2 NMAC), *Accounting and Control of Fixed Assets of State Government*, requires that agencies remove items from their capital asset inventory whose value is less than \$1,000; and

(b) The state auditor encourages agencies to maintain a separate accountability report (listing), for management purposes, of those items that cost less than \$1,000. This listing will not be reflected in the financial statements.

(12) Financial statement presentation (GASB 34 paragraph 134):

(a) Unless a state agency is legally separate from the state, the special formats applicable to special-purpose governments should not be used.

(b) State agencies that are not legally separate from the state should provide both fund financial statements and government-wide financial statements in their separately issued financial statements.

(13) Independent auditor's report: The independent auditor's report for state agencies, district attorneys, and district courts **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 present the financial position and results of operation of only that portion of the financial reporting agency of the state that is attributable to the transactions of the agency. See Example 14A.14 in the AICPA Audit and Accounting Guide, *Audits of State and Local Governments (GASB 34 Edition)*. A statement should be included that the audit was made in accordance with generally accepted government auditing standards per GAGAS 5.05.

B. PERTAINING TO HOUSING AUTHORITIES:

(1) **The state of New Mexico currently has 48 housing authorities that are included under the Audit Act:**

- (a) independent 5
- (b) component units or department of municipalities 33
- (c) component units or department of counties 9
- (d) component unit of the state 1

(2) The housing authority must be included in the financial report of the primary government by discrete presentation unless an exemption from this requirement is 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 GASB 14 paragraphs 44 through 50 for additional guidance.

(b) The primary government and/or 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/or auditor determine that the housing authority is a department of, rather than a component unit of the primary government, a **request for exemption from the discrete presentation requirement must be submitted to the state auditor, by the agency, explaining why the housing authority should not be a discretely presented component unit**. The request for exemption must include evidence that the housing authority is not a separate legal agency from the primary government and that the corporate powers of the housing authority are held by the primary government. Evidence included in the request must address these issues:

(i) the housing authority is not a corporation registered with the public regulation commission;

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

(iii) the housing authority was authorized under Section 3-45-1, NMSA 1978, Municipal Housing Law.

(c) Upon receipt of the exemption from the requirement for discrete presentation, granted by the state auditor, 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.

(d) **An annual exemption is required.**

(3) For housing authorities that are component units, the financial data for all funds of the housing authority **must be accounted for in proprietary funds**.

(4) Notice PIH 2002-4 (HA) dated February 11, 2002, requires all public housing authorities to submit one copy of the completed audit report including the findings to the HUD office for review, effective for fiscal years ended June 30, 2001.

(a) The IPA shall issue to the housing authority **a separate audit report if it is required by HUD or the agency**. The preparation and submission cost for any required separate audit report must be included in the audit contract.

(b) Any separate housing authority audit report is due on or before the due date specified in 2.2.2.9 NMAC. If the separate report is not received on or before the due date by the state auditor, the report is late and not in compliance with the requirements of Subsection A of 2.2.2.9 NMAC, and a current-year audit finding must be included the audit report.

(5) Auditors and public housing authorities must follow the requirements of *Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities Not-for-Profit Multifamily Program Participants and their Independent Accountants*, which is available on the real estate assessment center (REAC) web site at www.hud.gov/offices/reac under a search for UFRS. Additional administrative issues related to the audit of public housing authorities follow.

(a) The local governments are encouraged to include representatives from the housing authority in the IPA selection process.

(b) Audits of the public housing authorities shall be conducted by the same IPA who performs the audit of the local government. Separate audit contracts will not be approved.

(c) Audits of public housing authorities that are component units of or are otherwise included in a state or local government that expends \$500,000 (require a Single Audit) must also include a separate agreed-upon procedures engagement related to the audited financial data schedule (FDS) which is electronically submitted to REAC by the housing authority. The PHA must submit electronically a final approved FDS based on the audited financial statements **no later than 9 months** after the PHA's fiscal year end. The auditor must:

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

(ii) include a hard copy of the FDS in the audit report;

(iii) render a SAS 29 opinion on the FDS; and

(iv) explain any material differences between the audited FDS and the financial statements in the notes to the financial statements. **The audit must include this separate attestation engagement. The preparation and submission cost for this HUD requirement must be included in the audit contract.**

(d) 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.

(e) 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.

(f) The IPA shall consider whether any fee accountant used by the housing authority is a service organization according to the criteria of SAS 70. See Subsection W of 2.2.2.1 NMAC above, SAS AU 324, and the SAS 98 amendment to SAS 70 for further explanation regarding service organizations and related auditing requirements. If the housing authority has not implemented effective internal controls over the fee accountant's work product, the auditor will have to obtain sufficient understanding of the internal controls the fee accountant has over his/her work product to plan the audit. A service auditor's report on controls placed in operation at the fee accountant's organization should be helpful in providing a sufficient understanding to plan the audit of the housing authority; however, relying on that report alone, the housing authority auditor cannot reduce the assessed level of control risk below the maximum. To do that the housing authority auditor would have to do one or more of the following:

(i) test the housing authority's controls over the activities of the fee accountant;

(ii) obtain a copy of the fee accountant's auditors' report on controls placed in operation and tests of operating effectiveness, or a report on the application of agreed-upon procedures that describes relevant tests of controls; or

(iii) perform tests of the fee accountant's internal controls at the fee accountant's office. (SAS AU 324.12)

C. PERTAINING TO SCHOOL DISTRICTS:

(1) Update to the auditor selection process: After completing the evaluation for each IPA the school district shall submit the IPA recommendation to the state public education department (PED) for approval, prior to submitting the recommendation to the state auditor for approval. The sample cover letter provided in Appendix A may be used for the PED approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Regional education cooperative (REC) audits:

(a) For accounting purposes, RECs are considered joint ventures, in accordance with the GASB *Codification of Governmental Accounting and Financial Reporting Standards*, Section J50 "Accounting for Participation in Joint Ventures and Jointly Governed Organizations".

(b) A separate financial and compliance audit is required on activities of RECs. The IPA shall provide a copy of this report to the participating school districts and the New Mexico public education department once the report has been

released by the state auditor. The presentation of these funds should be in conformity with accounting principles generally accepted in the United States of America.

(c) Audits of RECs should test for compliance with PED Regulations 6.23.3.7 through 6.23.3.12.

(d) 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.

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

(a) Audits of school districts shall test for compliance with SBE 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*, (pages 7-1 through 7-13).

(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 will account for cash in the same categories as used by the district in its monthly cash reports to the state public education department.

(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; interentity cooperation is encouraged. If information cannot be obtained from those sources, employer governments should make their best estimates of the amounts." (GASB 24 paragraph 9)

(d) Any joint ventures or other entities created by the school districts are agencies subject to the Audit Act.

(e) Agency fund reporting: Under GASB 34 a statement of changes in fiduciary net assets is required for pension trust funds, investment trust funds, and private-purpose trust funds. Agency funds have no net assets and will be excluded from this presentation. (GASB 34 paragraph 110) Therefore, it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the fiscal year be included as supplemental information in the audit report, showing the changes in agency funds summarized by school.

(4) Pertaining to charter schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board 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 for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b) In defining a school district's financial reporting agency, certain GASB 14 criteria must be applied to determine whether the district (primary government) has any component units that must be included. A charter school is a component unit of its sponsoring school district. The charter schools must be included in the financial statements of their sponsoring school districts by discrete presentation. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government.

(c) Financial statement presentation requirements for charter school component units follow. Note that the scope of the audit includes supplemental information consisting of component unit fund financial statements and combining statements which must be opined on. The charter schools should be reported in the following manner:

(i) All charter schools should be reported as significant and therefore major component units of the school district. All the charter schools should be included in the basic financial statements (full accrual basis presentation) in one of the following manners: a separate column for each component unit presented in the government-wide statement; combining statements of component units presented as a basic financial statement after the fund financial statements; or as condensed financial statements in the notes to the basic financial statements. (GASB 34 paragraphs 124 to 126)

(ii) Fund financial statements are required because such information is not available in separately issued financial reports on the charter schools. This modified accrual basis presentation should be presented as supplemental information (SI) according to AAG-SLV 3.20. If any funds presented are the result of combining nonmajor funds, a combining statement should also be included in the SI presentation.

(d) The state auditor requires that individual budget-to-actual comparison schedules for the charter schools be included in the financial report following the fund financial statements and related combining statements as SI to demonstrate compliance

with legally adopted budgets. The individual budget comparison schedules are also included in the scope of the audit and must be audited and included in the auditor’s opinion.

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

D. PERTAINING TO LOCAL PUBLIC BODIES:

(1) Obsolete county records: Section 14-1-8, NMSA 1978 requires that “An official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage.” The auditor should test for compliance with this statute.

(2) Tax roll reconciliation - county governments: Counties must include two supplementary schedules. The first one is a “tax roll reconciliation of changes in the county treasurer’s property taxes receivable” showing the June 30th receivable balance with an additional breakout of the receivable for the past 10 years. The second schedule titled “county treasurer’s property tax schedule” must show by 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, by agency. 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 GASB 33. See Subsection AA of 2.2.2.10 NMAC for more information regarding GASB 33 property tax revenue recognition. Property taxes levied on January 2003 are budgeted for the fiscal year July 1, 2003 through June 30, 2004. If the county does not have a system set up to gather and report the necessary information, or the necessary information itself, for the property tax schedule a related finding is required.

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

STATE OF NEW MEXICO (NAME) COUNTY TAX ROLL RECONCILIATION - CHANGES IN THE COUNTY TREASURER’S PROPERTY TAXES RECEIVABLE FOR THE YEAR ENDED JUNE 30, 2004	
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, 2003	(4,330,993)
Property taxes receivable, end of year	<u>\$ 773,821</u>
Property taxes receivable by years:	
1994	\$ 0
1995	29
1996	556
1997	1,848
1998	3,381
1999	5,498
2000	13,169
2001	34,134
2002	167,729
2003	547,477
Total taxes receivable	<u>\$ 773,821</u>

(4) An example of the schedule titled “county treasurer’s property tax schedule “ is shown in Appendix E.

E. PERTAINING TO AUDITS OF COLLEGES AND UNIVERSITIES:

(1) Update to the auditor selection process: After completing the evaluation for each IPA the college or university shall submit the IPA recommendation to the commission on higher education (CHE) for approval, prior to submitting the recommendation to the state

auditor for approval. The sample cover letter provided in Appendix A may be used for the CHE approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Budget comparison schedules: The state auditor requires that every college and university audit report include budget comparison schedules as supplementary information (SI). The budget comparison schedules must show columns for: the original budget; the revised budget; actuals on the budgetary basis; and a variance column. **The budget comparison schedules must be audited and an auditor opinion must be rendered.** See Section 14.51 of the AICPA Audit and Accounting Guide, *Audits of State and Local Governments, GASAB 34 Edition* (AAG-SLV). The auditor must confirm the final adjusted and approved budget with the CHE. The auditor opinion on the budgetary SI should follow Example 14A.12 in AAG-SLV and include a statement that the audit was made in accordance with generally accepted government auditing standards (GAGAS 5.3). A reconciliation of actual amounts on the budget basis to financial statement accrual basis amounts should be disclosed on the budget comparison schedule. The reconciliation is required only at the "rolled up" level of unrestricted and restricted - all operations. The commission on higher education (CHE), department of finance administration (DFA) budget division, and the legislative finance committee (LFC) have approved the following format for audited budget comparison schedules. This rule requires that the format be used in reporting the budget comparison data as supplementary information.

(a) Unrestricted and restricted - all operations (Schedule 1)
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
Cash balance budgeted
Total unrestricted and restricted revenues and cash balance budgeted
Unrestricted and restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant, research, public service, auxiliary services, intercollegiate athletics, capital outlay, building renewal and replacement, retirement of indebtedness, other (student aid, grants and stipends; and independent operations)
Total unrestricted and restricted expenditures
Change in net assets (budgetary basis)
(b) Unrestricted - Non Instruction & General (Schedule 2)
Unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Cash balance budgeted
Total unrestricted revenues and cash balance budgeted
Unrestricted expenditures: Research, public service, internal services, student aid, grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness
Total unrestricted expenditures
Change in net assets (budgetary basis)
(c) Restricted - Non-Instruction and General(Schedule 3)
Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Cash balance budgeted
Total restricted revenues and cash balance budgeted
Restricted expenditures: Research, public service, internal services, student aid, grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness
Total restricted expenditures
Changes in net assets (budgetary basis)

(d) Unrestricted - instruction and general (Schedule 4)
Unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Cash balance budgeted
Total unrestricted revenues and cash balance budgeted
Unrestricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total unrestricted expenditures
Change in net assets (budgetary basis)
(e) Restricted - instruction and general (Schedule 5)
Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Cash balance budgeted
Total restricted revenues and cash balance budgeted
Restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total restricted expenditures
Change in net assets (budgetary basis)

(3) The level of planning materiality required by the state auditor follows: Institutions must report using the business type activities (BTA) model. The level of planning materiality described in the AICPA Audit and Accounting Guide, *Audits of State and Local Governments (GASB 34 Edition)*, Section 4.26, must be used for the audit of these institutions. **Planning materiality for component units is at the individual component unit level.**

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

(5) Component unit issues: Legally separate entities that meet the criteria set forth in GASB 14 as amended by GASB 39 to qualify as a component unit of an educational institution must be included in the educational institution’s audit report **as a discrete component unit**. An exemption must be obtained from the state auditor in order to present any component unit as blended. The **same auditor** must audit the component unit and the educational institution unless an exemption is obtained from the state auditor. **These exemptions must be obtained annually.**

(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) GASB Statement No. 39, *Determining Whether Certain Organizations Are Component Units*, became effective for financial statements of periods beginning after June 15, 2003 (FY04), and requires that a legally separate, tax-exempt organization should be reported as a component unit of a reporting entity if the primary government is not financially accountable; however, the nature and significance of the relationship with the primary government is such that exclusion would cause the reporting entity’s financial statements to be misleading or incomplete. As a result of this statement, many college and university foundations, which were not previously reported as component units, will have to be reported as a component unit of the college or university.

(c) Individual component unit budget comparison schedules 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.

(d) There is also no level of materiality for reporting findings of component units that do not receive public funds. All component unit findings must be disclosed in the primary government’s audit report.

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

(7) Special appropriations (outside HB2) should be clearly shown in the financial statement or explained in the notes to the financial statements. Any unexpended balances in the appropriations at year-end that do not have to revert should be shown as restricted expendable net assets in the business-type activity (BTA) model. See Paragraph (7) of Subsection A of 2.2.2.12 NMAC for more information regarding reversions of appropriations.

F. **PERTAINING TO MUTUAL DOMESTIC WATER ASSOCIATIONS:** Associations created pursuant to the Sanitary Projects Act (3-29-1, NMSA 1978) are subject to audit under the Audit Act 12-6-2, NMSA 1978 and this rule. The financial statements should follow the not-for-profit model unless the agency meets the criteria described in AAG-SLV 1.01 for being a governmental organization that should use the governmental accounting and financial reporting model.

[2.2.2.12 NMAC - Rp 2.2.2.12 NMAC, 3-31-04]

2.2.2.13 REVIEW OF AUDIT REPORTS AND WORKING PAPERS:

A. Section 12-6-14(D), NMSA requires that the state auditor or personnel of his office designated by him examine all audit reports of agencies made pursuant to contract. All audits under contracts approved by the state auditor are subject to review.

(1) The state auditor conducts a preliminary review of all audit reports received for proper reporting and presentation of financial statements, note disclosures and audit findings.

(2) The state auditor notifies the IPA regarding any deficiencies found during the review process. The IPA shall submit related corrections or notification of disagreement with the review comments to the state auditor **within ten days** of receipt of the deficiency notification.

(3) A copy of the deficiency comments will be mailed to the agency, by the state auditor, if the IPA does not respond to the deficiency notification in a timely manner. These deficiency comments are considered public documents and may be requested by the agency.

(4) If the IPA does not respond to the deficiency notification the state auditor will notify the agency to select a different auditor for future audits.

B. Released audit reports may be subject to a comprehensive desk and working paper review by the state auditor. These review checklists are public documents available on the website at www.saonm.org/pdfguides.html, unless the review is performed in conjunction with a federal agency. It should be noted that any reviews of working papers will include testing of audit firm documentation for:

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

(2) the independence safeguards on nonaudit services, for compliance with GAGAS 3.17 requirements; and

(3) SAS 99 brainstorming; procedures performed to obtain information necessary to identify and assess the risks of material misstatement due to fraud; specific risks that were identified and a description of the auditor's response to those risks; improper revenue recognition as a risk of material misstatement due to fraud; the results of procedures performed to further address the risk of management override of controls; other conditions and analytical relationships that caused the auditor to believe that additional auditing procedures were required and any further related auditor responses; and the nature of the communications about fraud made to management, the audit committee, and others.

C. If during the course of

such a quality control review, the state auditor determines that deficiencies noted are significant enough that the audit was not performed in accordance with auditing standards generally accepted in the United States of America and/or this rule, any or all of the following action(s) may be taken:

(1) the IPA may be required to correct the working papers and reissue the audit report to the agency, and any others receiving copies;

(2) the number of audit engagements may be limited;

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

(4) the IPA may be denied the issuance of future audit contracts; and/or

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

D. Results of review:

(1) A letter will be issued upon completion of each report or working paper review to advise the IPA of the results of the review. The IPA is required to respond to each review comment as directed.

(2) Any corrective actions will be approved by the state auditor based on the recommendation of the in-charge reviewer.

(3) The IPA may request a review of the recommended action by the state auditor. If requested, the state auditor will schedule a conference, within fifteen days, to allow the IPA an opportunity to analyze the results of the desk or working paper review and present any information the IPA deems appropriate.

E. Revisions to the audit report: revisions to the audit reports from reviews conducted by the federal inspector generals and the state auditor will be made by the IPA, to all copies of the audit report held by the agencies and the state auditor.

[2.2.2.13 NMAC - Rp 2.2.2.13 NMAC, 3-31-04]

2.2.2.14 CONTINUING EDUCATION AND QUALITY CONTROL REQUIREMENTS:

A. Continuing professional education: The U. S. GAO *Government Auditing Standards 2003 Revision*, states in Section 3.45 that "each auditor performing work under GAGAS should complete, every 2 years, at least 80 hours of CPE that directly enhance the auditor's professional proficiency to perform audits and/or attestation engagements." At least 20 hours of the 80 should be completed in any 1 year of the 2-year period. Staff members involved in planning, directing, or reporting on the audit or attestation engagement following GAGAS must obtain at least 24 of the 80

hours of CPE in subjects directly related to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. Staff members not involved in planning, directing, or reporting on the audit or attestation engagement, and who charge less than 20 percent annually of their time to audits and attestation engagement following GAGAS, do not have to comply with the 24-hour CPE requirement. Guidance regarding allowable CPE is available in *Interpretation of Continuing Education and Training Requirements* at <http://www.gao.gov/govaud/ybk01.htm>.

B. U.S. GAO *Government Auditing Standards, 2003 Revision* (GAGAS), Section 3.49 states "each audit organization performing audits and/or attestation engagements in accordance with GAGAS should have an appropriate internal quality control system in place and should undergo an external peer review." Sections 3.52 and 3.53 require that "Audit organizations performing audits and attestation engagements in accordance with GAGAS should have an external peer review ... at least once every 3 years by reviewers independent of the audit organization being reviewed. The external peer review should determine whether ... the organization's internal quality control system was adequate and whether quality control policies and procedures were being complied with to provide the audit organization with reasonable assurance of conforming with applicable professional standards.

(1) Audit organizations should have an external peer review conducted within 3 years from the date they start (that is, start of field work) their first assignment in accordance with GAGAS. Subsequent external peer reviews should be conducted every 3 years. The *Standards for Performing and Reporting on Peer Reviews*, promulgated by the AICPA require that a new firm enrolling in the AICPA Peer Review Program must have its initial peer review within 18 months of joining.

(2) *Proposed Revisions to the AICPA Standards for Performing and Reporting on Peer Reviews*, are scheduled to become effective for peer reviews commencing on or after January 1, 2005.

(3) If the firm is unable to complete its external quality control review by the required due date, it will render the firm ineligible from conducting audits of governmental agencies. **Extension requests to complete the external quality control review that are approved by the administering organization will not be accepted by the state auditor.**

(4) 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.

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

(a) the employing organization of the peer reviewers' quality control review showing an unqualified opinion (this is a special requirement of the state auditor);

(b) external quality control review report for the auditor's firm;

(c) the corresponding letter of comments;

(d) auditor's response to letter of comments;

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

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

(6) Failure to submit the required IPA firm profile documentation, or an opinion less than **modified** on the auditor's peer review, will disqualify the IPA from doing governmental audits.

(7) 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.

(8) Individuals conducting peer reviews of an audit organization's system of quality control should meet the following requirements per GAGAS 3.53:

(a) have current knowledge of GAGAS and the government environment relative to the work being reviewed;

(b) be independent (as defined in GAGAS) of the audit organization being reviewed, its staff, and the assignments selected for review;

(c) the employing organization of the peer reviewers should have received an unqualified opinion on the review of their organization's system of quality controls; and

(d) have knowledge on how to perform a peer review (knowledge can be obtained from on-the-job training, training courses, or both).

(9) The reviewer must 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.

(10) The review should include (GAGAS 3.54):

(a) "a review of the organization's internal quality control policies and procedures, including related monitoring procedures, audit and attestation engagement

reports, audit and attest documentation, and other necessary documents (for example, independence documentation, CPE records, personnel management files related to compliance with hiring, performance evaluation, and assignment policies);"

(b) interviews with various levels of the reviewed organization's professional staff to assess their understanding of and compliance with relevant quality control policies and procedures;

(c) use of one of the following approaches to selecting assignments for review:

(i) select assignments that provide a reasonable cross section of the assignments performed by the reviewed organization in accordance with GAGAS; or

(ii) select assignments that provide a reasonable cross section of the reviewed organization's work subject to quality control requirements, including one or more assignments performed in accordance with GAGAS.

(d) The review should be sufficiently comprehensive to provide a reasonable basis for concluding whether the reviewed audit organization's system of quality control was complied with to provide the organization with reasonable assurance of conforming with professional standards in the conduct of its work. Reviewers should consider the adequacy and results of the reviewed audit organization's monitoring efforts to efficiently plan its peer review procedures; and

(e) Reviewers should prepare a written report(s) communicating the results of the external peer review. The report should indicate the scope of the review, including any limitations thereon, and should express an opinion on whether the system of quality control of the reviewed organization's audit and/or attestation engagement practices was adequate and was being complied with during the year reviewed to provide the audit organization with reasonable assurance of conforming with professional standards for audits and attestation engagements. The report should state the professional standards to which the reviewed audit organization is being held. The report should also describe the reason(s) for any modifications to the opinion. When there are matters that resulted in a modification to the opinion, reviewers should report a detailed description of the findings and recommendation, either in the peer review report or in a separate letter of comment or management letter, to enable the reviewed audit organization to take appropriate actions. The written report should refer to the letter of comment or management letter if such a letter is issued along with a modified report.

C. The state auditor performs its own quality control review of IPA audit reports and working papers. When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding letter of comments, the state auditor will 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.

D. **House Joint Memorial 86 requesting the state auditor to study the need for stricter conflict of interest standards for public accountants:** The prior year legislative session passed House Joint Memorial 86. It builds on the work done under House Joint Memorial 76 (Laws of 2002) which requested that the New Mexico public accountancy board, the state auditor, the New Mexico society of CPAs (NMSCPA), and the New Mexico society of public accountants (NMSPA) work to ensure strict adherence to public accountancy regulations and standards and report their findings and recommendations to the legislative finance committee (LFC) by December 1, 2003. The deadline for the committee to report to the LFC has been extended to prior to the 2005 legislative session. The HJM task force reported the following summary findings to the LFC: 429% improvement in resolving unprocessed complaints to the public accountancy board; four CPA's referred to the board for enforcement action by the state auditor and HUD, resulting from quality reviews of financial statements and working papers; early adoption by the state auditor of proposed changes to GAGAS requirements for external quality control peer reviews; "on-site" peer reviews required by the state auditor; existing statutes appear sufficient to protect the public; and continued and increased severe disciplinary actions are needed to ensure timely and accurate financial reporting. House Joint Memorial 86 continues to build upon this foundation of the work performed under House Joint Memorial 76. It states:

(1) "WHEREAS, recent public accountancy scandals have highlighted the dangers that exist and the corruption that can result when certified public accountants and auditors have multiple and conflicting business relationships with their clients; and

(2) WHEREAS, stockholders and the general public must be able to rely upon the statements and reports of certified public accountants and auditors to be honest, unvarnished reports of a corporation's financial affairs; and

(3) WHEREAS, corporate corruption aided and abetted by certified public accountants and auditors costs not only individual stockholders millions of dollars, but also governmental investors such as the state of New Mexico that invest taxpayer dollars; and

(4) WHEREAS, such corruption further weakens the public's faith in its governmental and corporate institutions; and

(5) WHEREAS, New Mexico law currently prohibits certain practices by certified public accountants, but might benefit from a review to determine if other practices should be prohibited;

(6) NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the state auditor, with the assistance of the performance audit staff of the legislative finance committee, the New Mexico public accountancy board and the New Mexico society of public accountants, be requested to study the current ethical and conflict of interest standards for New Mexico's certified public accountants and the need, if any, to revise those standards and report his findings and recommendations, if any, to the second session of the forty-sixth legislature; and

(7) BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the state auditor, the director of the legislative finance committee, the New Mexico public accountancy board and the New Mexico society of certified public accountants.

[2.2.2.14 NMAC - Rp 2.2.2.14 NMAC, 3-31-04]

[Appendices begin on page 175.]

Date

Name of the State Auditor
2113 Warner Circle
Santa Fe, NM 87505-5499

Dear Mr. "Name of the State Auditor,"

In accordance with the requirements of Paragraph (6) of Subsection C of 2.2.2.8 of 2.2.2 NMAC *Requirements for Contracting and Conducting Audits of Agencies*, the agency name is recommending that the firm of recommended IPA be the agency's Independent Public Accountant (IPA) for the financial and compliance audit of the agency financial statements for the fiscal year ended June 30, ____; and requesting approval of this selection by the State Auditor.

This IPA recommendation has been reviewed and approved by our oversight agency _____ (CHE or SDE) as required by Section 12-6-14, NMSA 1978, and indicated by the following oversight agency signature and date.

Oversight Agency Signature Printed name of signer Date

List the agency personnel who attended the Office of the State Auditor Rule Update Training for FY04.

_____ Name	_____ Location of Training	_____ Date
_____ Name	_____ Location of Training	_____ Date
_____ Name	_____ Location of Training	_____ Date

Complete the following if applicable:

This is the _____ (first, second, or third) year of the multi-year contract for this recommended auditor.

The following is a list of all professional services contracts that the agency had with any IPA on the State Auditor's approved list of IPA's during calendar year 2003.

Contract Date	Contract Amt	Contract Auditor	Services Provided by the Auditor
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____

If you have any questions regarding this IPA recommendation please contact _____ at phone number _____ at the agency office.

Respectfully,

Agency Representative

Enc: Evaluation for the Recommended IPA

[2.2.2 NMAC Appendix A - Rp 2.2.2 NMAC Appendix A, 3-31-04]

NEW MEXICO STATE AUDITOR'S OFFICE
 Audit Contract Proposal Evaluation Form
 Part One

Name of Agency _____
 Agency Contact _____ Phone # _____
 Audit Firm Name _____ Date Completed _____

<u>Evaluation Criteria</u>		Points	Points Awarded
Section I. <u>Capability of Firm</u>			
A)	The firm has the resources to perform the type and size of audit required. # of firm team members _____ Total audit hours available _____	0-5	
B)	The firm meets independence standards to perform your audit.	0-2	
C)	External Quality Control Review (Peer Review) 1. Peer review results: Obtain most recent copy of the external quality control review report including letter of comments 2. - Opinion received _____ Unmodified 10 Modified 5	0-10	
If report is less than modified (adverse) STOP HERE. FIRM DOES NOT QUALIFY.			
	3. Results of reference checks and agency's prior experience with firm (check should include timeliness, planning, technical expertise, etc.).	0-10	
D)	Organization and completeness of proposal or bid.	0-3	
Section I Total			
Section II. <u>Work Requirements & Audit Approach</u>			
A)	Knowledge of audit objectives, agency needs, and product to be delivered.	0-5	
B)	Proposal or bid contains a sound technical plan and realistic estimate of time to complete major segments of the audit: planning; interim fieldwork; fieldwork; and reporting. Start Date _____ End Date _____	0-5	
C)	Plans for using agency staff, including internal auditors.	0-3	
D)	If the proposal or bid is for a multi-year contract, approach for planning and conducting the work efforts of subsequent years.	0-2	
Section II Total			
Section III. <u>Technical Experience</u>		0-10	
A)	Governmental audit experience of on-site manager Name of on-site manager _____		
B)	Team audit experience: 1. Specialization in your type of agency (e.g., state agencies, schools, hospitals, counties, cities, etc.)	0-10	
	2. GASB 34 and 35 Experience	0-7	
	3. Experience with Housing Authorities	0-4	
	4. Experience with Charter Schools	0-4	
C)	Attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and the agency.	0-5	
Section III Total			
Section IV. <u>Firm Strengths or Weaknesses</u>			
Specify _____		0-5	
Section IV Total			
Total All Sections			

Submit a copy of this form for the proposal selected to the State Auditor along with the Agency recommendation letter.

Appendix B

New Mexico State Auditor's Office
 Agency Audit Contract Proposal Evaluation Form
 Part Two

 Name of Agency Phone #

 Agency Contact

 Audit Firm

Cost is to be evaluated ONLY upon completion of Part One of this two-part evaluation form. Evaluate cost separately for the top THREE CHOICES ONLY from Part One. ADD parts One and Two in making your FINAL recommendation.

EVALUATION CRITERIA		
COST	Maximum Points	Points Awarded
Award a maximum of 10 points		
Lowest Cost Proposal \$ _____ / (divided by) Subtotal This Proposal \$ _____ = _____ (If this is a multi-year proposal, divide the total lowest cost for the three years by total cost for the three years on this proposal) x 10 = Points Awarded _____	10	
Multi-Year Proposal Y <input type="checkbox"/> (_____ year of _____ year proposal) N <input type="checkbox"/>		

BREAKDOWN	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	1 st Year Hours FYE 6/30	1 st Year Cost FYE 6/30/	2 nd Year Hours FYE 6/30/	2 nd Year Cost FYE 6/30	3 rd Year Hours FYE 6/30/	3 rd Year Cost FYE 6/30/
Financial Statement Audit	_____	_____	_____	_____	_____	_____
Federal Single Audit	_____	_____	_____	_____	_____	_____
Financial Statement Preparation	_____	_____	_____	_____	_____	_____
GASB 34/35 Implementation	_____	_____	_____	_____	_____	_____
Other (i.e. housing authorities, charter schools))	_____	_____	_____	_____	_____	_____
SUB TOTAL	_____	_____	_____	_____	_____	_____
Gross Receipts Tax		_____		_____		_____
TOTAL COMPENSATION		=====		=====		=====

SCORE	Maximum Points	Points Awarded
SCORE, Part One: Bring forward score from Part One of Evaluation Form	90	
FINAL SCORE	100	

Evaluated By

 Name and Title

Date

 Name and Title

Date

 Name and Title

Date

[2.2.2 NMAC Appendix B - Rp 2.2.2 NMAC Appendix B, 3-31-04]

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
1	Authoritative Status of NCGA Pronouncements and AICPA Industry Audit Guide	On issuance July 1984
2	Financial Reporting of Deferred Compensation Plans Adopted under the Provisions of Internal Revenue Code Section 457	Financial statements for periods ending after 12/15/86
3	Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements	Financial statements for periods ending after 12/15/86
4	Applicability of FASB Statement No. 87, "Employers' Accounting for Pensions," to State and Local Government Employers	On issuance September 1986
5	Disclosure of Pension Information by Public Employee Retirement Systems and State and Local Governmental Employers	Financial reports issued for fiscal years beginning after 12/15/86
6	Accounting and Financial Reporting for Special Assessments	Financial statements for periods beginning after 06/15/87
7	Advance Refundings Resulting in Defeasance of Debt	Fiscal periods beginning after 12/15/86
8	Applicability of FASB Statement No. 93, "Recognition of Depreciation by Not-for-Profit Organizations," to Certain State and Local Governmental Entities	On issuance January 1988
9	Reporting Cash Flows of Proprietary and Nonexpendable Trust Funds and Governmental Entities that Use Proprietary Fund Accounting	Financial statements for fiscal years beginning after 12/15/89
10	Accounting and Financial Reporting for Risk Financing and Related Insurance Issues	Public entity risk pools: periods beginning after 06/15/90; Entities other than pools: periods beginning after 06/15/94
11	Measurement Focus and Basis of Accounting - Governmental Fund Operating Systems	Deferred by GASB 17 to periods beginning approximately two years after an implementation standard is issued (early application not permitted)
12	Disclosure of Information on Post-employment Benefits Other than Pension Benefits by State and Local Governmental Employers	Financial reports issued for fiscal years beginning after 06/15/90
13	Accounting for Operating Leases with Scheduled Rent Increases	Proprietary and similar trust funds: prospectively for leases with terms beginning after 06/30/90 Governmental and similar trust funds: Measurement criteria - prospectively for leases with terms beginning after 06/30/90; Recognition criteria - two changes: one for financial statements for periods approximately two years after an implementation standard is issued (early application not permitted)
14	The Financial Reporting Entity	Financial statements for periods beginning after 12/15/92
15	Governmental College and University Accounting and Financial Reporting Models	Financial statements for periods beginning after 06/15/92
16	Accounting for Compensated Absences	Financial statements for periods beginning after 06/15/93

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
17	Measurement Focus and Basis of Accounting - Governmental Fund Operating Statements: Amendment of the Effective Dates of GASB Statement 11 and Related Statements (an Amendment of GASB Statements 10, 11 and 13)	On issuance June 1993
18	Accounting for Municipal Solid Waste Landfill Closure and Post-closure Care Costs	Financial statements for periods beginning after 06/15/93
19	Governmental College and University Omnibus Statement (an Amendment of GASB Statements 10 and 15)	Pell grants - periods beginning after 06/15/93; Risk financing activities - periods beginning after 06/15/94
20	Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities that use Proprietary Fund Accounting	Financial statements for periods beginning after 12/15/93
21	Accounting for Escheat Property	Financial statements for periods beginning after 06/15/94
22	Accounting for Taxpayer-Assessed Tax Revenues in Governmental Funds	Financial statements for periods beginning after 06/15/94
23	Accounting and Financial Reporting for Refundings of Debt Reported by Proprietary Activities	Financial statements for periods beginning after 06/15/94
24	Accounting and Financial Reporting for Certain Grants and Other Financial Assistance	Financial statements for periods beginning after 06/15/95
25	Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans	Financial statements for periods beginning after 06/15/96 Earlier implementation is encouraged; however, implement GASB 26 in the same fiscal year
26	Financial Reporting for Post-employment Health Care Plans Administered by Defined Benefit Pension Plans	Financial statements for periods beginning after 06/15/96 Earlier implementation is encouraged; however, implement GASB 25 in the same fiscal year
27	Financial Reporting for Pensions by State and Local Governmental Employers	Financial statements for periods beginning after 06/15/97 Earlier implementation is encouraged
28	Accounting and Financial Reporting for Securities Lending Transactions	Financial statements for periods beginning after 12/15/95 Earlier implementation is encouraged
29	The Use of Not-for-Profit Accounting and Financial Reporting Principles by Governmental Entities	Financial statements for periods beginning after 12/15/94 For entities that have applied the AICPA Not-for-Profit model but previously have not followed the governmental accounting and financial reporting standards required by Paragraphs 5 and 6 of this statement, the provisions of those governmental standards are effective for financial statements for periods beginning after 12/15/95 Earlier application is encouraged
30	Risk Financing Omnibus - an amendment of GASB Statement No. 10	Financial statements for periods beginning after 6/15/96
31	Accounting and Financial Reporting for Certain Investments and for External Investment Pools	Financial statements for periods beginning after 6/15/97

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
32	Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans	Financial statements for periods beginning after 12/31/98 or when plan assets are held in trust under the requirements of IRC Section 457, subsection (g), if sooner
33	Accounting and Financial Reporting for Non-Exchange Transactions	Financial statements for periods beginning after June 15, 2000 Earlier application is encouraged
34	Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments	<p>The requirements of this Statement are effective in three phases based on a government's total annual revenues in the first fiscal year ending after June 15, 1999. Governments with total annual revenues (excluding extraordinary items) of \$100 million or more (phase 1) should apply this Statement for periods beginning after June 15, 2001. Governments with at least \$10 million but less than \$100 million in revenues (phase 2) should apply this Statement for periods beginning after June 15, 2002. Governments with less than \$10 million in revenues (phase 3) should apply this Statement for periods beginning after June 15, 2003. Earlier application is encouraged. Governments that elect early implementation of this Statement for periods beginning before June 15, 2000, should also implement GASB Statement No. 33, <i>Accounting and Financial Reporting for Non-exchange Transactions</i>, at the same time. If a primary government chooses early implementation of this Statement, all of its component units also should implement this standard early to provide the financial information required for the government-wide financial statements.</p> <p>Prospective reporting of general infrastructure assets is required at the effective dates of this Statement. Retroactive reporting of all major general governmental infrastructure assets is <i>required</i> four years after the effective date on the basic provisions for all major general infrastructure assets that were required or significantly reconstructed, or that received significant improvements, in fiscal years ending after June 30, 1980. Phase 3 governments are encouraged to report infrastructure retroactively, but may elect to report general infrastructure prospectively only.</p>
35	Basic Financial Statement - and Management's Discussion and Analysis - For Public Colleges and Universities	Colleges and Universities that are a unit of a state or local government will implement the new standards at the same time as their primary government, generally for fiscal years beginning July 1, 2001.

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
36	Recipient Reporting for Certain Shared Non-exchange Revenues	This Statement should be implemented simultaneously with Statement 33, for periods beginning after June 15, 2000.
37	Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments: Omnibus (An amendment of GASB Statement No. 21 and No. 34)	<p>This Statement should be implemented simultaneously with Statement 34. For governments that implemented Statement 34 prior to the issuance of this Statement, this Statement's requirements are effective for financial statements for periods beginning after June 15, 2000. Accounting changes adopted to conform to the provisions of this Statement should be applied retroactively, if practical, by restating financial statements for all prior periods presented. If restatement is not practical, the cumulative effect of applying this Statement, if any, should be reported as a restatement of beginning net assets, fund balances, or fund equity, as appropriate, for the earliest period restated. In the period this Statement is first applied, the financial statements should disclose the nature of any restatement and its effect. Also, the reason for not restating prior periods presented should be explained</p> <p>The provisions of this Statement need not be applied to immaterial items.</p> <p>The requirements of this Statement are effective in three phases based on the revenues of the government as described in paragraph 143 of Statement 34;</p> <p>* Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 2002.</p> <p>* Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002.</p> <p>* Phase 3 governments should apply this Statement for fiscal periods beginning after June 15, 2003.</p> <p>Earlier application is encouraged. However, paragraphs 6, 14, and 15 should be implemented only if Statement 34 has also been implemented.</p> <p>The provisions of this Statement need not be applied to immaterial items.</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
38	Certain Financial Statement - Note Disclosures	<p>The requirements of this Statement are effective in three phases on the revenues of the government as described in paragraph 143 of Statement 34:</p> <p>* Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 2002.</p> <p>* Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002.</p> <p>* Phase 3 governments should apply this Statement for fiscal periods beginning after June 15, 2003.</p> <p>Earlier application is encouraged. However, paragraphs 6, 14, and 15 should be implemented only if Statement 34 has been implemented.</p> <p>The provision of this Statement need not be applied to immaterial items.</p>
39	Determining Whether Certain Organizations Are Component Units	<p>The requirements of the statement are effective for financial statements for periods beginning after June 15, 2003. Earlier application is encouraged. Adjustments resulting from a change to comply with this statement should be treated as adjustments of prior periods. The financial statements of all prior periods presented should be restated, if practical, to show the financial information of the new reporting entity for all periods. If restatement of the financial statements for prior periods is not practical, the cumulative effect of applying this statement should be reported as a restatement of beginning net assets/fund balance for the earliest period restated.</p>

[2.2.2 NMAC Appendix C - Rp 2 .2.2 NMAC Appendix C, 3-31-04]

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i> <i>No.</i>	<i>Title</i>	<i>AU</i> <i>Section</i>
1	Codification of Auditing Standards and Procedures	See Part II of Cross-References To SASs section
7	Communications Between Predecessor and Successor Auditors	315
8	Other Information in Documents Containing Audited Financial Statements	550
12	Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments	337
19	Client Representation	333
21	Segment Information	435
22	Planning and Supervision	311
25	The Relationship of Generally Accepted Auditing Standards to Quality Control Standards	161
26	Association With Financial Statements	504
29	Reporting on Information Accompanying the Basic Financial Statements in Auditor Submitted Documents	551
31	Evidential Matter	326
32	Adequacy of Disclosure of Financial Statements	431
37	Filings Under Federal Securities Statutes	711
39	Audit Sampling	350
41	Working Papers	339
43	Omnibus Statements on Auditing Standards	150.06; 331.14 350.46; 420.15 901.01; 901.24 901.28
45	Omnibus Statement on Auditing Standards-1983	313; 334
46	Consideration of Omitted Procedures After the Report Date	390
47	Audit Risk and Materiality in Conducting an Audit	312
48	The Effects of Computer Processing on the Audit of Financial Statements	311.03; 311.09-10; 326.12
50	Reports on the Application of Accounting Principles	625
51	Reporting on Financial Statements Prepared for Use in Other Countries	534
52	Omnibus Statement on Auditing Standards-1987	551.15; 558
53	The Auditors Responsibility to Detect and Report Errors and Irregularities	316A
54	Illegal Acts by Clients	317
56	Analytical Procedures	329
57	Auditing Accounting Estimates	342
58	Reports on Audited Financial Statements	508
59	The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern	341
60	Communication of Internal Control Related Matters Noted in an Audit	325
61	Communication With Audit Committees	380
62	Special Reports	623
64	Omnibus Statement on Auditing Standards-1990	341.12; 508.83; 543.16

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS No.</i>	<i>Title</i>	<i>AU Section</i>
65	The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements	322
67	The Confirmation Process	330
69	The Meaning of <i>Present Fairly in Conformity With Generally Accepted Accounting Principles</i> in the Independent Auditor's Report	411
70	Reports on the Processing of Transactions by Service Organizations	324
71	Interim Financial Information	722
72	Letters for Underwriters and Certain Other Requesting Parties	634
73	Using the Work of a Specialist	336
74	Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance	801
76	Amendments to Statement on Auditing Standards No. 72, <i>Letters for Underwriters and Certain Other Requesting Parties</i>	634.01; 634.09; 634.10; 634.34 AT 300.01
77	Amendments to Statements on Auditing Standards No. 22, <i>Planning and Supervision</i> , No. 59, <i>The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern</i> , and No. 62, <i>Special Reports</i>	311.05; 341.13; 544.02; 544.04; 623.05; 623.08
78	Consideration of Internal Control in a Financial Statement Audit: An Amendment to Statement on Auditing Standards No. 55	319
79	Amendment to Statement on Auditing Standards No. 58, <i>Reports on Audited Financial Statements</i>	508
80	Amendment to Statement on Auditing Standards No. 31, <i>Evidential Matter</i>	326
81	Auditing Investments	332
82	Consideration of Fraud in a Financial Statement Audit	316
83	Establishing an Understanding with the Client	310
84	Communications Between Predecessor and Successor Auditors	315
85	Management Representations	333
86	Amendment to SAS No. 72, <i>Letters for Underwriters and Certain Other Reporting Parties</i> . Amendment is effective for comfort letters issued on or after June 30, 1998.	634
87	Restricting the Use of an Auditor's Report Statement is effective for reports issued after December 31, 1998	532
88	Service Organization and Reporting on Consistency	324; 420
89	Audit Adjustments	310.06; 333.06, 333.16; 380.09; and 380.10
90	Audit Committee Communications	380.03; 380.11; and 722.25-.27
92	Auditing Derivates Instruments, Heading Activities and Investments in Securities	332
93	Omnibus Statement on Auditing Standards - 2000	315.02; 315.12 411 (title) 411.01; 508.08 and 622

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i> <i>No.</i>	<i>Title</i>	<i>AU</i> <i>Section</i>
94	The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit	319
95	Generally Accepted Auditing Standards	150
96	Audit Documentation	339
97	N/A	
98	Omnibus Statement on Auditing Standards-2002	150.05 161.02 and .03 312.34-41 324 508.65 558.08 & .10 558.02 561.03 560.01 530.03-.05
99	Consideration of Fraud in a Financial Statement Audit	230 336

[2.2.2 NMAC Appendix D - Rp 2.2.2 NMAC Appendix D, 3-31-04]

STATE OF NEW MEXICO
 (NAME) COUNTY TREASURER'S
 PROPERTY TAX SCHEDULE
 FOR THE YEAR ENDED JUNE 30, 2004

Appendix E

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year-End	County Receivable at Year End
Grant County:									
Generaladvalorem 1994	\$2,425,000	\$ -	\$2,419,667	\$ -	\$2,419,667	\$ -	\$5,333	\$ -	\$ -
Generaladvalorem 1995	2,433,762	50	2,428,733	50	2,428,733	-	5,000	-	29
Generaladvalorem 1996	2,475,960	500	2,471,071	500	2,471,071	-	4,333	-	556
Generaladvalorem 1997	2,476,000	200	2,471,152	200	2,471,152	-	3,000	-	1,848
Generaladvalorem 1998	2,477,989	700	2,471,810	700	2,471,810	1,844	2,798	-	3,381
Generaladvalorem 1999	2,475,896	-	2,467,744	-	2,467,744	1,995	2,654	-	5,498
Generaladvalorem 2000	2,476,998	2,442	2,461,329	2,442	2,461,329	1,805	2,500	-	13,169
Generaladvalorem 2001	2,484,500	27,558	2,450,366	27,558	2,450,366	-	-	-	34,134
Generaladvalorem 2002	2,485,000	488,209	2,317,271	488,209	2,317,271	-	-	-	167,729
Generaladvalorem 2003	2,490,000	1,942,523	1,942,523	1,942,523	1,942,523	-	-	-	547,477
Total Generaladvalorem	24,701,105	2,462,182	23,901,666	2,462,182	23,901,666	5,644	25,618	-	773,821
Non-remission fees									
Non-remission fees 1994	6,500	-	6,475	-	6,475	-	25	-	-
Non-remission fees 1995	6,500	-	6,450	-	6,450	-	50	-	-
Non-remission fees 1996	6,500	-	6,445	-	6,445	-	55	-	-
Non-remission fees 1997	6,500	-	6,425	-	6,425	-	75	-	-
Non-remission fees 1998	6,500	-	6,475	-	6,475	-	25	-	-
Non-remission fees 1999	6,520	-	6,450	-	6,450	-	70	-	-
Non-remission fees 2000	6,520	-	6,460	-	6,460	-	60	-	-
Non-remission fees 2001	6,520	-	6,420	-	6,420	100	100	-	-
Non-remission fees 2002	6,520	-	6,425	-	6,425	95	95	-	-
Non-remission fees 2003	6,520	6,520	6,520	6,520	6,520	-	-	-	-
Total Non-remission fees	65,100	6,520	64,545	6,520	64,545	195	555	-	-
Copper production									
Copper production 1994	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1995	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1996	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1997	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1998	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1999	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2000	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2001	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2002	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2003	1,598,437	1,598,437	1,598,437	1,598,437	1,598,437	-	-	-	-
Total Copper production	15,980,437	1,598,437	15,980,437	1,598,437	15,980,437	-	-	-	-
Re-appraisal program									
Re-appraisal program 1994	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1995	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1996	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1997	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1998	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1999	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2000	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2001	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2002	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2003	27,808	27,808	27,808	27,808	27,808	-	-	-	-

STATE OF NEW MEXICO
(NAME) COUNTY TREASURER'S
PROPERTY TAX SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2004

Appendix E

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year-End	County Receivable at Year-End
Total Re-appraisal program	278,080	27,808	278,080	27,808	278,080	-	-	-	-
Hospital bond 1994	107	-	107	-	107	-	-	-	-
Hospital bond 1995	107	-	107	-	107	-	-	-	-
Hospital bond 1996	107	-	107	-	107	-	-	-	-
Hospital bond 1997	107	-	107	-	107	-	-	-	-
Hospital bond 1998	107	-	107	-	107	-	-	-	-
Hospital bond 1999	107	-	107	-	107	-	-	-	-
Hospital bond 2000	107	-	107	-	107	-	-	-	-
Hospital bond 2001	107	-	107	-	107	-	-	-	-
Hospital bond 2002	107	-	107	-	107	-	-	-	-
Hospital bond 2003	107	107	107	107	107	-	-	-	-
Total Hospital bond	1,070	107	1,070	107	1,070	-	-	-	-
Total Grant County	41,025,792	4,095,054	40,225,798	4,095,054	40,225,798	5,839	26,173	-	773,821
Municipalities:									
City of Bayard 1994	\$16,500	-	\$16,500	\$ -	\$16,500	\$ -	\$ -	\$ -	-
City of Bayard 1995	16,500	-	16,480	-	16,480	-	20	-	-
City of Bayard 1996	16,500	-	16,475	-	16,475	-	25	-	-
City of Bayard 1997	16,500	-	16,500	-	16,500	-	-	-	-
City of Bayard 1998	16,500	-	16,500	-	16,500	-	-	-	-
City of Bayard 1999	16,500	-	16,433	-	16,433	-	67	-	-
City of Bayard 2000	16,500	-	16,455	-	16,455	-	45	-	-
City of Bayard 2001	16,500	-	16,400	-	16,400	100	100	-	-
City of Bayard 2002	16,500	901	16,450	901	16,450	50	50	-	-
City of Bayard 2003	16,500	16,000	16,500	16,000	16,500	-	-	-	-
Total City of Bayard	165,000	16,901	164,693	16,901	164,693	150	307	-	-
Village of Hurley 1994	8,000	-	7,975	-	7,975	-	25	-	-
Village of Hurley 1995	8,000	-	8,000	-	8,000	-	-	-	-
Village of Hurley 1996	8,000	-	7,970	-	7,970	-	30	-	-
Village of Hurley 1997	8,000	-	8,000	-	8,000	-	-	-	-
Village of Hurley 1998	8,000	-	7,950	-	7,950	-	50	-	-
Village of Hurley 1999	8,000	-	7,940	-	7,940	-	60	-	-
Village of Hurley 2000	8,000	-	7,930	-	7,930	-	70	-	-
Village of Hurley 2001	8,000	-	7,925	-	7,925	-	75	-	-
Village of Hurley 2002	8,000	43	7,950	43	7,950	50	50	-	-
Village of Hurley 2003	8,000	8,000	8,000	8,000	8,000	-	-	-	-
Total Village of Hurley	80,000	8,043	79,640	8,043	79,640	50	360	-	-
Village of Santa Clara 1994	5,000	-	4,950	-	4,950	-	50	-	-
Village of Santa Clara 1995	5,000	-	4,975	-	4,975	-	25	-	-
Village of Santa Clara 1996	5,000	-	4,990	-	4,990	-	10	-	-

STATE OF NEW MEXICO
 (NAME) COUNTY TREASURER'S
 PROPERTY TAX SCHEDULE
 FOR THE YEAR ENDED JUNE 30, 2004

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End
Village of Santa Clara 1997	5,000	-	4,950	-	4,950	-	50	-	-
Village of Santa Clara 1998	5,000	-	4,960	-	4,960	-	40	-	-
Village of Santa Clara 1999	5,000	-	4,970	-	4,970	-	30	-	-
Village of Santa Clara 2000	5,000	-	5,000	-	5,000	-	-	-	-
Village of Santa Clara 2001	5,000	-	4,950	-	4,950	10	50	-	-
Village of Santa Clara 2002	5,000	708	4,955	708	4,955	20	45	-	-
Village of Santa Clara 2003	5,000	5,000	5,000	5,000	5,000	-	-	-	-
Total Village of Santa Clara	50,000	5,708	49,700	5,708	49,700	30	300	-	-
Town of Silver City 1994	205,287	-	205,287	-	205,287	-	-	-	-
Town of Silver City 1995	205,287	-	205,187	-	205,187	-	100	-	-
Town of Silver City 1996	205,287	-	205,237	-	205,237	-	50	-	-
Town of Silver City 1997	205,287	-	205,262	-	205,262	-	25	-	-
Town of Silver City 1998	205,287	-	205,257	-	205,257	-	30	-	-
Town of Silver City 1999	205,287	-	205,262	-	205,262	-	25	-	-
Town of Silver City 2000	205,287	-	205,287	-	205,287	-	-	-	-
Town of Silver City 2001	205,287	-	205,237	-	205,237	50	50	-	-
Town of Silver City 2002	205,287	-	205,262	-	205,262	25	25	-	-
Town of Silver City 2003	205,287	205,287	205,287	205,287	205,287	-	-	-	-
Total Town of Silver City	2,052,870	205,287	2,052,565	205,287	2,052,565	75	305	-	-
Total Municipalities	2,347,870	235,939	2,346,598	235,939	2,346,598	305	1,272	-	-
Grand Total	\$43,373,662	\$4,330,993	\$42,572,396	\$4,330,993	\$42,572,396	\$6,144	\$27,445	\$ -	\$773,821

[2.2.2 NMAC Appendix E - Rp 2.2.2 NMAC Appendix E, 3-31-04]

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

This is an amendment to 19.15.5 NMAC, Section 313, effective 03/31/04. The rest of the rule has corrections made to unnecessary capitalization with no substantive changes.

19.15.5.313 EMULSION, BASIC SEDIMENTS, AND TANK BOTTOMS: Wells producing oil shall be operated in such a manner as will reduce as much as practicable the formation of emulsion and basic sediments. These substances and tank bottoms shall not be allowed to pollute fresh waters or cause surface damage. ~~[If tank bottoms are removed to surface pits, the pits shall be fenced and the fence shall be kept in good repair. To protect migratory birds, all tanks exceeding 16 feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon written application by the operator, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that an alternative method will protect migratory birds or that the facility is not hazardous to migratory birds.]~~

[1-1-50...2-1-96; 19.15.5.313 NMAC - Rn, 19 NMAC 15.E.313, 5-15-00; A, 03/31/04]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

These are amendments to 20.3.1 NMAC named "General Provisions". Contained are minor changes to the definitions of high radiation areas and dosimetry in Subsections AV and AZ of 20.3.1.7 NMAC. A more important change is made to the definition of "waste" in Subsection DQ of 20.3.1.7 NMAC that is broadly applicable to all of 20.3 NMAC. Finally, a new section 20.3.1.122 NMAC is added regarding deliberate misconduct. This rulemaking action also renumbers and reformats from that portion of 20 NMAC 3.1, Subpart 1, named "General" (filed 06-17-99) and now replaced by 20.3.1 NMAC. This amendment and renumber will become effective 04/15/2004.

20.3.1.7 DEFINITIONS: As used in these regulations, these terms have the definitions as set forth below. Additional definitions used only in a certain part of these regulations will be found in that part.

A. "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

B. "Accelerator" (See particle accelerator).

C. "Accelerator produced material" means any material made radioactive by exposure in a particle accelerator.

D. "Act" means the Radiation Protection Act (Sections 74-3-1 through 74-3-16, NMSA 1978).

E. "Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

F. "Adult" means an individual 18 or more years of age.

G. "Agreement state" means any state with which the United States nuclear regulatory commission (NRC) or the United States atomic energy commission (AEC) has entered into an effective agreement under Section 274b of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

H. "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

I. "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials exist in concentrations:

(1) in excess of the derived air concentrations (DACs) specified in 20.3.4.461, Table I of List of Elements, of these regulations; or

(2) to such a degree that an individual in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

J. "As low as is reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits in these regulations as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

K. "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product

of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices. "Background radiation" does not include sources of radiation from radioactive materials regulated by the department.

L. "Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to 1 disintegration or transformation per second (dps or tps).

M. "Bioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these regulations "radiobioassay" is an equivalent term.

N. "Board" means the environmental improvement board.

O. "Brachytherapy" means a method of radiation therapy in which sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavity, or interstitial application.

P. "Byproduct material" means:

(1) any radioactive material, (except special nuclear material), yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes; underground ore bodies depleted by these solution extraction operations do not constitute byproduct material within this definition.

Q. "Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method used to determine calendar quarters for purposes of these regulations except at the beginning of a calendar year without prior approval of the department.

R. "Calibration" means the quantitative evaluation and adjustment, as deemed necessary by the department of radiation measuring instruments by a department approved laboratory. Calibration includes the determination of 1) the response or reading of an instrument rel-

ative to a series of known radiation values over the range of the instrument, or 2) the strength of a source of radiation relative to a standard using national institute of standards and technology (NIST) traceable sources and approved techniques.

S. "CFR" means code of federal regulations.

T. "Chelating agent" means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

U. "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

V. "Commercial waste disposal" means disposal of radioactive waste as a business enterprise.

W. "Committed dose equivalent" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

X. "Committed effective dose equivalent" ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = W_T H_{T,50}$).

Y. "Council" means the radiation technical advisory council (RTAC).

Z. "Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} ($3.7E+10$) disintegrations or transformations per second (dps or tps). Commonly used submultiples of the curie are the millicurie and the microcurie. One millicurie (mCi) = 3.7×10^7 ($3.7E+7$) dps or tps. One microcurie (μ Ci) = 3.7×10^4 ($3.7E+4$) dps or tps.

AA. "Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm^2).

AB. "Department" means the environment department, its successors, or its predecessors, the environmental improvement agency, or the environmental improvement division of the health and environment department.

AC. "Depleted uranium" means the source material uranium which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

AD. "Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed

dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these regulations, "radiation dose" is an equivalent term.

AE. "Dose equivalent (H_T)" means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

AF. "Dose limits" means the permissible upper bounds of radiation doses established in accordance with these regulations. For purposes of these regulations, "limits" is an equivalent term.

AG. "Effective dose equivalent (H_E)" means the sum of the products of the dose equivalent to each organ or tissue (H_T), and the weighting factor (W_T) applicable to each of the body organs or tissues that are irradiated ($H_E = W_T H_T$).

AH. "Embryo/fetus" means the developing human organism from conception until the time of birth.

AI. "Entrance or access point" means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radiation materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

AJ. "Explosive material" means any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

AK. "Exposure" means being exposed to ionizing radiation or to radioactive material. [See also Subsection AL of 20.3.1.7 NMAC.]

AL. "Exposure" means the quotient of dQ divided by dm where " dQ " is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass " dm " are completely stopped by air. (The special unit of exposure is the roentgen (R). The SI unit of exposure is the coulomb per kilogram (C/kg). See 20.3.1.117 NMAC, Units of Exposure and Dose, for the special unit.) [See also Subsection AK of 20.3.1.7 NMAC.]

AM. "Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

AN. "External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

AO. "Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

AP. "Eye dose equivalent" means the external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 mg/cm^2).

AQ. "Former U.S. atomic energy commission (AEC) or U.S. nuclear regulatory commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

AR. "Generally applicable environmental radiation standards" means standards issued by the U.S. environmental protection agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

AS. "Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram ($1 \text{ Gy} = 100 \text{ rads}$).

AT. "Hazardous waste" means those wastes designated as hazardous by U.S. environmental protection agency (EPA) regulations in 40 CFR Part 261.

AU. "Healing arts" means those professional disciplines authorized by the laws of this state to use X-rays or radioactive material in the diagnosis or treatment of human or animal disease.

AV. "High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour at 30 centimeters from ~~[any source of radiation]~~ the radiation source or 30 centimeters from any surface that the radiation penetrates.

AW. "Human use" means the internal or external administration of radiation or radioactive material to human beings for the purpose of medical diagnosis or therapy.

AX. "Individual" means any human being.

AY. "Individual monitoring" means the assessment of:

(1) dose equivalent (a) by the use of individual monitoring devices or (b) by the use of survey data; or

(2) committed effective dose equivalent (a) by bioassay or (b) by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition of DAC-hours in 20.3.4 NMAC).

AZ. "Individual monitoring

devices" (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent [~~For purposes of these regulations, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal air sampling devices.~~], such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

BA. "Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the department.

BB. "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

BC. "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

BD. "License" means a license issued by the department in accordance with the regulations adopted by the board.

BE. "Licensed (or registered) material" means radioactive material received, possessed, used, transferred or disposed of under a general or specific license (or registration) issued by the department.

BF. "Licensee" means any person who is licensed by the department in accordance with these regulations and the act.

BG. "Licensing state" means any state with regulations equivalent to the *suggested state regulations for control of radiation* (SSRCR) relating to, and an effective program for, the regulatory control of NARM and which has been granted final designation by the conference of radiation control program directors, inc.

BH. "Limits" (see "dose limits").

BI. "Lost or missing source of radiation" means licensed (or registered) source of radiation whose location is unknown. This definition includes but is not limited to material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

BJ. "Major processor" means a user processing, handling, or manufacturing radioactive material exceeding type A quantities as unsealed sources or material, or exceeding 4 times type B quantities as sealed sources, but does not include

nuclear medicine programs, universities, industrial radiographers or small industrial programs. Type A and B quantities are defined in Section 71.4 of 10 CFR Part 71.

BK. "Member of the public" means any individual except when that individual is receiving an occupational dose.

BL. "Minor" means an individual less than 18 years of age.

BM. "Mixed waste" means waste that contains both hazardous constituents regulated under the Resource Conservation Recovery Act and radioactive constituents regulated by these regulations.

BN. "Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities or radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these regulations, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

BO. "NARM" means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material.

BP. "Natural radioactivity" means radioactivity of naturally occurring nuclides.

BQ. "Nuclear regulatory commission" (NRC) means the U.S. nuclear regulatory commission or its duly authorized representatives.

BR. "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received from background radiation; from any medical administration the individual has received; from exposure to individuals administered radioactive materials and released in accordance with Subsection J of 20.3.7.703 NMAC; from voluntary participation in medical research programs, or as a member of the public.

BS. "Ore refineries" means all processors of a radioactive material ore including uranium mills or other source material extraction facilities.

BT. "Package" means the packaging together with its radioactive contents as presented for transport.

BU. "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this

definition, "accelerator" is an equivalent term.

BV. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing, but shall not include federal government agencies.

BW. "Personnel monitoring equipment" (see "individual monitoring devices").

BX. "Pharmacist" means an individual licensed by this state to compound and dispense drugs and prescriptions.

BY. "Physician" means an individual licensed by this state to prescribe drugs in the practice of medicine.

BZ. "Principal activities" means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

CA. "Public dose" means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee or registrant, or to any other sources of radiation under the control of a licensee or registrant. Public dose does not include: occupational dose; or dose received from background radiation; or dose received from any medical administration the individual has received; or dose received from exposure to individuals administered radioactive material and released in accordance with Subsection J of 20.3.7.703 NMAC; or dose received from voluntary participation in medical research programs.

CB. "Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees fahrenheit (54.4 degrees celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

CC. "Qualified expert" means an individual having the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs, for example, individuals certified in the appropriate field by the American board of radi-

ology (ABR), or the American board of health physics (ABHP), or the American board of medical physics (ABMP) or those having equivalent qualifications. With reference to the calibration of radiation therapy equipment, an individual having, in addition to the above qualifications, training and experience in the clinical applications of radiation physics to radiation therapy, for example, individuals certified in therapeutic radiological physics or x-ray and radium physics by the ABR, or those having equivalent qualifications. With reference to providing medical physics services to certified mammographic facilities, such individuals must meet the requirements as defined by the U.S. FDA.

CD. "Quality factor" (Q) means the modifying factor, listed in Table 117.1 of 20.3.1.117.C NMAC and Table 117.2 of 20.3.1.117.D NMAC, that is used to derive dose equivalent from absorbed dose.

CE. "Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram (0.01 gray).

CF. "Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these regulations, ionizing radiation is an equivalent term. Radiation, as used in these regulations, does not include non-ionizing radiation, such as radiowaves or microwaves, visible, infrared, or ultraviolet light.

CG. "Radiation area" means any area, accessible to individuals in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in 1 hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

CH. "Radiation dose" (see "dose" in Subsection AD of 20.3.1.7 NMAC).

CI. "Radiation machine" means any device capable of producing radiation except those which produce radiation only from radioactive material.

CJ. "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection regulations. (For medical use see 20.3.7.712 NMAC.)

CK. "Radioactive material" means any material (solid, liquid, or gas) which emits radiation spontaneously.

CL. "Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

CM. "Radiobioassay" (see "bioassay" in Subsection M of 20.3.1.7

NMAC).

CN. "Registrant" means any person who is registered with the department. Registrant also means anyone who is legally obligated to register with the department pursuant to these regulations and the act.

CO. "Registration" means registration with the department in accordance with these regulations.

CP. "Regulations of the U.S. department of transportation" (DOT) means the regulations in 49 CFR Parts 100-185.

CQ. "Rem" means a special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert).

CR. "Research and development" means: (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

CS. "Restricted area" means an area, access to which is limited by the licensee or registrant for purposes of protection of individuals against undue risks from exposure to sources of radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

CT. "Roentgen" means the special unit of exposure. One roentgen (R) equals 2.58E-4 coulombs per kilogram of air (see "exposure" in Subsection AL of 20.3.1.7 NMAC and 20.3.1.117 NMAC).

CU. "Sealed source" means any container of radioactive material which has been constructed in such a manner as to prevent the escape of any radioactive material.

CV. "Shallow dose equivalent" (H_S), which applies to the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²) averaged over an area of 1 square centimeter.

CW. "SI" means the abbreviation for the international system of units.

CX. "Sievert" means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

CY. "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

CZ. "Source material" means:

(1) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(2) ores that contain by weight one-twentieth of 1 percent (0.05 percent) or more of uranium, thorium or any combination of uranium and thorium; source material does not include special nuclear material.

DA. "Source material milling" means any activity that results in the production of byproduct as defined by definition (2) of byproduct material.

DB. "Source of radiation" means any radioactive material, or any device or equipment emitting or capable of producing radiation.

DC. "Special form radioactive material" means radioactive material that satisfies the following conditions:

(1) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(2) the piece or capsule has at least one dimension not less than 5 millimeters (0.2 inch); and

(3) it satisfies the test requirements specified by the U.S. nuclear regulatory commission (NRC); a special form encapsulation designed in accordance with the NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used; a special form encapsulation either designed or constructed after June 30, 1985, must meet requirements of this definition applicable at the time of its design or construction.

DD. "Special nuclear material" means:

(1) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the department declares by order to be special nuclear material after the U.S. nuclear regulatory commission (NRC), pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(2) any material artificially enriched by any of the foregoing but does not include source material.

DE. "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or any combination of them in accordance with the following formula:

for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1 (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula: $175 \text{ (grams contained U-235)}/350 + 50 \text{ (grams U-233)}/200 + 50 \text{ (grams Pu)}/200 = 1$

DF. "State" means the state of New Mexico.

DG. "Survey" means an evaluation of the production, use, release, disposal, transfer or presence of sources of radiation under a specific set of conditions to determine actual or potential radiation hazards. When appropriate, such evaluation includes, but is not limited to tests, physical examination and measurements of levels of radiation or concentration of radioactive material present.

DH. "Test" means a method for determining the characteristics of conditions of sources of radiation or components thereof.

DI. "These regulations" means all parts of 20.3 NMAC [the New Mexico radiation protection regulations (NMRPR)].

DJ. "Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

DK. "Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Paragraph (6) of Subsection A of 20.3.4.446 NMAC.

DL. "U.S. department of energy" means the department of energy (DOE) established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et. seq., to the extent that the DOE exercises functions formerly vested in the U.S. atomic energy commission (AEC), its chairman, members, officers and components and transferred to the U.S. energy research and development administration (ERDA) and to the administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814, effective January 19, 1975) and retransferred to the secretary of energy pursuant to section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

DM. "U.S. EPA" means the environmental protection agency.

DN. "U.S. FDA" means the food and drug administration (FDA).

DO. "Unrefined and unprocessed ore" means ore in its natural form prior to any processing such as grinding, roasting, beneficiating, or refining.

DP. "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant. For purposes of these regulations, "uncontrolled area" is an equivalent term.

~~[~~ ~~DOQ. "Waste" means those low level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low level waste has the same meaning as in the Low Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste (a) not classified as high level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and (b) classified as low level radioactive waste consistent with existing laws and in accordance with (a) by the U.S. Nuclear Regulatory Commission. Mixed waste streams may also be regulated under the Resource Conservation Recovery Act requirements or other State or Federal regulations or statutes.]~~

DOQ. "Waste" means any radioactive material that is no longer of use, and is either discarded, disposed, or intended for disposal or treatment for the purposes of disposal, that requires licensure in accordance with the New Mexico radiation protection regulations (20.3 NMAC). This definition includes, however is not limited to, low-level radioactive waste as defined in the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b), and radioactive material that the U.S. nuclear regulatory commission (NRC), consistent with existing law, classifies as low-level radioactive waste. Excluded from the definition of "waste" are:

(1) high-level radioactive waste or spent nuclear fuel as defined in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101);

(2) transuranic waste as defined in section 11ee of the Atomic Energy Act of 1954 (42 U.S.C. 2014(ee)); and

(3) by-product material as defined in section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

DR. "Waste disposal site operators" means persons licensed to dispose of radioactive waste.

DS. "Waste handling licensees" means persons licensed to receive and store radioactive wastes prior to disposal and/or persons licensed to dispose

of radioactive waste.

DT. "Week" means 7 consecutive days starting on Sunday.

DU. "Whole body" means, for purpose of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

DV. "Worker" means an individual engaged in work under a license or registration issued by the department and controlled by a licensee or registrant, but does not include the licensee or registrant.

DW. "Working level" (WL) means any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of $1.3\text{E}+5$ MeV of potential alpha particle energy. The short-lived radon daughters are for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

DX. "Working level month" (WLM) means an exposure to 1 working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

DY. "Year" means the period of time beginning in January used to determine compliance with the provisions of these regulations. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

~~[20.3.1.122-199 [RESERVED]]~~

20.3.1.122 DELIBERATE MISCONDUCT:

A. Any licensee, registrant, applicant for a license or registration, employee of a licensee, employee of a registrant or registration applicant, or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or registrant or applicant for a license or registration, who knowingly provides to any licensee, registrant, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, registrant's or applicant's activities in these regulations (20.3 NMAC), may not:

(1) engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, registrant, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license or registration issued by the department; or

(2) deliberately submit to the

department, a licensee, registrant, an applicant, or a licensee's, registrant's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the department.

B. A person who violates Paragraphs (1) or (2) of Subsection A of 20.3.1.122 NMAC may be subject to enforcement action in accordance with all applicable provisions of the New Mexico Radiation Protection Act (NMSA 1978, Sec. 74-3-1 et. seq.) and these regulations (20.3 NMAC).

C. For the purposes of Paragraph (1) of Subsection A of 20.3.1.122 NMAC, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) would cause a licensee, registrant or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license or registration issued by the department; or

(2) constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, registrant, applicant, contractor, or subcontractor.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

These are amendments to 20.3.3 NMAC named "Licensing of Radioactive Material". The amendments include the addition of Section D to 20.3.3.302 NMAC regarding exemptions on drugs containing Carbon-14. The amendments also include improvements to the decommissioning requirements contained in 20.3.3.311 NMAC (refer to the title text and Subsection F and G), and in Subsections O and P of 20.3.3.318 NMAC. This rulemaking action also renumbers and reformats from that portion of 20 NMAC 3.1, Subpart 3, named "Licensing of Radioactive Material" (filed 06-17-99) and now replaced by 20.3.3 NMAC. This amendment and renumber will become effective 04/15/2004.

20.3.3.302 EXEMPTIONS - RADIOACTIVE MATERIAL OTHER THAN SOURCE MATERIAL:

**A. E x e m p t
Concentrations.**

(1) Except as provided in Paragraph (2) of Subsection A of 20.3.3.302 NMAC, any person is exempt from this Part (20.3.3 NMAC) to the extent that such person receives, possesses, uses, transfers, or acquires products or materials containing radioactive material in concentrations not in

excess of those listed in Schedule A of this Part.

(2) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Paragraph (1) of Subsection A of 20.3.3.302 NMAC or equivalent regulations of the U.S. nuclear regulatory commission or any agreement state, except in accordance with a specific license issued pursuant to Paragraph (1) of Subsection A of 20.3.3.315 NMAC or in the general license provided in 20.3.3.324 NMAC.

B. Exempt Quantities.

(1) Except as provided in Paragraphs (2) and (3) of Subsection B of 20.3.3.302 NMAC any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, or acquires radioactive material in individual quantities each of which does not exceed the applicable quantity set forth in Schedule B (20.3.3.330 NMAC).

(2) The production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution is not authorized by Subsection B of 20.3.3.302 NMAC.

(3) No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Schedule B (20.3.3.330 NMAC), knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under Subsection B of 20.3.3.302 NMAC or equivalent regulations of the U.S. nuclear regulatory commission or any agreement state, except in accordance with a specific license issued by the U.S. nuclear regulatory commission pursuant to 10 CFR 32.18 by the department pursuant to Subsection B of 20.3.3.315 NMAC which license states that the radioactive material may be transferred by the licensee to persons exempt under Subsection B of 20.3.3.302 NMAC or the equivalent regulations of the U.S. nuclear regulatory commission or any agreement state.

C. Exempt Items.

(1) Certain Items Containing Radioactive Material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, any person is exempt from these regulations to the extent that they receive, possess, use, transfer, or acquire the following products (authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source material or byproduct material whose subsequent pos-

session, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555):

(a) timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(i) 25 millicuries (925 MBq) of tritium per timepiece;

(ii) 5 millicuries (185 MBq) of tritium per hand;

(iii) 15 millicuries (555 MBq) of tritium per dial (bezels when used shall be considered as subpart of the dial);

(iv) 100 microcuries (3.7 MBq) of promethium-147 per watch hand or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(v) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(vi) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial (bezels when used shall be considered as subpart of the dial); or

(vii) the levels of radiation from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber: 1) for wrist watches, 0.1 millirad (1mGy) per hour at 10 centimeters from any surface; 2) for pocket watches, 0.1 millirad (1mGy) per hour at 1 centimeter from any surface; or 3) for any other timepiece 0.2 millirad (2mGy) per hour at 10 centimeters from any surface; and

(viii) 1 microcurie (37 kBq) of radium-226 per timepiece in timepieces acquired prior to August 8, 1973;

(b) lock illuminators containing not more than 15 millicuries (555 MBq) of tritium or not more than 2 millicuries (74 MBq) of promethium-147 installed in automobile locks; the levels of radiation from each lock illuminator containing promethium-147 shall not exceed 1 millirad (10mGy) per hour at 1 centimeter from any surface when measured through 50 milligrams per square centimeter absorber;

(c) precision balances containing not more than 1 millicurie (37 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part;

(d) automobile shift quadrants containing not more than 25 millicuries (925 MBq) of tritium;

(e) marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational

instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas;

(f) thermostat dials and pointers containing not more than 25 millicuries (925 MBq) of tritium per thermostat;

(g) electron tubes, provided that each tube does not contain more than one of the following specified quantities of byproduct material (for purposes of this exemption, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwaves tubes, indicator tubes, pick-up tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents):

(i) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or 10 millicuries (370 MBq) of tritium per any other electron tube;

(ii) 1 microcurie (37 kBq) of cobalt-60;

(iii) 5 microcuries (185 kBq) of nickel-63;

(iv) 30 microcuries (1.11 MBq) of krypton-85;

(v) 5 microcuries (185 kBq) of cesium-137;

(vi) 30 microcuries (1.11 MBq) of promethium-147; and provided further that the levels of radiation from each electron tube containing byproduct materials do not exceed 1 millirad (10 mGy) per hour at 1 centimeter from any surface when measured through 7 milligrams per sq cm absorber;

(h) ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material provided that:

(i) each source contains no more than one exempt quantity as set forth in 20.3.3.330 NMAC;

(ii) each instrument contains no more than ten exempt quantities; for this requirement, an instrument's source or sources may contain either one or multiple radionuclides; an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in 20.3.3.330 NMAC provided that the sum of fractions shall not exceed the total of the radionuclide exempt quantity limits as specified in 20.3.3.330 NMAC; and

(iii) for purposes of this paragraph, 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under 20.3.3.330 NMAC;

(i) spark gap irradiators containing not more than 1 microcurie (37 kBq) of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least 11.4 liters (3 gallons) per hour.

(2) Self-Luminous Products Containing Tritium, Krypton-85, Promethium-147, or Radium-226. Except for persons who manufacture, process, or produce self-luminous products containing tritium, krypton-85, promethium-147 or radium-226, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, or acquires tritium, krypton-85, promethium-147 or radium-226 in self-luminous products manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the U.S. nuclear regulatory commission pursuant to 10 CFR 32.22 which license authorizes the transfer of the product to persons who are exempt from regulatory requirements. The exemption in Paragraph (2) of Subsection C of 20.3.3.302 NMAC does not apply to tritium, krypton-85, promethium-147 or radium-226 used in products for frivolous purposes or in toys or adornments.

(3) Radium-226 Acquired Previously. Any person is exempt from these regulations to the extent that such person possesses, uses or transfers, articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these regulations.

(4) Gas and Aerosol Detectors Containing Radioactive Material.

(a) Except for persons who manufacture, process, or produce gas and aerosol detectors containing radioactive material, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards provided that detectors containing radioactive material shall have been manufactured, imported, or transferred in accordance with a specific license issued by the U.S. nuclear regulatory commission or an agreement state, pursuant to 10 CFR 32.36 or equivalent, which authorizes the transfer of the detectors to persons who are exempt from regulatory requirements; authority to transfer possession or control by the manufacturer, processor, or producer or any equipment, device, commodity, or other product containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(b) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an agreement state shall be considered exempt under

Subparagraph (a), of Paragraph (4) of Subsection C of 20.3.3.302 NMAC, provided that the device is labeled in accordance with the specific license authorizing distribution of the general licensed device, and provided further that they meet the requirements of Subsection C of 20.3.3.315 NMAC.

(5) Resins Containing Scandium-46 and Designed for Sand Consolidation in Oil Wells. Any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, or acquires synthetic plastic resins containing scandium-46 which are designed for sand consolidation in oil wells. Such resins shall have been manufactured or imported in accordance with a specific license issued by the NRC, the department, or any agreement state to the manufacturer of such resins pursuant to licensing requirements equivalent to 10 CFR 32.16. and 32.17. This exemption does not authorize the manufacture of any resins containing scandium-46.

D. Radioactive Drug:
Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(1) Except as provided in Paragraphs (2) and (3) of Subsection D of 20.3.3.302 NMAC, any person is exempt from the requirements for a license set forth in 20.3.3 NMAC and 20.3.7 NMAC provided that such person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1microcurie) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(2) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to 20.3.7 NMAC.

(3) Any person who desires to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution such capsules shall apply for and receive a specific license pursuant to 20.3.3 NMAC.

(4) Nothing in this section relieves persons from complying with applicable FDA, other federal, and state requirements governing receipt, administration, and use of drugs.

20.3.3.311 FINANCIAL ASSURANCE AND RECORD KEEPING FOR DECOMMISSIONING :
"Decommissioning" means to remove [~~as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.] a facility or site safely from service and reduce residual radioactivity to a level that permits; 1) release of the property for unrestricted use~~

and termination of the license; or 2) release of the property under restricted conditions and termination of the license.

A. Each applicant for a specific license authorizing the possession and use of unsealed byproduct material of half-life greater than 120 days and in quantities exceeding 100,000 (1E+5) times the most current applicable quantities set forth in 20.3.4.465 NMAC, shall submit a decommissioning funding plan as described in Subsection E of 20.3.3.311 NMAC. The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 100,000 (1E+5) is greater than 1 (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in 20.3.4.465 NMAC.

B. Each applicant for a specific license authorizing possession and use of byproduct material of half-life greater than 120 days and in quantities specified in Subsection D of 20.3.3.311 NMAC shall either:

(1) submit a decommissioning funding plan as described in Subsection E of 20.3.3.311 NMAC; or

(2) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection D of 20.3.3.311 NMAC using one of the methods described in Subsection F of 20.3.3.311 NMAC; for an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material; if the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection F of 20.3.3.311 NMAC must be submitted to the department before receipt of licensed material; if the applicant does not defer execution of the financial instrument, the applicant shall submit to the department, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of Subsection F of 20.3.3.311 NMAC.

C. Each holder of a specific license issued on or after the effective date of these regulations which is of a type described in Subsection A of 20.3.3.311 NMAC or Subsection B of 20.3.3.311 NMAC, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(1) Each holder of a specific license issued before the effective date of these regulations, and of a type described in Subsection A of 20.3.3.311 NMAC shall submit, on or before the effective date of these regulations, a decommissioning fund-

ing plan as described in Subsection E of 20.3.3.311 NMAC or a certification of financial assurance for decommissioning in an amount at least equal to \$750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(2) Each holder of a specific license issued before the effective date of these regulations, and of a type described in Subsection B of 20.3.3.311 NMAC shall submit, on or before the effective date of these regulations, a decommissioning funding plan as described in Subsection E of 20.3.3.311 NMAC, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(3) Any licensee who has submitted an application before the effective date of these regulations, for renewal of license in accordance with 20.3.3.319 NMAC shall provide financial assurance for decommissioning in accordance with Subsections A and B of 20.3.3.311 NMAC. This assurance must be submitted when these regulations become effective.

D. Required Amounts of Financial Assurance for Decommissioning by Quantity of Material.

(1) Greater than 10,000 (1E+4) but less than or equal to 100,000 (1E+5) times the applicable quantities of 20.3.4.465 NMAC, in unsealed form. (For a combination of isotopes, if R as defined in Subsection A of 20.3.3.311 NMAC, divided by 10,000 (1E+4) is greater than 1 but R divided by 100,000 (1E+5) is less than or equal to 1): \$750,000.

(2) Greater than 1,000 (1E+3) but less than or equal to 10,000 (1E+4) times the applicable quantities of 20.3.4.465 NMAC, in unsealed form. (For a combination of isotopes, if R, as defined in Subsection A of 20.3.3.311 NMAC, divided by 1,000 (1E+3) is greater than 1 but R divided by 10,000 (1E+4) is less than or equal to 1): \$150,000.

(3) Greater than 10,000,000,000 (1E+10) times the applicable quantities of 20.3.4.465 NMAC, in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in Subsection A of 20.3.3.311 NMAC, divided by 10,000,000,000 (1E+10) is greater than 1): \$75,000.

E. Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from Subsection F of 20.3.3.311 NMAC, including means for adjusting cost estimates and associated funding levels

periodically over the life of the facility. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirement of Subsection F of 20.3.3.311 NMAC.

F. Financial assurance for decommissioning must be provided by one or more of the following methods.

(1) Prepayment: Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) A Surety Method, Insurance, or Other Guarantee Method: These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in 20.3.3.334 NMAC. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in 20.3.3.335 NMAC. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(a) the surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the department, the beneficiary, and the licensee of its intention not to renew; the surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the department within 30 days after receipt of notification of cancellation;

(b) the surety method or insur-

ance must be payable to a trust established for decommissioning costs; the trustee and trust must be acceptable to the department; an acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by federal or state agency; and

(c) the surety method or insurance must remain in effect until the department has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions must be as stated in Paragraph (2) of Subsection F of 20.3.3.311 NMAC.

(4) In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on Subsection D of 20.3.3.311 NMAC, and indicating that funds for decommissioning will be obtained when necessary.

(5) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

G. Each person licensed under this Part (20.3.3 NMAC) or Parts 5, 7, 12, 13, and 15 (20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, 20.3.13 NMAC, or 20.3.15 NMAC) shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with 20.3.3.317 NMAC, licensees shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the department terminates the license. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the department considers important to decommissioning consists of:

(1) records of spills or other

unusual occurrences involving the spread of contamination in and around the facility, equipment, or site; these records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete; these records must include any known information on identification of involved nuclides, quantities, forms and concentrations;

(2) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination; if required drawings are referenced, each relevant document need not be indexed individually; if drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(3) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used;

(4) except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(a) all areas designated and formerly designated restricted areas as 20.3.1 NMAC of these regulations;

(b) all areas outside of restricted areas that require documentation under Paragraph (1) of Subsection G of 20.3.3.311 NMAC;

(c) all areas outside of restricted areas where current and previous wastes have been buried as documented under 20.3.4.448 NMAC; and

(d) all areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to ~~unrestricted release levels~~ meet the criteria for decommissioning in 20.3.4.426 NMAC, or apply for approval for disposal under 20.3.4.434 NMAC.

20.3.3.318 EXPIRATION AND TERMINATION OF LICENSES AND DECOMMISSIONING OF SITES AND SEPARATE BUILDINGS OR OUTDOOR AREAS:

A. Each specific license expires at the end of the day on the expira-

tion date stated in the license unless the licensee has filed an application for renewal under 20.3.3.319 NMAC not less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days before the expiration date stated in the existing license, the existing license expires at the end of the day on which the department makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

B. Each specific license revoked by the department expires at the end of the day on the date of the department's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by department order.

C. Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of byproduct material until the department notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) limit actions involving byproduct material to those related to decommissioning; and

(2) continue to control entry to restricted areas until they are suitable for release in accordance with department requirements.

D. Within 60 days of the occurrence of any of the following, consistent with the administrative directions in 20.3.1.116 NMAC, each licensee shall provide notification to the department in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with department requirements, or submit within 12 months of notification a decommissioning plan, if required by Subsection G of 20.3.3.318 NMAC, and begin decommissioning upon approval of that plan if:

(1) the license has expired pursuant to Subsections A or B of 20.3.3.318 NMAC; or

(2) the licensee has decided to permanently cease principal activities, as defined in Section BZ of 20.3.1.7 NMAC, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements; or

(3) no principal activities under the license have been conducted for a period of 24 months; or

(4) no principal activities have been conducted for a period of 24 months in

any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements.

E. Coincident with the notification required by Subsection D of 20.3.3.318 NMAC, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to 20.3.3.311 NMAC in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to Paragraph (5) of Subsection J of 20.3.3.318 NMAC. Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the department.

F. The department may grant a request to extend the time periods established in Subsection D of 20.3.3.318 NMAC, if the department determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection D of 20.3.3.318 NMAC. The schedule for decommissioning set forth in Subsection D of 20.3.3.318 NMAC may not commence until the department has made a determination on the request.

G. A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

- (1) procedures would involve techniques not applied routinely during cleanup or maintenance operations;
- (2) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;
- (3) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or
- (4) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

H. The department may approve an alternate schedule for submittal

of a decommissioning plan required pursuant to Subsection D of 20.3.3.318 NMAC if the department determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

I. Procedures, such as those listed in Subsection G of 20.3.3.318 NMAC, with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

J. The proposed decommissioning plan for the site or separate building or outdoor area must include:

(1) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(2) a description of planned decommissioning activities;

(3) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(4) a description of the planned final radiation survey;

(5) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

(6) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection N of 20.3.3.318 NMAC.

K. The proposed decommissioning plan will be approved by the department if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

L. Except as provided in Subsection N of 20.3.3.318 NMAC, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

M. Except as provided in Subsection N of 20.3.3.318 NMAC, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

N. The department may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the

department determines that the alternative is warranted by consideration of the following:

(1) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) other site-specific factors which the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

O. As the final step in decommissioning, the licensee shall:

(1) certify the disposition of all licensed material, including accumulated wastes, by submitting a completed *certificate - disposition of radioisotopes* form or equivalent information; and

(2) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey [~~unless the licensee demonstrates that the premises are suitable for release in some other manner.~~], unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 20.3.4.426 NMAC; the licensee shall, as appropriate:

(a) report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters, removable and fixed, for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(b) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

P. Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the department determines that:

(1) byproduct material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with [Department requirements] the criteria for decommissioning in 20.3.4.426 NMAC; or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with [Department requirements] the criteria for decommissioning in 20.3.4.426 NMAC; and

(4) records required by 20.3.4.448 NMAC, have been received.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

These are amendments to 20.3.4 NMAC named "Standards for Protection Against Radiation". The first amendment is to establish constraints on air emissions of radioactive material to the environment to avoid dual regulation between the state of New Mexico and the environmental protection agency (EPA). Second, amendments are made to regulations regarding decommissioning of licensed facilities to provide specific radiological criteria for the decommissioning of lands and structures. Third, minor corrections and clarifying changes are made to standards for protection against radiation to conform various regulations to the nuclear regulatory commission's (NRC) revised radiation protection requirements. Finally, amendments are made to streamline regulations concerning low-level waste shipment manifest information. This rulemaking action also renumbers and reformats from that portion of 20 NMAC 3.1, Subpart 4, named "Standards for Protection Against Radiation" (filed 06-17-99) and now replaced by 20.3.4 NMAC. This amendment and renumber will become effective 04/15/2004.

20.3.4.2 SCOPE: Except as specifically provided in other parts of these regulations (20.3 NMAC), Part 4 (20.3.4 NMAC) applies to persons licensed or registered by the department to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Part 4 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with Subsection J of 20.3.7.703 NMAC, or to voluntary participation in

medical research programs.

20.3.4.7 DEFINITIONS. As used in this part (20.3.4 NMAC).

A. "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 5 rem (0.05 Sv) or a committed dose equivalent of 50 rem (0.5 Sv) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of 20.3.4.461 NMAC.

B. "Background radiation" means radiation from cosmic sources; naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from source, byproduct, or special nuclear materials regulated by the Commission.

[B]C. "Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for class D, days, of less than 10 days, for class W, weeks, from 10 to 100 days, and for class Y, years, of greater than 100 days. For purposes of these regulations, "lung class" and "inhalation class" are equivalent terms.

D. "Constraint" (dose constraint) means a value above which specified licensee actions are required.

E. "Critical Group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

[E]F. "Declared pregnant woman" means a woman who has voluntarily informed [her employer] the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

G. "Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(1) release of the property for unrestricted use and termination of the license; or

(2) release of the property under restricted conditions and termination of the license.

[D]H. "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these regulations, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of 20.3.4.461 NMAC.

[E]I. "Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 5 rem (0.05 Sv).

J. "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

[F]K. "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

[G]L. "Inhalation class" [see "class"].

M. "Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²).

[H]N. "Lung class" [see "class"].

[I]O. "Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these regulations, "deterministic effect" is an equivalent term.

[J]P. "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

[K]Q. "Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coin-

cides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

[E]R. "Reference man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of reference man is contained in the international commission on radiological protection report, ICRP Publication 23, "report of the task group on reference man."

S. "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 20.3.4 NMAC.

[M]T. "Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

[N]U. "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

[O]V. "Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these regulations, "probabilistic effect" is an equivalent term.

[P]W. "Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 hour at 1 meter from a radiation source or 1 meter from any surface that the radiation penetrates. ~~At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.~~

[Q]X. "Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For cal-

culating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^a
Whole Body	1.00 ^b

^a 0.30 results from 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

^b For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

20.3.4.404 RADIATION PROTECTION PROGRAMS:

A. Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of 20.3.4 NMAC. See 20.3.4.411 NMAC for recordkeeping requirements relating to these programs.

B. The licensee or registrant shall use, to the extent ~~practicable~~ practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and ~~public~~ doses to members of the public that are as low as is reasonably achievable (ALARA).

C. The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

D. To implement the ALARA requirements of Subsection B of 20.3.4.404 NMAC, and notwithstanding the requirements in 20.3.4.413 NMAC, a constraint on air emissions of radioactive material to the environment, excluding Radon-222 and its daughters, shall be established by licensees such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 10 mrem (0.1 mSv) per year from these

emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedance as provided in 20.3.4.453 NMAC and promptly take appropriate corrective action to ensure against recurrence.

20.3.4.405 OCCUPATIONAL DOSE LIMITS FOR ADULTS:

A. The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to 20.3.4.410 NMAC, to the following dose limits:

(1) an annual limit, which is the more limiting of:

(a) the total effective dose equivalent being equal to 5 rem (0.05 Sv); or

(b) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rem (0.5 Sv); and

(2) the annual limits to the lens of the eye, to the skin, and to the extremities which are:

(a) ~~an eye~~ a lens dose equivalent of 15 rem (0.15 Sv); and

(b) a shallow dose equivalent of 50 rem (0.5 Sv) to the skin or to any extremity.

B. Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See Paragraphs (1) and (2) of Subsection E of 20.3.4.410 NMAC.

C. The assigned deep dose equivalent and shallow dose equivalent shall be for the portion of the body receiving the highest exposure:

(1) the deep-dose equivalent, ~~eye dose equivalent~~ lens dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(2) when a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Paragraph (4) of Subsection A of 20.3.4.417 NMAC, the effective dose equivalent for external radiation shall be determined as follows:

(a) when only one individual monitoring device is used and it is located at the neck outside the protective apron, the reported deep dose equivalent shall be the effective dose equivalent for external radiation; or

(b) when only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection A of 20.3.4.405 NMAC, the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(c) when individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

D. Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of 20.3.4.461 NMAC, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See 20.3.4.446 NMAC.

E. Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity. See footnote 3 of 20.3.4.461 NMAC.

F. The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person during the current year. See 20.3.4.409 NMAC.

20.3.4.407 DETERMINATION OF EXTERNAL DOSE FROM AIRBORNE RADIOACTIVE MATERIAL:

A. Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, ~~[eye]~~ lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See 20.3.4.461 NMAC, footnotes 1 and 2.

B. Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

20.3.4.410 PLANNED SPECIAL

EXPOSURES. A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in 20.3.4.405 NMAC provided that each of the following conditions is satisfied:

A. the licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the ~~[higher exposure]~~ dose estimated to result from the planned special exposure are unavailable or impractical;

B. the licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs;

C. before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(1) informed of the purpose of the planned operation;

(2) informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(3) instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present;

D. prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Subsection B of 20.3.4.409 NMAC during the lifetime of the individual for each individual involved;

E. subject to Subsection B of 20.3.4.405 NMAC, the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(1) the numerical values of any of the dose limits in Subsection A of 20.3.4.405 NMAC in any year; and

(2) five times the annual dose limits in Subsection A of 20.3.4.405 NMAC during the individual's lifetime;

F. the licensee or registrant maintains records of the conduct of a planned special exposure in accordance with 20.3.4.445 NMAC and submits a written report in accordance with 20.3.4.454 NMAC;

G. the licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure; the dose from planned special exposures shall not be considered in con-

trolling future occupational dose of the individual pursuant to Subsection A of 20.3.4.405 NMAC but shall be included in evaluations required by Subsections D and E of 20.3.4.410 NMAC.

20.3.4.412 DOSE EQUIVALENT TO AN EMBRYO/FETUS:

A. The licensee or registrant shall ensure that the dose equivalent to the embryo/fetus during the entire pregnancy, due to the occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). See 20.3.4.446 NMAC for recordkeeping requirements.

B. The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection A of 20.3.4.412 NMAC. The national council on radiation protection and measurements (NCRP) recommended in NCRP Report No. 91 "recommendations on limits for exposure to ionizing radiation" (June 1, 1987) that no more than 0.05 rem (0.5 mSv) to the embryo/fetus be received in any one month.

C. The dose equivalent to the embryo/fetus is the sum of:

(1) the dose equivalent to the embryo/fetus resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

(2) the dose that is most representative of the dose to the embryo/fetus from external radiation, that is, in the mother's lower torso region:

(a) if multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose to the embryo/fetus, in accordance with Subsection C of 20.3.4.409 NMAC; or

(b) if multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device which is most representative of the dose to the embryo/fetus shall be the dose to the embryo/fetus; assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose is also the most representative deep dose equivalent for the region of the embryo/fetus.

D. ~~[If by the time the woman declares pregnancy to the licensee or registrant, the dose to the embryo/fetus has exceeded 0.45 rem (4.5 mSv)]~~ If the dose equivalent to the embryo/fetus is found to have exceeded 0.5 rem (5 mSv), or is within 0.05 rem (0.5 mSv) of this dose, by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with Subsection A of 20.3.4.412

NMAC if the additional dose equivalent to the embryo/fetus does not exceed 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

20.3.4.416 SURVEY AND MONITORING/GENERAL:

A. Each licensee or registrant shall make, or cause to be made, surveys that:

(1) are necessary for the licensee or registrant to comply with 20.3.4 NMAC; and

(2) are necessary under the circumstances to evaluate:

(a) the magnitude and extent of radiation levels;

(b) concentrations or quantities of radioactive material; and

(c) the potential radiological hazards ~~[that could be present].~~

B. The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these regulations (20.3 NMAC) or a license condition.

C. All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with 20.3.4.405 NMAC, with other applicable provisions of these regulations, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(1) holding current personnel dosimetry accreditation from the national voluntary laboratory accreditation program (NVLAP) of the national institute of standards and technology (NIST); and

(2) approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

D. The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

20.3.4.417 CONDITIONS REQUIRING INDIVIDUAL MONITORING OF EXTERNAL AND INTERNAL OCCUPATIONAL DOSE.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the

occupational dose limits of 20.3.4 NMAC. As a minimum:

A. Each licensee or registrant shall monitor occupational exposure to radiation ~~from licensed and unlicensed radiation sources under the control of the licensee or registrant~~ and shall supply and require the use of individual monitoring devices by:

(1) adults likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of the limits in Subsection A of 20.3.4.405 NMAC;

~~[(2) minors and declared pregnant women likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of any of the applicable limits in 411 or 412; and]~~

(2) minors likely to receive, in 1 year, from radiation sources external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv), a lens dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent to the skin or to the extremities in excess of 0.5 rem (5 mSv);

(3) declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv) (note: all of the occupational doses in Subsection A of 20.3.4.405 NMAC continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded);

~~[(3)]~~ (4) individuals entering a high or very high radiation area; and/or

~~[(4)]~~ (5) individuals working with medical fluoroscopic equipment:

(a) an individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection A of 20.3.4.412 NMAC, shall be located under the protective apron at the waist;

(b) an individual monitoring device used for eye dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron; and/or

(c) when only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Paragraph (2) of Subsection C of 20.3.4.405 NMAC, it shall be located at the neck outside the protective apron; when a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist; the second individual monitoring device is required for a declared pregnant woman.

B. Each licensee or registrant shall monitor ~~[, to determine compliance with 408,] (see 20.3.4.408 NMAC)~~ the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(1) adults likely to receive, in 1 year, an intake in excess of 10 percent of the applicable ALI(s) in Table 1, Columns 1 and 2, of 20.3.4.461 NMAC; ~~and]~~

~~(2) [minors and declared pregnant women likely to receive, in 1 year, a committed effective dose equivalent in excess of 0.05 rem (0.5 mSv);] minors likely to receive, in 1 year, a committed effective dose equivalent in excess of 0.1 rem (1 mSv); and~~

(3) declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 0.1 rem (1 mSv).

C. Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection A of 20.3.4.417 NMAC wear individual monitoring devices as follows:

(1) an individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure; when a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar); or

(2) an individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection A of 20.3.4.412 NMAC, shall be located at the waist under any protective apron being worn by the woman; or

(3) an individual monitoring device used for monitoring the eye dose equivalent, to demonstrate compliance with Subparagraph (a) of Paragraph (2) of Subsection A of 20.3.4.405 NMAC, shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye; and/or

(4) an individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subparagraph (b) of Paragraph (2) of Subsection A of 20.3.4.405 NMAC, shall be worn on the extremity likely to receive the highest exposure; each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

20.3.4.426 ~~[RESERVED]~~ RADIOLOGICAL CRITERIA FOR LICENSE TERMINATION:

A. General provisions and scope.

(1) The criteria in this part (20.3.4 NMAC) apply to the decommissioning of facilities licensed under 20.3.3 NMAC, 20.3.13 NMAC, and 20.3.14 NMAC, as well as other facilities subject to the depart-

ment's jurisdiction under the New Mexico Radiation Protection Act. For low-level waste disposal facilities (20.3.13 NMAC), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities.

(2) The criteria in this section (20.3.4.426 NMAC) do not apply to sites which:

(a) have been decommissioned prior to the effective date of the rule; or

(b) have previously submitted and received department approval on a license termination plan (LTP) or decommissioning plan that is compatible with applicable department criteria.

(3) After a site has been decommissioned and the license terminated in accordance with the criteria in this section (20.3.4.426 NMAC), the department will require additional cleanup only if, based on new information, it determines that the criteria of this section were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(4) When calculating TEDE to the average member of the critical group the licensee shall determine the peak annual TEDE dose expected within the first 1000 years after decommissioning.

B. Radiological criteria for unrestricted use. A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

C. Criteria for license termination under restricted conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(1) the licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Subsection B of 20.3.4.426 NMAC would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA; determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal;

(2) the licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year;

(3) the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; acceptable financial assurance mechanisms are:

(a) funds placed into an account segregated from the licensee's assets and outside the licensee's administrative control as described in Paragraph (1) of Subsection F of 20.3.3.311 NMAC;

(b) surety method, insurance, or other guarantee method as described in Paragraph (2) of Subsection F of 20.3.3.311 NMAC;

(c) a statement of intent in the case of federal, state, or local government licensees, as described in Paragraph (4) of Subsection F of 20.3.3.311 NMAC; or

(d) when a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity;

(4) the licensee has submitted a decommissioning plan or license termination plan (LTP) to the department indicating the licensee's intent to decommission in accordance with Subsection D of 20.3.3.318 NMAC, and specifying that the licensee intends to decommission by restricting use of the site; the licensee shall document in the LTP or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) whether provisions for institutional controls proposed by the licensee; (A) will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) TEDE per year; (B) will be enforceable; and (C) will not impose undue burdens on the local community or other affected parties;

(ii) whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of

the site;

(b) in seeking advice on the issues identified in Paragraph (4) of Subsection C of 20.3.4.426 NMAC, the licensee shall provide for:

(i) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

(a) 100 mrem (1 mSv) per year; or

(b) 500 mrem (5 mSv) per year

provided the licensee:

(i) demonstrates that further reductions in residual radioactivity necessary to comply with the 100 mrem/y (1 mSv/y) value of Subparagraph (a) of Paragraph (5) of Subsection C of 20.3.4.426 NMAC are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) makes provisions for durable institutional controls;

(iii) provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every 5 years to assure that the institutional controls remain in place as necessary to meet the criteria of Paragraph (2) of Subsection C of 20.3.4.426 NMAC and to assume and carry out responsibilities for any necessary control and maintenance of those controls; acceptable financial assurance mechanisms are those in Paragraph (3) of Subsection C of 20.3.4.426 NMAC.

D. Alternate criteria for license termination.

(1) The department may terminate a license using alternate criteria greater than the dose criterion of Subsection B of 20.3.4.426 NMAC, Paragraph (2) of Subsection C of 20.3.4.426 NMAC, and Item (i) of Subparagraph (a) of Paragraph (4) of Subsection C of 20.3.4.426 NMAC, if the licensee:

(a) provides assurance that public

health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 1 mSv/y (100 mrem/y) limit of 20.3.4.413 NMAC, by submitting an analysis of possible sources of exposure; has employed to the extent practical restrictions on site use according to the provisions of Subsection C of 20.3.4.426 NMAC in minimizing exposures at the site; and reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal;

(b) has submitted a decommissioning plan or license termination plan (LTP) to the department indicating the licensee's intent to decommission in accordance with Subsection D of 20.3.3.318 NMAC, and specifying that the licensee proposes to decommission by use of alternate criteria; the licensee shall document in the decommissioning plan or LTP how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(2) The use of alternate criteria to terminate a license requires the approval of the department after consideration of the department staff's recommendations that will address any comments provided by state and federal agencies and any public comments submitted pursuant to Subsection E of 20.3.4.426 NMAC.

E. Public notification and public participation. Upon the receipt of an LTP or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Subsection C or D of 20.3.4.426 NMAC, or whenever the department deems such notice to be in the public interest, the department shall:

(1) notify and solicit comments from:

(a) local governments in the vicinity of the site and any Indian nation or other indigenous people that have treaty or statutory rights that could be affected by the

decommissioning; and

(b) the environmental protection agency (EPA) for cases where the licensee proposes to release a site pursuant to Subsection D of 20.3.4.426 NMAC.

(2) Publish a notice in the state register and in a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from the public. Further, that the public notice be published in any language when assessed appropriate.

F. Minimization of contamination. Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.

20.3.4.429 EXCEPTIONS TO POSTING REQUIREMENTS:

A. A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than 8 hours, if each of the following conditions is met:

(1) the sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in 20.3.4 NMAC; and

(2) the area or room is subject to the licensee's or registrant's control.

B. Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to 20.3.4.428 NMAC provided that the requirements of Subparagraph (b) of Paragraph (1) of Subsection C of 20.3.7.708 NMAC, or Subparagraph (b) of Paragraph (1) of Subsection E of 20.3.7.709 NMAC, are met.

C. Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs, provided that:

(1) a patient being treated with a permanent implant could be released from confinement pursuant to Subsection I of 20.3.7.703 NMAC; or

(2) a patient being treated with a therapeutic radiopharmaceutical could be released from confinement pursuant to Subsection C of 20.3.7.708 NMAC.

D. A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.005

rem (0.05 mSv) per hour.

E. A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

F. Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under 20.3.4.428 NMAC if:

(1) access to the room is controlled pursuant to 20.3.7.710 NMAC; and

(2) personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in this part (20.3.4 NMAC).

20.3.4.432 PROCEDURES FOR RECEIVING AND OPENING PACKAGES:

A. Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a type A quantity, as defined in 49 CFR 173.435 revised as of September 29, 1988, or as derived from 49 CFR 173.433 revised as of March 19, 1985, shall make arrangements to receive:

(1) the package when the carrier offers it for delivery; or

(2) the notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

B. Each licensee or registrant shall:

(1) monitor the external surfaces of a labeled (labeled with a radioactive white I, yellow II, or yellow III label as specified in U.S. department of transportation (DOT) regulations 49 CFR 172.403 and 172.436-440.) package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in 20.3.1.7 NMAC;

(2) monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the type A quantity, as defined in 20.3.3.325 NMAC and U.S. department of transportation (DOT) regulations 49 CFR 173.433, 173.434, and 173.435; and

(3) monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

C. The licensee or registrant shall perform the monitoring required by Subsection B of 20.3.4.432 NMAC as soon as practicable after receipt of the pack-

age, but not later than 3 hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours, or if there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged. If a package is received after working hours and has no evidence of degradation of package integrity, the package shall be monitored no later than three hours from the beginning of the next working day.

D. The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and written communication which can include e-mail, telegram, mailgram, or facsimile, the department when:

(1) removable radioactive surface contamination exceeds the limits of U.S. department of transportation (DOT) regulations 49 CFR 173.443; or

(2) external radiation levels exceed the limits of U.S. department of transportation (DOT) regulations 49 CFR 173.443.

E. Each licensee or registrant shall:

(1) establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(2) insure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

F. Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of Subsection B of 20.3.4.432 NMAC, but are not exempt from the monitoring requirement in Subsection B of 20.3.4.432 NMAC for measuring radiation levels that ensures that the source is still properly lodged in its shield.

20.3.4.440 RECORDS/GENERAL PROVISIONS:

~~A. When recording information on shipping manifests, as required by 438.B, each licensee or registrant shall use the International System of Units (SI) becquerel, gray, sievert and coulomb per kilogram, or SI and the special units curie, rad, rem and roentgen (as allowed by DOT 49 CFR), including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by Subpart 4.~~

~~B. The licensee or registrant shall make a clear distinction among the quantities entered on the records required by Subpart 4, such as, total effective dose equivalent, total organ dose equiv-~~

~~alent, shallow dose equivalent, eye dose equivalent, deep dose equivalent, or committed effective dose equivalent.]~~

~~A. Each licensee or registrant shall use the units: curie, rad, rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this part (20.3.4 NMAC).~~

~~B. In the records required by this part (20.3.4 NMAC), the licensee or registrant may record quantities in SI units in parentheses following each of the units specified Subsection A of 20.3.4.440 NMAC. However, all quantities must be recorded as stated in Subsection A of 20.3.4.440 NMAC.~~

~~C. Notwithstanding the requirements of Subsection A of 20.3.4.440 NMAC, when recording information on shipment manifests, as required in Subsection B of 20.3.4.438 NMAC, information must be recorded in the international system of units (SI), or in SI and the units as specified in Subsection A of 20.3.4.440 NMAC.~~

~~D. The licensee or registrant shall make a clear distinction among the quantities entered on the records required by 20.3.4 NMAC (e.g., total effective dose equivalent, shallow-dose equivalent, lens dose equivalent, deep-dose equivalent, committed effective dose equivalent).~~

20.3.4.446 RECORDS OF INDIVIDUAL MONITORING RESULTS:

A. Record Keeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to 20.3.4.417 NMAC, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before the effective date of these regulations need not be changed. These records shall include, when applicable:

(1) the deep dose equivalent to the whole body, ~~[eye]~~ lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities;

(2) the estimated intake of radionuclides, see 20.3.4.406 NMAC;

(3) the committed effective dose equivalent assigned to the intake of radionuclides;

(4) the specific information used to ~~[calculate]~~ assess the committed effective dose equivalent pursuant to ~~[408.C]~~ Subsections A and C of 20.3.4.408 NMAC, and when required by 20.3.4.417 NMAC;

(5) the total effective dose equivalent when required by 20.3.4.406 NMAC; and

(6) the total of the deep dose

equivalent and the committed dose to the organ receiving the highest total dose.

B. Record Keeping Frequency. The licensee or registrant shall make entries of the records specified in Subsection A of 20.3.4.446 NMAC at intervals not to exceed 1 year.

C. Record Keeping Format. The licensee or registrant shall maintain the records specified in Subsection A of 20.3.4.446 NMAC on department form RPS 013, in accordance with the instructions for department form RPS 013, or in clear and legible records containing all the information required by department form RPS 013.

D. The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

E. The licensee or registrant shall retain each required form or record until the department terminates each pertinent license or registration requiring the record.

F. Upon termination of the license or registration, the licensee or registrant shall permanently store records on department form RPS 012 or equivalent, or shall make provision with the department for transfer to the department.

20.3.4.452 NOTIFICATION OF INCIDENTS:

A. Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(1) an individual to receive:

(a) a total effective dose equivalent of 25 rem (0.25 Sv) or more; or

(b) ~~[An eye]~~ a lens dose equivalent of 75 rem (0.75 Sv) or more; or

(c) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 250 rad (2.5 Gy) or more; or

(2) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI; this provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

B. Twenty-four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the

event, report to the department each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(1) an individual to receive, in a period of 24 hours:

(a) a total effective dose equivalent exceeding 5 rem (0.05 Sv); or

(b) ~~[An eye]~~ a lens dose equivalent exceeding 15 rem (0.15 Sv); or

(c) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 50 rem (0.5 Sv); or

(2) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI; this provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

C. The licensee or registrant shall prepare each report filed with the department pursuant to 20.3.4.452 NMAC so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

D. Licensees and registrants shall make the reports required by Subsections A and B of 20.3.4.452 NMAC to the department by telephone, and shall confirm the initial contact by e-mail, telegram, mailgram, or facsimile to the department.

E. The provisions of 20.3.4.452 NMAC do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to 20.3.4.454 NMAC.

20.3.4.453 REPORTS OF EXPOSURES, RADIATION LEVELS, AND CONCENTRATIONS OF RADIOACTIVE MATERIAL EXCEEDING THE CONSTRAINTS OR LIMITS:

A. Reportable Events. In addition to the notification required by 20.3.4.452 NMAC, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(1) incidents for which notification is required by 20.3.4.452 NMAC; or

(2) doses in excess of any of the following:

(a) the occupational dose limits for adults in 20.3.4.452 NMAC; or

(b) the occupational dose limits for a minor in 20.3.4.411 NMAC; or

(c) the limits for an embryo/fetus of a declared pregnant woman in 20.3.4.412

NMAC; or

(d) the limits for an individual member of the public in 20.3.4.413 NMAC; or

(e) the limit in the license or registration; or

(f) the ALARA constraints for air emissions established under Subsection D of 20.3.4.404 NMAC; or

(3) levels of radiation or concentrations of radioactive material in:

(a) a restricted area in excess of applicable limits in the license or registration; or

(b) an unrestricted area in excess of 10 times the applicable limit set forth in this part (20.3.4 NMAC) or in the license or registration, whether or not involving exposure of any individual in excess of the limits in 20.3.4.413 NMAC; or

(4) for licensees subject to the provisions of U.S. environmental protection agency's (EPA's) generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

B. Contents of Reports.

(1) Each report required by Subsection A of 20.3.4.453 NMAC shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(a) estimates of each individual's dose;

(b) the levels of radiation and concentrations of radioactive material involved;

(c) the cause of the elevated exposures, dose rates, or concentrations; and

(d) corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

(2) Each report filed pursuant to Subsection A of 20.3.4.453 NMAC shall include for each ~~[individual exposed]~~ occupationally overexposed individual: the name, social security account number, and date of birth. With respect to the limit for the embryo-fetus set forth in 20.3.4.412 NMAC, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable part of the report.

C. All licensees or registrants who make reports pursuant to Subsection A of 20.3.4.453 NMAC shall submit the report in writing to the department.

20.3.4.463 ~~[APPENDIX D. REQUIREMENTS FOR TRANSFER OF LOW LEVEL RADIOACTIVE WASTE FOR DISPOSAL AT LAND DISPOSAL FACILITIES AND MANIFESTS:]~~

~~A. Manifest. The shipment manifest shall contain the name, address, and telephone number of the person generating the waste. The manifest shall also include the name, address, and telephone number or the name and U.S. Environmental Protection Agency hazardous waste identification number of the person transporting the waste to the land disposal facility. The manifest shall also indicate: a physical description of the waste; the volume, radionuclide identity and quantity, the total radioactivity, and the principal chemical form. The solidification agent shall be specified. Waste containing more than 0.1% chelating agents by weight shall be identified and the weight percentage of the chelating agent estimated. Wastes classified as Class A, Class B, or Class C in 464.A.2 shall be clearly identified as such in the manifest. The total quantity of the radionuclides hydrogen 3, carbon 14, technetium 99, and iodine 129 shall be shown. The manifest required by this paragraph may be shipping papers used to meet U.S. department of Transportation or U.S. Environmental Protection Agency regulations or requirements of the receiver, provided all the required information is included. Copies of manifests required by this section may be legible carbon copies or legible photocopies.~~

~~B. Certification: The waste generator shall include in the shipment manifest a certification that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the U.S. department of Transportation and the Agency. An authorized representative of the waste generator shall sign and date the manifest.~~

~~C. Control and Tracking:~~

~~(1) Any radioactive waste generator who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in 463.C.1.a-h. Any radioactive waste generator who transfers waste to a licensed waste processor who treats or repackages waste shall comply with the requirements of 463.C.1.d-h of this section. A licensee shall:~~

~~(a) Prepare all wastes so that the waste is classified according to 464.A and meets the waste characteristics requirements in 464.B;~~

~~(b) Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance~~

with 464.A;

(c) Conduct a quality control program to ensure compliance with 464.A and 464.B; the program shall include management evaluation of audits;

(d) Prepare shipping manifests to meet the requirements of 464.A and B [Subsections A. and B.;

(e) Forward a copy of the manifest to the intended recipient, at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation from the collector;

(f) Include one copy of the manifest with the shipment;

(g) Retain a copy of the manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material;

(h) For any shipments or any portion of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with 463.C.5.

(2) Any waste collector licensee who handles only prepackaged waste shall:

(a) Acknowledge receipt of the waste from the generator within 1 week of receipt by returning a signed copy of the manifest or equivalent documentation;

(b) Prepare a new manifest to reflect consolidated shipments; the new manifest shall serve as a listing or index for the detailed generator manifests. Copies of the generator manifests shall be a part of the new manifest. The waste collector may prepare a new manifest without attaching the generator manifests, provided the new manifest contains for each package the information specified in 463.A. The collector licensee shall certify that nothing has been done to the waste that would invalidate the generator's certification;

(c) Forward a copy of the new manifest to the land disposal facility operator at the time of shipment;

(d) Include the new manifest with the shipment to the disposal site;

(e) Retain a copy of the manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material and retain information from generator manifest until the license is terminated and disposition is authorized by the department; and

(f) For any shipments or any portion of a shipment for which acknowledgment of receipt is not received within the times set forth in this section, conduct an investigation in accordance with 463.C.5.

(3) Any licensed waste processor who treats or repackages wastes shall:

(a) Acknowledge receipt of the

waste from the generator within 1 week of receipt by returning a signed copy of the manifest or equivalent documentation;

(b) Prepare a new manifest that meets the requirements of 463.A and 463.B. Preparation of the new manifest reflects that the processor is responsible for the waste;

(c) Prepare all wastes so that the waste is classified according to 464.A and meets the waste characteristics requirements in 464.B;

(d) Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with 464.A and 464.C;

(e) Conduct a quality control program to ensure compliance with 464.A and 464.B. The program shall include management evaluation of audits;

(f) Forward a copy of the new manifest to the disposal site operator or waste collector at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation by the collector;

(g) Include the new manifest with the shipment;

(h) Retain copies of original manifests and new manifests and documentation of acknowledgment of receipt as the record of transfer of licensed material; and

(i) For any shipment or portion of a shipment for which acknowledgment is not received within the times set forth in this section, conduct an investigation in accordance with 463.C.5.

(4) The land disposal facility operator shall:

(a) Acknowledge receipt of the waste within 1 week of receipt by returning a signed copy of the manifest or equivalent documentation to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. The returned copy of the manifest or equivalent documentation shall indicate any discrepancies between materials listed on the manifest and materials received;

(b) Maintain copies of all completed manifests or equivalent documentation until the Agency authorizes their disposition; and

(c) Notify the shipper, that is, the generator, the collector, or processor, and the Agency when any shipment or portion of a shipment has not arrived within 60 days after the advance manifest was received.

(5) Any shipment or portion of a shipment for which acknowledgment is not received within the times set forth in this section shall:

(a) Be investigated by the shipper if the shipper has not received notification

or receipt within 20 days after transfer; and

(b) Be traced and reported to whom. The investigation shall include tracing the shipment and filing a report with the department. Each licensee who conducts a trace investigation shall file a written report with the department within 2 weeks of completion of the investigation. [RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.3.12 NMAC named "Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies". The amendment provides clarifying language and changes to radiation units. This rule-making action also renubers and reforms from that portion of 20 NMAC 3.1, Subpart 12, named "Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies" (filed 06-17-99) and now replaced by 20.3.12 NMAC. This amendment and renumber will become effective 04/15/2004.

20.3.12.1207 RADIATION SURVEY INSTRUMENTS:

A. The licensee or registrant shall ~~maintain sufficient~~ keep a calibrated and operable radiation survey instrument[s] capable of detecting beta and gamma radiation at each field station and temporary jobsite to make ~~physical~~ the radiation surveys ~~[as]~~ required by this part (20.3.12 NMAC) and by 20.3.4 NMAC. [Instrumentation shall be capable of measuring 0.1 milliroentgen (25.8 nanocoulombs/kg) per hour through at least 50 milliroentgens (12.9 microcoulombs/kg)] To satisfy this requirement, the radiation survey instrument must be capable of measuring 0.001 mSv (0.1 mrem) per hour through at least 0.5 mSv (50 mrem) per hour.

B. Each radiation survey instrument shall be calibrated:

(1) at intervals not to exceed 6 months and after each instrument servicing;

(2) for linear scale instruments, at two points located approximately 1/3 and 2/3 of full-scale on each scale; for logarithmic scale instruments, and mid-range of each decade, and at two points of at least one decade; and for digital instruments, at appropriate points; and

(3) so that accuracy within 20 percent of the true radiation level can be demonstrated on each scale.

C. Calibration records shall be maintained for a period of two years for inspection by the department.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.3.13 NMAC named "Licensing Requirements for Land Disposal of Radioactive Waste". The amendment is made to the definition of "waste" contained in Subsection V of 20.3.13.7 NMAC. The amendment specifically excludes transuranic waste from the definition, and is revised to be more compatible with the definition set forth by the NRC in 10CFR 61.2. This rulemaking action also renumbers and reformats from that portion of 20 NMAC 3.1, Subpart 13, named "Licensing Requirements for Land Disposal of Radioactive Waste" (filed 06-17-99) and now replaced by 20.3.13 NMAC. This amendment and renumber will become effective 04/15/2004.

20.3.13.7 DEFINITIONS: As used in this part (20.3.13 NMAC), the following definitions apply.

A. "Active maintenance" means any significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in 20.3.13.1307 NMAC and 20.3.13.1308 NMAC are met. Such active maintenance includes ongoing activities, such as the pumping and treatment of water from a disposal unit, or one-time measures, such as replacement of a disposal unit cover. Active maintenance does not include custodial activities, such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers and general disposal site upkeep, such as mowing grass.

B. "Buffer zone" means a portion of the disposal site that is controlled by the licensee, and that lies under the disposal units and between the disposal units and the boundary of the site.

C. "Chelating agent" means amine polycarboxylic acids, hydroxy-carboxylic acids, gluconic acid and polycarboxylic acids.

D. "Commencement of construction" means any clearing of land, excavation or other substantial action that would adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

E. "Custodial agency"

means an agency of the government designated to act on behalf of the government owner of the disposal site.

F. "Disposal" means the isolation of wastes from the biosphere inhabited by man and his food chains by emplacement in a land disposal facility.

G. "Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

H. "Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the unit is usually a trench.

I. "Engineered barrier" means a man-made structure or device that is intended to improve the land disposal facility's ability to meet the performance objective in this part (20.3.13 NMAC).

J. "Explosive material" means any chemical compound, mixture or device which produces a substantial instantaneous release of gas and heat spontaneously, or by contact with sparks or flame.

K. "Hazardous waste" means those wastes designated as hazardous by U.S. environmental protection agency regulations in 40 CFR, Part 261.

L. "Hydrogeologic unit" means any soil or rock unit or zone which, by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of ground water.

M. "Inadvertent intruder" means a person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction or other pursuits in which an individual might be unknowingly exposed to radiation from the waste.

N. "Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste, and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in this part (20.3.13 NMAC), or engineered structures that provide equivalent protection to the inadvertent intruder.

O. "Land disposal facility" means the land, buildings and equipment which is intended to be used for the disposal of wastes into the subsurface of the land.

P. "Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

Q. "Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

R. "Pyrophoric liquid" means any liquid that ignites spontaneously

in dry or moist air at or below 130 degrees F (54.4 degrees C). A pyrophoric solid is any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily, and when ignited, burns so vigorously and persistently as to create a serious transportation, handling or disposal hazard. Included in this definition are spontaneously combustible and water-reactive materials.

S. "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

T. "Stability" means structural stability.

U. "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion and compliance with other license and regulatory requirements.

~~V. "Waste" means those low level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low level waste has the same meaning as in the Low Level Radioactive Waste Policy Act, PL 96 573, radioactive waste not classified as high level radioactive waste, spent nuclear fuel or byproduct material, as defined in Section 11.E.(2) of the Atomic Energy Act (uranium or thorium tailings and waste).]~~

V. "Waste" means, for the purposes of this part (20.3.13 NMAC), those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Waste Policy Act, that is, radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste).

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment 20.3.15 NMAC named "Licenses and Radiation Safety Requirements for Irradiators". Subsection G of 20.3.15.1507 NMAC is amended in regards to access control posting requirements for panoramic irradiators. This rulemaking action also

renumbers and reformats from that portion of 20 NMAC 3.1, Subpart 15, named "Licenses and Radiation Safety Requirements for Irradiators" (filed 06-17-99) and now replaced by 20.3.15 NMAC. This amendment and number will become effective 04/15/2004.

20.3.15.1507 ACCESS CONTROL:

A. Each entrance to a radiation room at a panoramic irradiator must have a door or other physical barrier to prevent inadvertent entry of personnel if the sources are not in the shielded position. Product conveyer systems may serve as barriers as long as they reliably and consistently function as a barrier. It must not be possible to move the sources out of their shielded position if the door or barrier is open. Opening the door or barrier while the sources are exposed must cause the sources to return promptly to their shielded position. The personnel entrance door or barrier must have a lock that is operated by the same key used to move the source. The doors and barriers must not prevent any individual in the radiation room from leaving.

B. In addition, each entrance to a radiation room at a panoramic irradiator must have an independent backup access control to detect personnel entry while the sources are exposed. Detection of entry while the sources are exposed must cause the sources to return to their fully shielded position, and must also activate a visible and audible alarm to make the individual entering the room aware of the hazard. The alarm must also alert at least one other individual who is on-site of the entry. That individual shall be trained on how to respond to the alarm and prepared to promptly render or summon assistance.

C. A radiation monitor must be provided to detect the presence of high radiation levels in the radiation room of a panoramic irradiator before personnel entry. The monitor must be integrated with personnel access door locks to prevent room access when radiation levels are high. Attempted personnel entry while the monitor measures high radiation levels must activate the alarm described in Subsection B of 20.3.15.1507 NMAC. The monitor may be located in the entrance (normally referred to as the maze), but not in the direct radiation beam.

D. Before the sources move from their shielded position in a panoramic irradiator, the source control must automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the sources will be moved from their shielded position. The alarms must give individuals enough time to leave the room before the sources leave the shielded position.

E. Each radiation room at a panoramic irradiator must have a clearly visible and readily accessible control that would allow an individual in the room to make the sources return to their fully shielded position.

F. Each radiation room of a panoramic irradiator must contain a control that prevents the sources from moving from the shielded position, unless the control has been activated and the door or barrier to the radiation room has been closed within a preset time after activation of the control.

G. Each entrance to the radiation room of a panoramic irradiator and each entrance to the area within the personnel access barrier of an underwater irradiator must ~~have a sign bearing the radiation symbol and the words, "Caution (or danger) — Radioactive Material."~~ Panoramic irradiators must also have a sign stating "High Radiation Area," but ~~the sign~~ be posted as required by 20.3.4.428 NMAC. Radiation postings for panoramic irradiators must comply with the posting requirements of 20.3.4.428 NMAC, except that signs may be removed, covered, or otherwise made inoperative when the sources are fully shielded.

H. If the radiation room of a panoramic irradiator has roof plugs or other movable shielding, it must not be possible to operate the irradiator unless the shielding is in its proper location. This requirement may be met by interlocks that prevent operation if shielding is not placed properly or by an operating procedure requiring inspection of shielding before operating.

I. Underwater irradiators must have a personnel access barrier around the pool which must be locked to prevent access when the irradiator is not attended. Only operators and facility management may have access to keys to the personnel access barrier. There must be an intrusion alarm to detect unauthorized entry when the personnel access barrier is locked. Activation of the intrusion alarm must alert an individual (not necessarily onsite) who is prepared to respond or summon assistance.

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Section 11, which will be effective on April 1, 2004. The Medical Assistance Division amended subsections in Section 11 by changing the poverty income guidelines dollar amounts.

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. **100% of federal poverty:** 100% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$749] \$776 per month*
2	[\$1,010] \$1,041 per month*
3	[\$1,272] \$1,306 per month
4	[\$1,534] \$1,571 per month
5	[\$1,795] \$1,836 per month
6	[\$2,057] \$2,101 per month
7	[\$2,319] \$2,366 per month
8	[\$2,580] \$2,631 per month

Add ~~[\$261]~~ \$265 for each additional person in the assistance unit.

* Use only these two standards for the QMB program.

B. **120% of federal poverty:** This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants/recipients.

<u>Applicant/recipient</u>	<u>Amount</u>
1. Individual	At least [\$749] \$776 per month but no more than [\$898] \$931 per month.
2. Couple	At least [\$1,010] \$1,041 per month but no more than [\$1,212] \$1,249 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. **133% of federal poverty:** 133% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$996] \$1,032 per month
2	[\$1,344] \$1,385 per month
3	[\$1,692] \$1,737 per month
4	[\$2,040] \$2,090 per month
5	[\$2,388] \$2,442 per month
6	[\$2,736] \$2,795 per month

7 [3,084] \$3,147 per month
 8 [3,432] \$3,500 per month
 Add [348] \$353 for each additional person in the assistance unit.
D. 135% of federal poverty: This income level is used only in the determination of the maximum income limit for qualified individuals 1 (QI-1) applicants/recipients. The following income levels apply:

<u>Applicant/recipient</u>	<u>Amount</u>
1. Individual	At least [898] \$931 per month but no more than [1,011] \$1,048 per month.
2. Couple	At least [1,212] \$1,249 per month but no more than [1,364] \$1,406 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

E. 185% of federal poverty:

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[1,385] \$1,436 per month
2	[1,869] \$1,926 per month
3	[2,353] \$2,416 per month
4	[2,837] \$2,907 per month
5	[3,321] \$3,397 per month
6	[3,805] \$3,887 per month
7	[4,289] \$4,377 per month
8	[4,773] \$4,868 per month

Add [484] \$491 for each additional person in the assistance unit.

F. 200% of federal poverty: 200% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[1,497] \$1,552
2	[2,020] \$2,082

G. 235% of federal poverty: 235% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[1,759] \$1,824 per month
2	[2,374] \$2,446 per month
3	[2,989] \$3,069 per month
4	[3,604] \$3,692 per month
5	[4,219] \$4,315 per month
6	[4,834] \$4,937 per month
7	[5,449] \$5,560 per month
8	[6,063] \$6,183 per month

Add [614] \$623 for each additional person in the assistance unit.

H. 250% of federal poverty: 250% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[1,871] \$1,940 per month
2	[2,525] \$2,603 per month
3	[3,180] \$3,265 per month
4	[3,834] \$3,928 per month
5	[4,488] \$4,590 per month
6	[5,142] \$5,253 per month
7	[5,796] \$5,915 per month
8	[6,450] \$6,578 per month

Add [654] \$663 for each additional person in the assistance unit.

[1-1-95, 4-1-95, 4-15-96, 4-1-97, 3-31-98, 3-1-99, 4-1-99, 4-1-00; 8.200.520.11 NMAC - Rn, 8 NMAC 4.MAD.520.1-5, & 14, & A, 1-1-01; A, 4-1-01; A, 4-1-02; A, 4-1-03; A, 4-1-04]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to Subsection D of 1.7.9 NMAC, Performance Appraisals, effective 3/31/04.

1.7.9.8 FORM:

A. The performance and development of employees shall be documented on an appraisal form number SPB

232 approved by the director, incorporated by reference into 1.7.9 NMAC, and shall become a part of each employee's employment history [and filed with the office].

B. A performance and development plan shall be initiated within [45] 90 calendar days of appointment, reassignment, promotion, demotion, reduction, transfer and/or the employee's appraisal date.

[C. Appraisals may be performed whenever an immediate supervisor

wishes to make an employee's performance a matter of record, upon change of immediate supervisor, or whenever deemed appropriate.]

[1.7.9.8 NMAC - Rp, 1 NMAC 7.9.8, 07/07/01; A, 11/14/02; A, 3/31/04]

1.7.9.9 PERFORMANCE APPRAISAL:

A. Managers and supervisors must successfully complete a director-approved course of study on employee performance appraisal within [45] 90 days of appointment as a supervisor.

B. [The performance and development of a career employee shall be reviewed semi-annually and appraised by the immediate supervisor each year in accordance with director issued guidelines.] The performance and development of a career employee shall be reviewed semi-annually and appraised by the immediate supervisor on an annual basis completed by the employee's anniversary date.

C. [The performance and development of a probationary employee shall be reviewed quarterly and appraised by the immediate supervisor before the end of the one year probationary period. Performance and development of newly appointed managers and first line supervisors and newly promoted employees shall be reviewed semi-annually for the first year of appointment, and may be performed whenever an immediate supervisor wishes to make an employee's performance a matter of record.] The performance and development of a probationary employee shall be reviewed through at least two (2) interim reviews and a final review prior to the completion of the probationary period. The performance and development of promoted employees shall be reviewed through at least two (2) interim reviews and a final review prior to the completion of a one-year period upon promotion.

D. The appraisal of employee performance and development shall [include the immediate supervisor and self and additional evaluation(s) (peer, customer, subordinate, etc.) when deemed appropriate.] be performed by the immediate supervisor with employee input and participation. Additional input and participation from employee's peers, customers, subordinates, or other appropriate personnel may be applied when appropriate.

E. Appraisals may be performed whenever an immediate supervisor wishes to make an employee's performance a matter of record, upon change of immediate supervisor, or whenever appropriate.

[E] **F.** Managers and immediate supervisors who fail to comply with the provisions of 1.7.9 NMAC [shall] may be subject to disciplinary action including dis-

missal.

[1.7.9.9 NMAC - Rp, 1 NMAC 7.9.9, 07/07/01; A, 11/14/02; A, 7/30/03; A, 12/01/03; A, 3/31/04]

1.7.9.10 [FOCAL POINT APPRAISAL]

~~[A. Each agency shall develop an agency plan, which outlines how it will conduct employee performance appraisals in accordance with these rules and the quality assurance review guidelines established pursuant to Paragraph (1) of Subsection A of 1.7.1.8 NMAC. The plan and its guidelines shall support equity and fairness in its administration of performance appraisals and shall ensure that distribution of rating is based solely on employee's contribution relative to the requirements of their positions. The plan and its guidelines shall be approved by the Director prior to the agency awarding a pay increase, pursuant to Subsection B of 1.7.4.13 NMAC, and will be reviewed by the Board annually.~~

~~B. Agencies shall select a specific point period of time, not to exceed 60 consecutive days between July and November, inclusive, to conduct appraisals and rate all employees on their performance using a form approved by the Director.~~

~~C. Agencies shall have a five tier appraisal rating system. Unless otherwise specified by agency policy, the ratings will be named: Greatly Exceeds Expectations; Exceeds Expectations; Meets Expectations; Needs Improvement; Unacceptable. If agency policy substitutes alternative names, the agency name for the top tier rating shall use the Office definition for Greatly Exceeds Expectations; the agency name for the second tier rating shall use the Office definition for Exceeds Expectations; the agency name for the third tier rating shall use the Office definition for Meets Expectations; the agency name for the fourth tier rating shall use the Office definition for Needs Improvement; the agency name for the fifth tier rating shall use the Office definition for Unacceptable.]~~

[RESERVED]

[1.7.9.10 NMAC - N, 07/01/02; A, 11/14/02; A, 7/30/03; A, 12/01/03; A, 2/31/04]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to Subsection D of 1.7.10.9 NMAC, Furlough, Reduction in Force, Reemployment, effective 3/31/04. [This amendment is the result of action taken by the state personnel board in relation to their authority under Emergency Rules, 1.7.13.11 NMAC (07/07/01). This

amendment expires 120 calendar days after publication.]

1.7.10.9 REDUCTION IN FORCE:

A. An agency may lay off employees only for deletion of positions, shortage of work or funds, or other reasons that do not reflect discredit on the services of the employees.

B. An agency shall identify organizational units for purposes of a layoff and submit a written plan to the Board. Such organizational units may be recognized on the basis of geographic area, function, funding source, or other factors. The agency must define the technical occupation group(s) or manager category(ies) affected within the organizational unit.

C. Upon board approval of a layoff plan, the agency effecting the layoff shall initiate a right of first refusal within the agency. All employees affected by the layoff shall be provided the following rights:

(1) employees to be affected by the reduction in force (RIF) shall be provided the right of first refusal to any position to be filled within the agency for which they meet the established requirements, at the same or lower midpoint than the midpoint of the position the employee currently holds, unless there is an actual layoff candidate exercising RIF rights for that position;

(2) affected employees shall compete only with other employees in the same agency affected by the reduction in force;

(3) the agency's list of eligible candidates for the open positions shall be comprised of those affected employees meeting the established requirements of the position;

(4) employees shall have eleven calendar days from the date of an offer to accept the position unless otherwise agreed; employees who do not accept an offer shall not lose the right of first refusal status to other positions; and

(5) the right of first refusal under *Subsection C of 1.7.10.9. NMAC* shall extend until the first effective date of layoff as defined in the plan.

D. The order of layoff due to reduction in force shall be by service date which is determined based upon the agency hire date, with additional service credit provided under the following formula.

(1) An employee's performance appraisal of official employment record pursuant to *1.7.1.12 NMAC* on the date of notice of a reduction in force shall determine entitlement to additional service credit. If there is no performance appraisal on file, it shall be assumed that the employee's performance [~~"meets expectations"~~] is "successful".

(a) An employee who has a rating of [~~"greatly exceeds expectations,"~~] "exceptional" or its equivalent, shall have four years of service added to the employee's creditable service.

(b) An employee who has a rating of [~~"exceeds expectations,"~~] "successful" or its equivalent, shall have two years of service added to the employee's creditable service.

~~[(c) An employee who has a rating of "meets expectations," or its equivalent, shall have one year of service added to the employee's creditable service.]~~

(2) In the event of a tie, the director shall determine an appropriate mechanism for breaking the tie.

E. No employee in career status shall be laid off while there are term, probationary, emergency or temporary status employees in the same technical occupation group role or manager category in the same organizational unit.

F. Employees in career status shall be given at least 14 calendar days written notice of layoff. Notice shall be served according to the provisions of *1.7.1.10 NMAC*.

[1.7.10.9 NMAC - Rp, 1 NMAC 7.10.9, 07/07/01; A, 11/14/02; A, 3/31/04]

[This amendment is the result of action taken by the state personnel board in relation to their authority under Emergency Rules, 1.7.13.11 NMAC (07/07/01). This amendment expires 120 calendar days after publication.]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Repeal

1.18.352 NMAC, Executive Records Retention and Disposition Schedule for Educational Retirement Board, is hereby repealed and replaced with the new 1.18.352 NMAC, Executive Records Retention and Disposition Schedule for the Educational Retirement Board, effective April 5, 2004. 1.18.418 NMAC, Executive Records Retention and Disposition Schedule for the Department of Tourism, is hereby repealed and replaced with the new 1.18.418 NMAC, Executive Records Retention and Disposition Schedule for the Department of Tourism, effective April 5, 2004. 1.18.464 NMAC, Executive Records Retention and Disposition Schedule for the Professional Engineers and Land Surveyors Board, is hereby repealed and replaced with the new 1.18.464 NMAC, Executive Records Retention and Disposition Schedule for the State Board of Licensure for Professional Engineers and Surveyors,

effective April 5, 2004. 1.18.508 NMAC, Executive Records Retention and Disposition Schedule for the New Mexico Livestock Board is hereby repealed and replaced with the new 1.18.508 NMAC, Executive Records Retention and Disposition Schedule for the New Mexico Livestock Board, effective April 5, 2004. 1.18.609 NMAC, Executive Records Retention and Disposition Schedule for the Office of Indian Affairs is hereby repealed and replaced with the new 1.18.609 NMAC, Executive Records Retention and Disposition Schedule for the Indian Affairs Department, effective April 5, 2004. 1.18.780 NMAC, Executive Records Retention and Disposition Schedule for the Crime Victims Reparation Commission is hereby repealed and replaced with the new 1.18.780 NMAC, Executive Records Retention and Disposition Schedule for the Crime Victims Reparation Commission, effective April 5, 2004. The current rules were repealed by the New Mexico Commission of Public Records at their March 2, 2004 meeting. The new rules were approved by the New Mexico Commission of Public Records at their March 2, 2004 meeting.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

March 5, 2004

Donald L. Padilla, Records Management
Division Director
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505

Mr. Padilla:

You recently requested to publish a synopsis in lieu of publishing the full content of the following listed rules:

- * 1.18.352 NMAC, ERRDS Educational Retirement Board;
- * 1.18.418 NMAC, ERRDS Tourism Department;
- * 1.18.464 NMAC, ERRDS State Board of Licensure for Professional Engineers and Surveyors;
- * 1.18.508 NMAC, ERRDS New Mexico Livestock Board;
- * 1.18.609 NMAC, ERRDS Indian Affairs Department;
- * 1.18.780 NMAC, ERRDS Crime Victims Reparation Commission;
- * 1.18.356 NMAC, ERRDS Office of the Governor; and
- * 1.18.361 NMAC, ERRDS Office of the Chief Information Officer.

A review of these rules shows that their

most impact is limited to the individual agencies to which they pertain, and they are "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for each is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

SJ/dlp

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.352 NMAC ERRDS, Educational Retirement Board

1. Subject matter: 1.18.352 NMAC, Executive Records Retention and Disposition Schedule for the Educational Retirement Board. This rule is being amended 1.18.352 NMAC ERRDS, Educational Retirement Board an outdated re-numbered version that was filed on 6/21/2002. This records retention and disposition schedule is a timetable for the management of all records series of the Educational Retirement Board. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Educational Retirement Board.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Educational Retirement Board. Persons and entities normally subject to the rules and regulations of the Educational Retirement Board may also be directly or indirectly affected by this rule.

3. Interest of persons affected: Interests include the records produced and maintained by the Educational Retirement Board.

4. Geographical applicability: Geographical applicability is limited to

areas within the State of New Mexico covered by the Educational Retirement Board. Any person or entity outside the covered geographical area that conducts business with or through the Educational Retirement Board may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, NM 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: April 5, 2004.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.352 NMAC ERRDS, Educational Retirement Board.

Roberta D. Joe
Assistant Attorney General

Date

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.356 NMAC, ERRDS, NM Office of the Governor

1. Subject matter: 1.18.356 NMAC, Executive Records Retention and Disposition Schedule for the New Mexico Office of the Governor. Because every administration is distinct, this retention schedule may not address every record group created or maintained by the current or future administrations. This is intended to be a model schedule and is based on the records associated with the powers and duties of the office as well as on collections of records transferred to the New Mexico State Archives by previous administrations. new model records retention and disposition schedule for the New Mexico Office of the Governor. This records retention and disposition schedule is a timetable for the management of specific records series of the New Mexico Office of the Governor. It describes each record series by record

name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the court as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator and the New Mexico Commission of Public Records. This rule was also submitted to the Governor's office for review.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the New Mexico Office of the Governor. Persons and entities normally subject to the rules and regulations of the New Mexico Office of the Governor may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the New Mexico Office of the Governor.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the New Mexico Office of the Governor. Any person or entity outside the covered geographical area that conducts business with or through the New Mexico Office of the Governor may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: April 5, 2004.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of

1.18.356 NMAC ERRDS, New Mexico Office of the Governor.

Roberta D. Joe
Assistant Attorney General

Date

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.361 NMAC ERRDS, Office of the Chief Information Officer

1. Subject matter: 1.18.361 NMAC, Executive Records Retention and Disposition Schedule for the Office of the Chief Information Officer. This rule is new. This records retention and disposition schedule is a timetable for the management of specific records series of the Office of the Chief Information Officer. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the office as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Office of the Chief Information Officer.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Office of the Chief Information Officer. Persons and entities normally subject to the rules and regulations of the Office of the Chief Information Officer may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Office of the Chief Information Officer.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Office of the Chief Information Officer. Any person or entity outside the covered geographical area that conducts business with or through the Office of the

Chief Information Officer may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: April 5, 2004.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.361 NMAC ERRDS, Office of the Chief Information Officer.

Roberta D. Joe
Assistant Attorney General

Date

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.418 NMAC ERRDS, Tourism Department

1. Subject matter: 1.18.418 NMAC, Executive Records Retention and Disposition Schedule for the Tourism Department. This rule is new and replaces 1.18.418 NMAC ERRDS, Department of Tourism an outdated version that was filed on 6/21/2002. This records retention and disposition schedule is a timetable for the management of specific records series of the Tourism Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records)

and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Tourism Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Tourism Department. Persons and entities normally subject to the rules and regulations of the Tourism Department may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Tourism Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Tourism Department. Any person or entity outside the covered geographical area that conducts business with or through the Tourism Department may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507. Telephone number: (505) 476-7900.

7. Effective date of this rule: April 5, 2004.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.418 NMAC ERRDS, Tourism Department.

 Roberta D. Joe
 Assistant Attorney General

 Date

**NEW MEXICO
 COMMISSION OF
 PUBLIC RECORDS**

SYNOPSIS

1.18.464 NMAC ERRDS, State Board of Licensure for Professional Engineers and Surveyors

1. Subject matter: 1.18.464 NMAC,

Executive Records Retention and Disposition Schedule for the State Board of Licensure for Professional Engineers and Surveyors. This rule is new and replaces 1.18.464 NMAC ERRDS, Professional Engineers and Land Surveyors Board an outdated version that was filed on 8/29/2001. This records retention and disposition schedule is a timetable for the management of specific records series of the State Board of Licensure for Professional Engineers and Surveyors. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the board as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the State Board of Licensure for Professional Engineers and Surveyors.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the State Board of Licensure for Professional Engineers and Surveyors. Persons and entities normally subject to the rules and regulations of the State Board of Licensure for Professional Engineers and Surveyors may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the State Board of Licensure for Professional Engineers and Surveyors.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the State Board of Licensure for Professional Engineers and Surveyors. Any person or entity outside the covered geographical area that conducts business with or through the State Board of Licensure for Professional Engineers and Surveyors may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507. Telephone number: (505) 476-7900.

7. Effective date of this rule: April 5, 2004.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.464 NMAC ERRDS, State Board of Licensure for Professional Engineers and Surveyors.

 Roberta D. Joe
 Assistant Attorney General

 Date

**NEW MEXICO
 COMMISSION OF
 PUBLIC RECORDS**

SYNOPSIS

1.18.508 NMAC ERRDS, New Mexico Livestock Board

1. Subject matter: 1.18.508 NMAC, Executive Records Retention and Disposition Schedule for the New Mexico Livestock Board. This rule is new and replaces 1.18.508 NMAC ERRDS, New Mexico Livestock Board an outdated renumbered version that was filed on 3/12/2002. This records retention and disposition schedule is a timetable for the management of specific records series of the New Mexico Livestock Board. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the board as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the New Mexico Livestock Board.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the New Mexico Livestock

Board. Persons and entities normally subject to the rules and regulations of the New Mexico Livestock Board may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the New Mexico Livestock Board.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the New Mexico Livestock Board. Any person or entity outside the covered geographical area that conducts business with or through the New Mexico Livestock Board may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: April 05, 2004.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.508 NMAC ERRDS, New Mexico Livestock Board.

Roberta D. Joe
Assistant Attorney General

_____ Date

**NEW MEXICO
COMMISSION OF
PUBLIC RECORDS**

SYNOPSIS

1.18.609 NMAC ERRDS, Indian Affairs Department

1. Subject matter: 1.18.609 NMAC, Executive Records Retention and Disposition Schedule for the Indian Affairs Department. This rule is new and replaces 1.18.609 NMAC ERRDS, Office of Indian Affairs an outdated version that was filed on 5/16/2001. This records retention and disposition schedule is a timetable for the management of specific records series of the Indian Affairs Department. It describes

each record series by record name, record function, record content, record filing system, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the office as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Indian Affairs Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Indian Affairs Department. Persons and entities normally subject to the rules and regulations of the Indian Affairs Department may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Indian Affairs Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Indian Affairs Department. Any person or entity outside the covered geographical area that conducts business with or through the Indian Affairs Department may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507. Telephone number: (505) 476-7900.

7. Effective date of this rule: April 5, 2004.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.609 NMAC ERRDS, Indian Affairs Department.

_____ Roberta D. Joe

Assistant Attorney General

_____ Date

**NEW MEXICO
COMMISSION OF
PUBLIC RECORDS**

SYNOPSIS

1.18.780 NMAC ERRDS, Crime Victims Reparation Commission

1. Subject matter: 1.18.780 NMAC, Executive Records Retention and Disposition Schedule for the Crime Victims Reparation Commission. This rule is new and replaces 1.18.780 NMAC ERRDS, Crime Victims Reparation Commission an outdated re-numbered version that was filed on 6/21/2002. This records retention and disposition schedule is a timetable for the management of specific records series of the Crime Victims Reparation Commission. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the commission as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Crime Victims Reparation Commission.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Crime Victims Reparation Commission. Persons and entities normally subject to the rules and regulations of the Crime Victims Reparation Commission may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Crime Victims Reparation Commission.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Crime Victims Reparation Commission. Any person or entity outside the covered geographical area that conducts business with or through the Crime Victims Reparation Commission may also be affect-

ed by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: April 05, 2004.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.780 NMAC ERRDS, Crime Victims Reparation Commission.

Roberta D. Joe
Assistant Attorney General

Date

**NEW MEXICO
COMMISSION OF
PUBLIC RECORDS**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 18 EXECUTIVE RECORDS RETENTION AND DISPOSITION SCHEDULES (ERRDS)
PART 940 ERRDS, PUBLIC SCHOOLS FACILITIES AUTHORITY**

1.18.940.1 ISSUING AGENCY: Commission of Public Records - State Records Center and Archives [1.18.940.1 NMAC - N, 4/5/2004]

1.18.940.2 SCOPE: public school facilities authority [1.18.940.2 NMAC - N, 4/5/2004]

1.18.940.3 STATUTORY AUTHORITY: Section 14-3-6 NMSA 1978. The administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records. [1.18.940.3 NMAC - N, 4/5/2004]

1.18.940.4 DURATION: permanent [1.18.940.4 NMAC - N, 4/5/2004]

1.18.940.5 EFFECTIVE DATE: April 5, 2004 unless a later date is cited at the end of a section [1.18.940.5 NMAC - N, 4/5/2004]

1.18.940.6 OBJECTIVE: To establish a records retention schedule for the management and orderly retirement of records necessary for the carrying out the Public Records Act, Section 14-3-6 NMSA 1978. [1.18.940.6 NMAC - N, 4/5/2004]

1.18.940.7 DEFINITIONS:
A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978)

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978)

C. "Commission" means the state commission of public records (Section 14-3-2 NMSA)

D. "Pending litigation" means a proceeding in a court of law whose activity is in progress but not yet completed

E. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition

F. "Records retention schedule" means a document prepared as part of a records retention program that lists the period of time for retaining records [1.18.940.7 NMAC - N, 4/5/2004]

1.18.940.8 ABBREVIATIONS AND ACRONYMS:

A. "GRRDS" stands for general records retention schedule.

B. "NMAC" stands for New Mexico administrative code.

C. "NMSA" stands for New Mexico statutes annotated.

D. "OHSA" stands for occupational health and safety administration.

E. "PSCOC" stands for public school capital outlay council.

F. "PSFA" stands for public school facilities authority.

G. "RFI" stands for request for information.

H. "RFP" stands for request for proposals.

I. "RFQ" stands for request for quotes.

J. "USC" stands for United States code. [1.18.940.8 NMAC - N, 4/5/2004]

1.18.940.9 INSTRUCTIONS:

A. For records of a general administrative nature, refer to the GRRDS, General Administrative Records Retention And Disposition Schedule, 1.15.2 NMAC.

B. For records of a financial nature, refer to the GRRDS, General Financial Records Retention and Disposition Schedule, 1.15.4 NMAC.

C. For records of a personnel nature, refer to the GRRDS, General Personnel Records Retention and Disposition Schedule, 1.15.6 NMAC.

D. For records of a medical nature, refer to the GRRDS, General Medical Records Retention And Disposition Schedule, 1.15.8 NMAC.

E. Retention periods shall be extended until six months after all current or pending litigation; current claims, audit exceptions or court orders involving a record have been resolved or concluded.

F. The descriptions of file are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description. Access to confidential documents and confidential files shall be only by authorization of agency, or attorney general and/or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

G. Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials, and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Some or all materials in a file may be confidential. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

H. Access to confidential documents and confidential files shall be only by authorization of agency, attorney general or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

I. All records, papers or documents may be photographed, micro-filmed, micro-photographed or reproduced on film. Such photographs, microfilm, photographic film or microphotographs shall be deemed to be an original record for all pur-

poses, including introduction in evidence in all courts or administrative agencies (Sections 14-1-5, 14-1-6 NMSA 1978).

J. Data processing and other machine readable records. Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention and disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). See also 1.13.70 NMAC: Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

[1.18.940.9 NMAC - N, 4/5/2004]

1.18.940.10 - 1.18.940.15 [RESERVED]

1.18.940.16 RADON AND ASBESTOS MANAGEMENT PLAN FILES:

A. Program: deficiencies correction

B. Maintenance system: chronological by calendar year, then alphabetical by school district name

C. Description: records relating to radon and asbestos testing of all public schools. File may contain results of OSHA review, required lab tests, lab studies, radon and asbestos management plans, memoranda, correspondence, etc.

D. Retention: twenty years after close of calendar year in which created transfer to archives for review and final disposition.

[1.18.940.16 NMAC - N, 4/5/2004]

1.18.940.17 SCHOOL IMPROVEMENT PROJECT FILE:

A. Program: capital outlay

B. Maintenance system: alphabetical by school district, then school name, then numerical by project number

C. Description: record concerning memorandum of understanding submitted to PSCOC for approval of deficiencies correction and capital outlay projects. File may contain memorandum of understanding, (project name, project number, approval request, scope of work, justification for project, budget information, schedule of events, management and supervision authority, required signatures), attachments, completed asbestos tests, copies of blueprints, school approval mem-

orandum, final approval from PSCOC, approval letter from committee on concerns for the handicapped and energy minerals and natural resources, approval letter from PSCOC, on-site construction managers recommendations, construction record concerning renovation projects for correcting existing health and safety deficiencies in the public schools, memoranda, correspondence, etc.

D. Retention:

(1) Approved projects: seven years after project completed

(2) Denied projects: returned to school district for modification [1.18.940.17 NMAC - N, 4/5/2004]

1.18.940.18 CAPITAL OUTLAY ALLOCATION AWARD FILE:

A. Program: capital outlay

B. Maintenance system: alphabetical by name of school district, then name of school

C. Description: records concerning monies allocated through the legislature to build additions to school facilities or renovate and improve existing school facilities. File may contain school application for funds; description of school presentation as to what the project consists of, reason and amount of monies requested; allocation award letter, on-site construction manager recommendations, final approval from PSCOC, letter of acceptance from school district, memoranda, correspondence, etc.

D. Retention:

(1) Approved projects: seven years after project completed

(2) Denied projects: returned to school district for modification [1.18.940.18 NMAC - N, 4/5/2004]

1.18.940.19 SCHOOL IMPROVEMENT PROJECT SYSTEM:

A. Program: capital outlay

B. Maintenance system: numerical by primary key

C. Description: system monitors and tracks statewide capital outlay and deficiency corrections monies approved for all public school districts in New Mexico. Data include: description of school improvement and renovation projects to be completed, amount allocated for fiscal year, name of school district, name of school, monies requested and awarded for each individual school districts building project, description of building project, letter of approval date, amount of monies awarded, etc.

D. Retention: ten years after project completed

E. Hardcopy input docu-

ments. The memorandum of understanding project packet is used as input for the *school improvement project system* and is filed in the corresponding *school improvement project file*. 1.18.940.17 NMAC. The packet includes: approval request, scope of work, justification for project, budget information, schedule of events, management and oversight required signatures; etc. Additional information is forwarded from outside entities including: energy, minerals, and natural resources, committee for concerns of the handicapped, etc.

F. Hardcopy output documents. Because this is a data-based system, required administrative and ad hoc reports may be generated upon request or demand. The reports generated include: *deficiencies correction unit project status* report; *public school capital outlay unit award* report; *maintenance* report; *3DI status* report; and the *PSCOC awards* report. When produced, these reports are used for informational purposes by the administrative assistant and then destroyed.

[1.18.940.19 NMAC - N, 4/5/2004]

1.18.940.20 AWARD ALLOCATION FILE:

A. Program: capital outlay

B. Maintenance system: alphabetical by school district, then color-coded by name of fund

C. Description: records concerning monies from individual funds awarded to school districts for school improvements, renovations, new construction, and health and safety issues. The four funds included are: *deficiencies corrections* fund; *capital outlay* fund; *direct appropriations* (legislative monies) fund; and *local general obligation* (city) fund. File may contain name of project, description of project, name of school district, name of individual school, amount of money awarded, from fund which money awarded, etc.

D. Retention:

(1) Deficiencies correction: seven years after project completed

(2) Capital outlay: ten years after project completed

(3) Direct appropriations: five years after project completed

(4) Local general obligation (bond): three years after project completed [1.18.940.20 NMAC - N, 4/5/2004]

1.18.940.21 PSFA INVOICING SYSTEM:

A. Program: construction management

B. Maintenance system: numerical by project number

C. Description: financial system used to track funds approved by the

PSFA review department and PSCOC for capital outlay projects. Data include: amount encumbered, project number, purchase order number, corresponding financial information, assigned PSFA construction manager, etc.

D. Retention: ten years

E. Hardcopy input documents: Payment invoice requests are scanned and submitted electronically to this system. Payment invoice requests are entered by the assigned PSFA on-site construction manager.

F. Hardcopy output documents: Because this is a data-based system, payment requests can be generated on demand. Documents generated by this system include approved pay applications, etc. Approved pay applications are filed in the accounting file and the *school improvement project file*, 1.18.940.17 NMAC.

[1.18.940.21 NMAC - N, 4/5/2004]

[This is a secure, password-encrypted, web-based application.]

1.18.940.22 BIDNET SYSTEM:

A. Program: construction management

B. Maintenance system: numerical by primary key [alphabetical by project name, then chronological by date]

C. Description: System monitors and tracks status on proposed and approved bids, requests for proposals submitted electronically for school improvement or renovation projects. Data include: name of school district, scope of project, project start date, project completion date and name of assigned project manager, commentary on proposed project by initiating agencies.

D. Retention: ten years after project completed

E. Hardcopy input documents. All documentation used for the *bidnet system* are retained by the agency or administrative staff responsible for input. Those documents include: requests for proposals, invitations to bid, public advertisements, comments, etc.

F. Hardcopy output documents. All documents generated by the *bidnet system* are produced (printed) because of public request or administrative reporting responsibilities. Because the *bidnet system* is a data-based system, required and ad hoc reports may be generated upon request or demand. When produced, these reports are either forwarded to the requesting entity or filed in the corresponding *school improvement project file*. Some of the reports include but are not limited to the following: *quarterly usage report, proposed project report, school improvement project report*.

[1.18.940.22 NMAC - N, 4/5/2004]

[This is a hosted, web-based system]

1.18.940.23 CIMS (CONSTRUCTION INFORMATION MANAGEMENT SYSTEM):

A. Program: construction management

B. Maintenance system: chronological by project number, then by type of fund

C. Description: System monitors, tracks and provides information on funding for all capital outlay projects in New Mexico school districts. Data may include: RFI, RFQ, BIDS, RFP, project cost, project time estimates, mock print drawings, blueprints, support documentation, correspondence, daily usage reports, monthly usage reports, progress reports, daily logs, uploaded architectural drawings, project specifications, weekly construction schedule, messages posted and answered, correspondence etc.

D. Retention: ten years after project completed

E. Hardcopy input documents: All documents generated are retained by initiating agency, staff, or applicable vendor responsible for input into the system. Those documents include: aspects of approved and funded project history, working documentation, correspondence, etc.

F. Hardcopy output documents: No documents are generated from this system. It is maintained for informational use only.

[1.18.940.23 NMAC - N, 4/5/2004]

[This is a hosted, web-based application]

HISTORY OF 1.18.940 NMAC: [RESERVED]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

13.10.17 NMAC, Grievance Procedures (filed 06/14/2000), was repealed effective May 3, 2004.

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

**TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 17 GRIEVANCE PROCEDURES**

13.10.17.1 ISSUING AGENCY:

Public Regulation Commission, Insurance Division.

[13.10.17.1 NMAC - Rp, 13.10.17.1 NMAC, 5-3-04]

13.10.17.2 SCOPE:

A. Applicability. This rule applies to all health care insurers that provide, offer, or administer health benefits plans including health benefits plans:

(1) with a point-of-service option that allows covered persons to obtain health care services out of network;

(2) provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act; and

(3) provided through the Medicaid program, subject to the limitations in NMSA 1978 Section 59A-57-10.

B. Exemptions. This rule does not apply to policies or certificates that provide coverage for:

(1) traditional fee-for-service indemnity plans;

(2) only short-term travel, accident-only, student health, specified disease, or other limited benefits; or

(3) credit, disability income, hospital indemnity, long-term care insurance, vision care or any other limited supplemental benefit.

C. Conflicts. For purposes of this rule, if any provision in this rule conflicts with any provision in 13.10.13 NMAC, Managed Health Care, the provisions in this rule shall apply.

[13.10.17.2 NMAC - Rp, 13.10.17.2 NMAC, 5-3-04]

13.10.17.3 STATUTORY AUTHORITY: NMSA 1978 Sections 59A-1-16, 59A-2-8, 59A-2-9, 59A-15-16, 59A-16-3, 59A-16-11, 59A-16-12, 59A-16-12.1, 59A-16-20, 59A-16-22, 59A-19-4, 59A-19-6, 59A-46-10, 59A-46-11, 59A-57-2, 59A-57-4, and 59A-57-5.

[13.10.17.3 NMAC - Rp, 13.10.17.3 NMAC, 5-3-04]

13.10.17.4 DURATION: Permanent.

[13.10.17.4 NMAC - Rp, 13.10.17.4 NMAC, 5-3-04]

13.10.17.5 EFFECTIVE DATE: May 3, 2004, unless a later date is cited at the end of a section.

[13.10.17.5 NMAC - Rp, 13.10.17.5 NMAC, 5-3-04]

13.10.17.6 OBJECTIVE: The purpose of this rule is to establish procedures for filing and processing adverse determination grievances and administrative grievances regarding actions taken or

inaction by a health care insurer.

[13.10.17.6 NMAC - Rp, 13.10.17.6 NMAC, 5-3-04]

13.10.17.7 DEFINITIONS: As used in this rule:

A. administrative grievance means an oral or written complaint submitted by or on behalf of a covered person regarding any aspect of a health benefits plan other than a request for health care services, including but not limited to:

(1) administrative practices of the health care insurer that affect the availability, delivery, or quality of health care services;

(2) claims payment, handling or reimbursement for health care services; and

(3) terminations of coverage;

B. adverse determination means a decision by a health care insurer that a health care service requested by a provider or covered person has been reviewed and, based upon the information available, does not meet the health care insurer's requirements for coverage or medical necessity, and the requested health care service is therefore denied, reduced or terminated;

C. adverse determination grievance means an oral or written complaint submitted by or on behalf of a covered person regarding an adverse determination;

D. certification means a decision by a health care insurer that a health care service requested by a provider or covered person has been reviewed and, based upon the information available, meets the health care insurer's requirements for coverage and medical necessity, and the requested health care service is therefore approved;

E. covered person means a policyholder, subscriber, enrollee, or other individual entitled to receive health care benefits provided by a health benefits plan, and includes medicaid recipients enrolled in a health care insurer's medicaid plan and individuals whose health insurance coverage is provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act;

F. grievant means a covered person, a covered person's authorized representative, or a provider acting on behalf of a covered person with the covered person's consent;

G. health benefits plan means a policy, contract, certificate or agreement offered or issued by a health care insurer or plan administrator to provide, deliver, arrange for, pay for, or reimburse the costs of health care services;

H. health care insurer

means a person that has a valid certificate of authority in good standing issued pursuant to the Insurance Code to act as an insurer, health maintenance organization, nonprofit health care plan, or pre-paid dental plan;

I. health care professional means a physician or other health care practitioner, including a pharmacist, who is licensed, certified or otherwise authorized by the state to provide health care services consistent with state law;

J. health care services means services, supplies, and procedures for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury, or disease, and includes, to the extent offered by the health benefits plan, physical and mental health services, including community-based mental health services, and services for developmental disability or developmental delay;

K. independent co-hearing officer or ICO means a health care or other professional licensed to practice medicine or another profession who is willing to assist the superintendent as a hearing officer in understanding and analyzing medical necessity and coverage issues that arise in external review hearings;

L. medical necessity or medically necessary means health care services determined by a provider, in consultation with the health care insurer, to be appropriate or necessary, according to any applicable generally accepted principles and practices of good medical care or practice guidelines developed by the federal government, national or professional medical societies, boards and associations, or any applicable clinical protocols or practice guidelines developed by the health care insurer consistent with such federal, national, and professional practice guidelines, for the diagnosis or direct care and treatment of a physical, behavioral, or mental health condition, illness, injury, or disease;

M. provider means a duly licensed hospital, physician, or other health care professional authorized to furnish health care services within the scope of her license;

N. summary of benefits means the written materials required by NMSA 1978 Section 59A-57-4 to be given to the covered person by the health care insurer or group contract holder;

O. termination of coverage means the cancellation or non-renewal of coverage provided by a health care insurer to a covered person but does not include a voluntary termination by a covered person or termination of a health benefits plan that does not contain a renewal provision;

P. uniform standards means all generally accepted practice guidelines, evidence-based practice guidelines or

practice guidelines developed by the federal government or national and professional medical societies, boards and associations, and any applicable clinical review criteria, policies, practice guidelines, or protocols developed by the health care insurer consistent with the federal, national, and professional practice guidelines that are used by a health care insurer in determining whether to certify or deny a requested health care service.

[13.10.17.7 NMAC - Rp, 13.10.17.7 NMAC, 5-3-04]

13.10.17.8 COMPUTATION OF TIME: Whenever this rule requires that an action be taken within a certain period of time from receipt of a request or document, the request or document shall be deemed to have been received within three (3) working days of the date it was mailed.

[13.10.17.8 NMAC - Rp, 13.10.17.8 NMAC, 5-3-04]

13.10.17.9 GENERAL REQUIREMENTS REGARDING GRIEVANCE PROCEDURES:

A. Written grievance procedures required. Every health care insurer shall establish and maintain separate written procedures to provide for the presentation, review, and resolution of:

(1) adverse determination grievances; a health care insurer shall establish procedures for both standard and expedited review of adverse determination grievances that comply with the requirements of 13.10.17.17 NMAC through 13.10.17.22 NMAC;

(2) administrative grievances; a health care insurer shall establish procedures for reviewing administrative grievances that comply with the requirements of 13.10.17.33 NMAC through 13.10.17.36 NMAC.

B. Assistance to covered persons. In those instances where a covered person makes an oral grievance or request for internal review to the health care insurer, or expresses interest in pursuing a written grievance, the health care insurer shall assist the covered person to complete all the forms required to pursue internal review and shall advise the covered person that the managed health care bureau of the insurance division is available for assistance.

C. Retaliatory action prohibited. No person shall be subject to retaliatory action by the health care insurer for any reason related to a grievance.

[13.10.17.9 NMAC - Rp, 13.10.17.9 NMAC, 5-3-04]

13.10.17.10 INFORMATION ABOUT GRIEVANCE PROCEDURES:

A. For covered persons.

A health care insurer shall:

(1) include a clear and concise description of all grievance procedures in boldface type in the enrollment materials and summary of benefits issued to covered persons;

(2) notify covered persons that a representative of the health care insurer and the managed health care bureau of the insurance division are available upon request to assist covered persons with grievance procedures by including such information, and a toll-free telephone number for obtaining such assistance, in the enrollment materials and summary of benefits issued to covered persons;

(3) provide a copy of its grievance procedures and all necessary grievance forms at each decision point in the grievance process and immediately upon request, at any time, to a covered person, provider or other interested person; and

(4) provide a detailed written explanation of the appropriate grievance procedure and a copy of the grievance form to a grievant or provider when the health care insurer makes either an adverse determination or adverse administrative decision; the written explanation shall describe how the health care insurer reviews and resolves grievances and provide a toll-free telephone number, facsimile number, e-mail address, and mailing address of the health care insurer's consumer assistance office.

B. For providers. A health care insurer shall inform all providers of the grievance procedures available to covered persons and providers acting on behalf of covered persons, and shall make all necessary forms available to providers.

C. Special needs. Information about grievance procedures must be provided in accordance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq., and 13.10.13 NMAC, Managed Health Care, particularly 13.10.13.29 NMAC, Cultural and Linguistic Diversity. [13.10.17.10 NMAC - Rp, 13.10.17.10 NMAC, 5-3-04]

13.10.17.11 CONFIDENTIALITY OF A COVERED PERSON'S RECORDS AND MEDICAL INFORMATION:

A. Confidentiality. Health care insurers, the superintendent, independent co-hearing officers, and all others who acquire access to identifiable medical records and information of covered persons when reviewing grievances shall treat and maintain such records and information as confidential except as otherwise provided by federal and New Mexico law.

B. Procedures required.

The superintendent and health care insurers shall establish procedures to ensure the confidential treatment and maintenance of identifiable medical records and information of covered persons submitted as part of any grievance.

[13.10.17.11 NMAC - Rp, 13.10.17.11 NMAC, 5-3-04]

13.10.17.12 RECORD OF GRIEVANCES:

A. Record required. The health care insurer shall maintain a grievance register to record all grievances received and handled during the calendar year. The register shall be maintained in a manner that is reasonably clear and accessible to the superintendent.

B. Contents. For each grievance received, the grievance register shall:

- (1) assign a grievance number;
- (2) indicate whether the grievance is an adverse determination or administrative grievance;
- (3) state the date the grievance was received;
- (4) state the name and address of the grievant, if different from the covered person;
- (5) identify by name and member number the covered person making the grievance or for whom the grievance was made;
- (6) indicate whether the grievant's coverage is provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act, the medicaid program, or a commercial health care insurer;
- (7) identify the health insurance policy number and the group if the policy is a group policy;
- (8) identify the individual employee of the health care insurer to whom the grievance was made;
- (9) describe the grievance;
- (10) for adverse determination grievances, indicate whether the grievance received expedited or standard review;
- (11) indicate who resolved the grievance and what the actual outcome was; and
- (12) state the date the grievance was resolved and the date the covered person was notified of the outcome.

C. Annual report. Each year, the superintendent shall issue a data call for information based on the grievances received and handled by a health care insurer during the prior calendar year. The data call will be based on the information contained in the grievance register.

D. Retention. The health care insurer shall maintain such records for

at least three (3) years.

E. Submittal. The health care insurer shall submit information regarding all grievances involving quality of care issues to the health care insurer's continuous quality improvement committee and to the superintendent and shall document the qualifications and background of the continuous quality improvement committee members.

[13.10.17.12 NMAC - Rp, 13.10.17.12 NMAC, 5-3-04]

13.10.17.13 PRELIMINARY DETERMINATION. Upon receipt of a grievance, a health care insurer shall first determine the type of grievance at hand.

A. If the grievance seeks review of an adverse determination of a requested health care service, it is an adverse determination grievance and the health care insurer shall review the grievance in accordance with its procedures for adverse determination grievances and the requirements of 13.10.17.17 NMAC through 13.10.17.22 NMAC.

B. If the grievance is not based on an adverse determination of a requested health care service, it is an administrative grievance and the health care insurer shall review the grievance in accordance with its procedures for administrative grievances and the requirements of 13.10.17.33 NMAC through 13.10.17.36 NMAC.

[13.10.17.13 NMAC - N, 5-3-04]

13.10.17.14 TIMEFRAMES FOR INITIAL DETERMINATIONS:

A. Expedited decision. A health care insurer shall make its initial certification or adverse determination decision in accordance with the medical exigencies of the case. The health care insurer shall make decisions within twenty-four (24) hours of the request for an expedited decision whenever:

- (1) the life or health of a covered person would be jeopardized;
- (2) the covered person's ability to regain maximum function would be jeopardized;
- (3) the provider reasonably requests an expedited decision; or
- (4) the medical exigencies of the case require an expedited decision.

B. Standard decision. A health care insurer shall make all other initial utilization management decisions within five (5) working days. The health care insurer may extend the review period for a maximum of ten (10) working days if it:

- (1) can demonstrate reasonable cause beyond its control for the delay;
- (2) can demonstrate that the delay will not result in increased medical risk to the covered person; and

(3) provides a written progress report and explanation for the delay to the covered person and provider within the original five (5) working day review period. [13.10.17.14 NMAC - Rp, 13.10.17.14 NMAC, 5-3-04]

13.10.17.15 INITIAL DETERMINATION:

A. Coverage. When considering whether to certify a health care service requested by a provider or covered person, the health care insurer shall determine whether the requested health care service is covered by the health benefits plan. Before denying a health care service requested by a provider or covered person on grounds of a lack of coverage, the health care insurer shall determine that there is no provision of the health benefits plan under which the requested health care service could be covered. If the health care insurer finds that the requested health care service is not covered by the health benefits plan, the health care insurer need not address the issue of medical necessity.

B. Medical necessity.

(1) If the health care insurer finds that the requested health care service is covered by the health benefits plan, then when considering whether to certify a health care service requested by a provider or covered person, a physician, registered nurse, or other health care professional shall, within the timeframe required by the medical exigencies of the case, determine whether the requested health care service is medically necessary.

(2) Before a health care insurer denies a health care service requested by a provider or covered person on grounds of a lack of medical necessity, a physician shall render an opinion as to medical necessity, either after consultation with specialists who are experts in the area that is the subject of review, or after application of uniform standards used by the health care insurer. The physician shall be under the clinical authority of the medical director responsible for health care services provided to covered persons.

[13.10.17.15 NMAC - Rp, 13.10.17.13 NMAC & 13.10.17.16 NMAC, 5-3-04]

13.10.17.16 NOTICE OF INITIAL DETERMINATION:

A. Certification. The health care insurer shall notify the covered person and provider of the certification by written or electronic communication sent within two (2) working days of the date the health care service was certified, unless earlier notice is required by the medical exigencies of the case.

B. Adverse determination. The health care insurer shall notify a

covered person and provider of an adverse determination by telephone or as required by the medical exigencies of the case, but in no case later than twenty-four (24) hours after making the adverse determination. Additionally, the health care insurer shall notify the covered person and provider of the adverse determination by written or electronic communication sent within one (1) working day of the telephone notice. The notice shall:

(1) if the adverse determination is based on a lack of medical necessity, clearly and completely explain why the requested health care service is not medically necessary. A statement that the health care service is not medically necessary will not be sufficient;

(2) if the adverse determination is based on a lack of coverage, identify all health benefits plan provisions relied on in making the adverse determination, and clearly and completely explain why the requested health care service is not covered by any provision of the health benefits plan. A statement that the requested health care service is not covered by the health benefits plan will not be sufficient;

(3) advise the grievant that he or she may request internal review of the health care insurer's adverse determination; and

(4) describe the procedures and provide all necessary forms to the grievant for requesting internal review.

[13.10.17.16 NMAC - Rp, 13.10.17.17 NMAC, 5-3-04]

13.10.17.17 RIGHTS REGARDING INTERNAL REVIEW OF ADVERSE DETERMINATIONS:

A. Right to internal review. Every grievant who is dissatisfied with an adverse determination shall have the right to request internal review of the adverse determination by the health care insurer.

B. Acknowledgement of request. Upon receipt of a request for internal review of an adverse determination, the health care insurer shall date and time stamp the request and, within one (1) working day from receipt, send the grievant an acknowledgment that the request has been received. The acknowledgment shall contain the name, address, and direct telephone number of an individual representative of the health care insurer who may be contacted regarding the grievance.

[13.10.17.17 NMAC - Rp, 13.10.17.18 NMAC, 5-3-04]

13.10.17.18 TIMEFRAMES FOR INTERNAL REVIEW OF ADVERSE DETERMINATIONS: Upon receipt of a request for internal review of an adverse

determination, the health care insurer shall conduct either a standard or expedited review, as appropriate.

A. Expedited review. A health care insurer shall complete its internal review as required by the medical exigencies of the case but in no case later than seventy-two (72) hours from the time the internal review request was received whenever:

(1) the life or health of a covered person would be jeopardized; or

(2) the covered person's ability to regain maximum function would be jeopardized.

B. Standard review. A health care insurer shall complete a standard review within twenty (20) working days of receipt of the request for internal review in all cases not requiring expedited review. The health care insurer may extend the review period for a maximum of ten (10) working days if it:

(1) can demonstrate reasonable cause beyond its control for the delay;

(2) can demonstrate that the delay will not result in increased medical risk to the covered person; and

(3) provides a written progress report and explanation for the delay to the covered person and provider within the original thirty (30) day review period.

C. Failure to comply with deadline. If the health care insurer fails to comply with the deadline for completion of an internal review, the requested health care service shall be deemed approved unless the grievant, after being fully informed of his or her rights, has agreed to extend the deadline.

[13.10.17.18 NMAC - Rp, 13.10.17.19 NMAC, 5-3-04]

13.10.17.19 INTERNAL REVIEW OF ADVERSE DETERMINATIONS BY MEDICAL DIRECTOR:

A. Scope of review. The medical director, or an appropriate person designated by the medical director, shall complete his or her review of the adverse determination within the timeframes required by the medical exigencies of the case.

(1) **Coverage.** If the initial adverse determination was based on a lack of coverage, the medical director, or an appropriate person designated by the medical director, shall review the health benefits plan and determine whether there is any provision in the plan under which the requested health care service could be certified.

(2) **Medical necessity.** If the initial adverse determination was based on a lack of medical necessity, the medical director shall render an opinion as to medical

necessity, either after consultation with specialists who are experts in the area that is the subject of review, or after application of uniform standards used by the health care insurer.

B. Decision to reverse. If the medical director reverses the initial adverse determination and certifies the requested health care service, the health care insurer shall notify the covered person as required by 13.10.17.16 NMAC.

C. Decision to uphold. If the medical director upholds the initial adverse determination to deny the requested health care service, the health care insurer shall notify the covered person and provider as required by 13.10.17.16 NMAC and shall ascertain whether the grievant wishes to pursue the grievance.

(1) If the grievant does not wish to pursue the grievance, the health care insurer shall mail written notification of the medical director's decision, and confirmation of the grievant's decision not to pursue the matter further, to the grievant within three (3) working days.

(2) If the health care insurer is unable to contact the grievant by telephone within seventy-two (72) hours, the health care insurer shall notify the grievant by mail of the medical director's decision and shall include in the notification a self-addressed stamped response form which asks the grievant whether he or she wishes to pursue the grievance further and provides a box for checking "yes" and a box for checking "no." If the grievant does not return the response form within ten (10) working days, the health care insurer shall again contact the grievant by telephone.

(3) If the grievant responds affirmatively to the telephone inquiry or by response form, the health care insurer will select a medical panel to further review the adverse determination.

(4) If the grievant does not respond to the health care insurer's telephone inquiries or return the response form, the health care insurer shall:

(a) when the review is an expedited review, select a medical panel to further review the adverse determination;

(b) when the review is a standard review, close the file if the health care insurer can document its efforts to contact the grievant and the grievant has not responded within twenty (20) working days.

[13.10.17.19 NMAC - Rp, 13.10.17.20 NMAC, 5-3-04]

13.10.17.20 INTERNAL PANEL REVIEW OF ADVERSE DETERMINATIONS:

A. Notice of review. Unless the grievant chooses not to pursue the grievance, the health care insurer shall

notify the grievant of the date, time, and place of the internal panel review. The notice shall advise the grievant of the rights specified in Subsection E of this section. If the health care insurer indicates that it will have an attorney represent its interests, the notice shall advise the grievant that an attorney will represent the health care insurer and that the grievant may wish to obtain legal representation of her own.

B. Panel membership. The health care insurer shall select one or more representatives of the health care insurer and one or more health care or other professionals who have not been previously involved in the adverse determination being reviewed to serve on the internal panel. At least one of the health care professionals selected shall practice in a specialty that would typically manage the case that is the subject of the grievance or be mutually agreed upon by the grievant and the health care insurer.

C. Scope of review.

(1) **Coverage.** The internal review panel shall review the health benefits plan and determine whether there is any provision in the plan under which the requested health care service could be certified.

(2) **Medical necessity.** The internal review panel shall render an opinion as to medical necessity, either after consultation with specialists who are experts in the area that is the subject of review, or after application of uniform standards used by the health care insurer.

D. Information to grievant. No fewer than three (3) working days prior to the internal panel review, the health care insurer shall provide to the grievant copies of:

(1) the covered person's pertinent medical records;

(2) the treating provider's recommendation;

(3) the covered person's health benefits plan;

(4) the health care insurer's notice of adverse determination;

(5) uniform standards relevant to the grievant's medical condition that is used by the internal panel in reviewing the adverse determination;

(6) questions sent to or reports received from any medical consultants retained by the health care insurer; and

(7) all other evidence or documentation relevant to reviewing the adverse determination.

E. Request for postponement. The health care insurer shall not unreasonably deny a request for postponement of the internal panel review made by the grievant.

F. Rights of grievant. A

grievant has the right to:

(1) attend and participate in the internal panel review;

(2) present her case to the internal panel;

(3) submit supporting material both before and at the internal panel review;

(4) ask questions of any representative of the health care insurer;

(5) ask questions of any health care professionals on the internal panel;

(6) be assisted or represented by a person of her choice, including legal representation; and

(7) hire a specialist to participate in the internal panel review at his or her own expense, but such specialist may not participate in making the decision.

G. Timeframe for review; attendance. The internal panel will complete its review of the adverse determination as required by the medical exigencies of the case and within the timeframes set forth in 13.10.17.18 NMAC. Panel members must be present physically or by video or telephone conferencing to hear the grievance. A panel member who is not present to hear the grievance either physically or by video or telephone conferencing shall not participate in the decision. [13.10.17.20 NMAC - Rp, 13.10.17.21 NMAC, 5-3-04]

13.10.17.21 ADDITIONAL REQUIREMENTS FOR EXPEDITED INTERNAL REVIEW OF ADVERSE DETERMINATIONS:

A. In an expedited review, all information required by Subsection D of 13.10.17.20 NMAC shall be transmitted between the health care insurer and the grievant by the most expeditious method available.

B. If an expedited review is conducted during a patient's hospital stay or course of treatment, health care services shall be continued without cost (except for applicable co-payments and deductibles) to the covered person until the health care insurer makes a final decision and notifies the grievant.

C. A health care insurer shall not conduct an expedited review of an adverse determination made after health care services have been provided to a covered person.

[13.10.17.21 NMAC - Rp, 13.10.17.22 NMAC, 5-3-04]

13.10.17.22 NOTICE OF INTERNAL PANEL DECISION:

A. Notice required. Within the time period allotted for completion of its internal review, the health care insurer shall notify the grievant and provider of the internal panel's decision by

telephone within twenty-four (24) hours of the panel's decision and in writing or by electronic means within one (1) working day of the telephone notice.

B. Contents of notice.

The written notice shall contain:

(1) the names, titles, and qualifying credentials of the persons on the internal panel;

(2) a statement of the internal panel's understanding of the nature of the grievance and all pertinent facts;

(3) a clear and complete explanation of the rationale for the medical panel's decision;

(a) the notice shall identify every provision of the grievant's health benefits plan relevant to the issue of coverage in the case under review, and explain why each provision did or did not support the panel's decision regarding coverage of the requested health care service;

(b) the notice shall cite the uniform standards relevant to the grievant's medical condition and explain whether each supported or did not support the panel's decision regarding the medical necessity of the requested health care service;

(4) reference to any other evidence or documentation considered by the internal panel in making its decision;

(5) notice of the grievant's right to request external review by the superintendent, including the address and telephone number of the managed health care bureau of the insurance division, a description of all procedures and time deadlines necessary to pursue external review, and copies of any forms required to initiate external review.

[13.10.17.22 NMAC - Rp, 13.10.17.23 NMAC, 5-3-04]

13.10.17.23 EXTERNAL REVIEW OF ADVERSE DETERMINATIONS:

A. Right to external review. Every grievant who is dissatisfied with the results of a medical panel review of an adverse determination by a health care insurer, or with the results of a grievance review by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act, may request external review by the superintendent.

B. Exhaustion of remedies. The superintendent may require the grievant to exhaust any grievance procedures adopted by the health care insurer or the entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act, as appropriate, before accepting a grievance for external review.

[13.10.17.23 NMAC - Rp, 13.10.17.24 NMAC, 5-3-04]

13.10.17.24 FILING REQUIREMENTS FOR EXTERNAL REVIEW OF ADVERSE DETERMINATIONS:

A. Deadline for filing request.

(1) **When required by the medical exigencies of the case.** If required by the medical exigencies of the case, a covered person or provider may telephonically request an expedited review by calling the managed health care bureau at (505) 827-3928 or 1-877-673-1732.

(2) **In all other cases.** To initiate an external review, a grievant must file a written request for external review with the superintendent within twenty (20) working days from receipt of the written notice of internal review decision unless extended by the superintendent for good cause shown. The request shall be:

(a) mailed to the Superintendent of Insurance, Attn: Managed Health Care Bureau – External Review Request, New Mexico Public Regulation Commission, Post Office Box 1269, 1120 Paseo de Peralta, Santa Fe, New Mexico 87504-1269; or

(b) e-mailed to mhcb.grievance@state.nm.us, subject External Review Request; or

(c) faxed to the Superintendent of Insurance, Attn: Managed Health Care Bureau – External Review Request, at (505) 827-4734.

B. Documents required to be filed by the grievant. The grievant shall file the request for external review on the forms provided to the grievant by the health care insurer or entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act pursuant to Paragraph 5 of Subsection B of 13.10.17.22 NMAC, and shall also file:

(1) a copy of the notice of internal review decision;

(2) a fully executed release form authorizing the superintendent to obtain any necessary medical records from the health care insurer or any other relevant provider; and

(3) if the grievance involves an experimental or investigational treatment adverse determination, the provider's certification and recommendation as described in Subsection B of 13.10.17.28 NMAC.

C. Other filings. The grievant may also file any other supporting documents or information the grievant wishes to submit to the superintendent for review.

[13.10.17.24 NMAC - Rp, 13.10.17.25 NMAC, 5-3-04]

13.10.17.25 ACKNOWLEDGEMENT OF REQUEST FOR EXTERNAL REVIEW OF ADVERSE DETER-

MINATION AND COPY TO HEALTH CARE INSURER:

A. Upon receipt of a request for external review, the superintendent shall immediately send:

(1) the grievant an acknowledgment that the request has been received;

(2) the health care insurer a copy of the request for external review.

B. Upon receipt of the copy of the request for external review, the health care insurer shall, within five (5) working days for standard review or the time limit set by the superintendent for expedited review, provide to the superintendent and the grievant by any available expeditious method:

(1) the summary of benefits;

(2) the complete health benefits plan;

(3) all pertinent medical records, internal review decisions and rationales, consulting physician reports, and documents and information submitted by the grievant and health care insurer;

(4) uniform standards relevant to the grievant's medical condition that were used by the internal panel in reviewing the adverse determination; and

(5) any other documents, records, and information relevant to the adverse determination and the internal review decision or intended to be relied on at the external review hearing.

C. If the health care insurer fails to comply with the requirements of Subsection B of this section, the superintendent may reverse the adverse determination.

D. The superintendent may waive the requirements of this section if necessitated by the medical exigencies of the case.

[13.10.17.25 NMAC - Rp, 13.10.17.26 NMAC, 5-3-04]

13.10.17.26 TIMEFRAMES FOR EXTERNAL REVIEW OF ADVERSE DETERMINATIONS: The superintendent shall conduct either a standard or expedited external review of the adverse determination, as required by the medical exigencies of the case.

A. Expedited review. The superintendent shall complete an external review as required by the medical exigencies of the case but in no case later than seventy-two (72) hours of receipt of the external review request whenever:

(1) the life or health of a covered person would be jeopardized; or

(2) the covered person's ability to regain maximum function would be jeopardized.

B. Standard review. The superintendent shall conduct a standard

review in all cases not requiring expedited review. Insurance division staff shall complete the initial review within ten (10) working days from receipt of the request for external review and the information required of the grievant and health care insurer in Subsection B of 13.10.17.24 and Subsection B of 13.10.17.25 NMAC respectively. If a hearing is held in accordance with 13.10.17.30 NMAC, the superintendent shall complete the external review within thirty (30) working days from receipt of the request for external review. The superintendent may extend the external review period for up to an additional ten (10) working days when the superintendent has been unable to schedule the hearing within the required timeframe and the delay will not result in increased medical risk to the covered person.

[13.10.17.26 NMAC - Rp, 13.10.17.27 NMAC, 5-3-04]

13.10.17.27 CRITERIA FOR INITIAL EXTERNAL REVIEW OF ADVERSE DETERMINATION BY INSURANCE DIVISION STAFF: Upon receipt of the request for external review, insurance division staff shall review the request to determine whether:

A. the grievant has provided the documents required by Subsection B of 13.10.17.24 NMAC;

B. the individual is or was a covered person of the health care insurer at the time the health care service was requested or provided;

C. the covered person has exhausted the health care insurer's internal review procedure and any applicable grievance review procedure of an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act; and

D. the health care service that is the subject of the grievance reasonably appears to be a covered benefit under the health benefits plan.

[13.10.17.27 NMAC - Rp, 13.10.17.28 NMAC, 5-3-04]

13.10.17.28 ADDITIONAL CRITERIA FOR INITIAL EXTERNAL REVIEW OF EXPERIMENTAL OR INVESTIGATIONAL TREATMENT ADVERSE DETERMINATIONS BY INSURANCE DIVISION STAFF: If the request is for external review of an experimental or investigational treatment adverse determination, insurance division staff shall also consider whether:

A. coverage; the recommended or requested health care service:

(1) reasonably appears to be a covered benefit under the covered person's health benefit plan except for the health care

insurer's determination that the health care service is experimental or investigational for a particular medical condition; and

(2) is not explicitly listed as an excluded benefit under the covered person's health benefit plan; and

B. medical necessity; the covered person's treating provider has certified that:

(1) standard health care services have not been effective in improving the covered person's condition; or

(2) standard health care services are not medically appropriate for the covered person; or

(3) there is no standard health care service covered by the health care insurer that is as beneficial or more beneficial than the health care service:

(a) recommended by the covered person's treating provider that the treating provider certifies in writing is likely to be more beneficial to the covered person, in the treating provider's opinion, than standard health care services; or

(b) requested by the covered person regarding which the covered person's treating provider, who is a licensed, board certified or board eligible physician qualified to practice in the area of medicine appropriate to treat the covered person's condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service requested by the covered person is likely to be more beneficial to the covered person than available standard health care services.

[13.10.17.28 NMAC - Rp, 13.10.17.29 NMAC, 5-3-04]

13.10.17.29 INITIAL EXTERNAL REVIEW OF ADVERSE DETERMINATION BY INSURANCE DIVISION STAFF:

A. Request incomplete. If the request for external review is incomplete, insurance division staff shall immediately notify the grievant and require the grievant to submit the information required by Subsection B of 13.10.17.25 NMAC within a specified period of time.

B. Request does not meet criteria. If the request for external review does not meet the criteria prescribed by 13.10.17.27 and, if applicable, 13.10.17.28 NMAC, insurance division staff shall so inform the superintendent. The superintendent shall notify the grievant and the health care insurer that the request does not meet the criteria for external review and is thereby denied, and that the grievant has the right to request a hearing in the manner provided by NMSA 1978 Sections 59A-4-15 and 59A-4-18 within thirty-three (33) days from the date the notice was mailed.

C. Request meets criteria. If the request for external review is complete and meets the criteria prescribed by 13.10.17.27 and, if applicable, 13.10.17.28 NMAC, insurance division staff shall so inform the superintendent. The superintendent shall notify the grievant and the health care insurer that the request meets the criteria for external review and that an informal hearing pursuant to NMSA 1978 Section 59A-4-18 and 13.10.17.30 NMAC has been set to determine whether, as a result of the health care insurer's adverse determination, the covered person was deprived of medically necessary covered services. Prior to the hearing, insurance division staff shall attempt to informally resolve the grievance in accordance with NMSA 1978 Section 12-8-10.

D. Notice of hearing. The notice of hearing shall state the date, time, and place of the hearing and the matters to be considered and shall advise the grievant and the health care insurer of the rights specified in Subsection G of 13.10.17.30 NMAC. The superintendent shall not unreasonably deny a request for postponement of the hearing made by the grievant or the health care insurer.

[13.10.17.29 NMAC - Rp, 13.10.17.30 NMAC, 5-3-04]

13.10.17.30 HEARING PROCEDURES FOR EXTERNAL REVIEW OF ADVERSE DETERMINATIONS:

A. Conduct of hearing. The superintendent may designate a hearing officer who shall be an attorney licensed to practice in New Mexico. The hearing may be conducted by telephone conference call, video conferencing, or other appropriate technology at the insurance division's expense.

B. Co-hearing officers. The superintendent may designate two (2) independent co-hearing officers. If the superintendent designates two (2) independent health care professionals as co-hearing officers, at least one of them shall practice in a specialty that would typically manage the case that is the subject of the grievance.

C. Powers. The superintendent or attorney hearing officer shall regulate the proceedings and perform all acts and take all measures necessary or proper for the efficient conduct of the hearing. The superintendent or attorney hearing officer may:

(1) require the production of additional records, documents, and writings relevant to the subject of the grievance;

(2) exclude any irrelevant, immaterial, or unduly repetitious evidence; and

(3) if the grievant or health care insurer fails to appear, proceed with the

hearing or adjourn the proceedings to a future date, giving notice of the adjournment to the absent party.

D. Staff participation. Staff may attend the hearing, ask questions, and otherwise solicit evidence from the parties, but shall not be present during deliberations among the superintendent or his designated hearing officer and any independent co-hearing officers.

E. Testimony. Testimony at the hearing shall be taken under oath. The superintendent or hearing officers may call and examine the grievant, the health care insurer, and other witnesses.

F. Hearing recorded. The hearing shall be stenographically recorded at the insurance division's expense.

G. Rights of parties. Both the grievant and the health care insurer have the right to:

(1) attend the hearing. The health care insurer shall designate a person to attend on its behalf and the grievant may designate a person to attend on her behalf if the grievant chooses not to attend personally.

(2) be assisted or represented by an attorney or other person; and

(3) call, examine and cross-examine witnesses.

H. Stipulation. The grievant and the health care insurer shall each stipulate on the record that the hearing officers shall be released from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the external review.

[13.10.17.30 NMAC - Rp, 13.10.17.31 NMAC, 5-3-04]

13.10.17.31 INDEPENDENT CO-HEARING OFFICERS (ICOs):

A. Identification of ICos. The superintendent shall consult with appropriate professional societies, organizations, or associations to identify licensed health care and other professionals who are willing to serve as independent co-hearing officers in external reviews.

B. Disclosure of interests. Prior to accepting designation as an ICO, each potential ICO shall provide to the superintendent a list identifying all health care insurers and providers with whom the potential ICO maintains any health care related or other professional business arrangements and briefly describe the nature of each arrangement. Each potential ICO shall disclose to the superintendent any other potential conflict of interest that may arise in hearing a particular case, including any personal or professional relationship to the covered person or to the health care insurer or providers involved in a particular

external review.

C. Compensation of ICos.

(1) Compensation schedule. The superintendent shall consult with appropriate professional societies, organizations, or associations in New Mexico to determine reasonable compensation for health care and other professionals who are appointed as ICos for external grievance reviews and shall annually publish a schedule of ICO compensation in a bulletin.

(2) Statement of ICO compensation. Upon completion of an external review, the attorney and co-hearing officers shall each complete a statement of ICO compensation form prescribed by the superintendent detailing the amount of time spent participating in the external review and submit it to the superintendent for approval. The superintendent shall send the approved statement of ICO compensation to the covered person's health care insurer.

(3) Direct payment to ICos. Within thirty (30) days of receipt of the statement of ICO compensation, the covered person's health care insurer shall remit the approved compensation directly to the ICO.

[13.10.17.31 NMAC - Rp, 13.10.17.32 NMAC, 5-3-04]

13.10.17.32 SUPERINTENDENT'S DECISION ON EXTERNAL REVIEW OF ADVERSE DETERMINATION:

A. Deliberation. At the close of the hearing, the hearing officers shall review and consider the entire record and prepare findings of fact, conclusions of law, and a recommended decision. Any hearing officer may submit a supplementary or dissenting opinion to the recommended decision.

B. Order. Within the time period allotted for external review, the superintendent shall issue an appropriate order.

(1) The order shall be binding on the grievant and the health care insurer and shall state that the grievant and the health care insurer have the right to judicial review pursuant to NMSA 1978 Section 59A-4-20 and that state and federal law may provide other remedies.

(2) Neither the grievant nor the health care insurer may file a subsequent request for external review of the same adverse determination that was the subject of the superintendent's order.

[13.10.17.32 NMAC - Rp, 13.10.17.33 NMAC, 5-3-04]

13.10.17.33 INTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCES:

A. Request for internal review of grievance. Any person dissatisfied with a decision, action or inaction of a health care insurer, including termination of coverage, has the right to request internal review of an administrative grievance orally or in writing.

B. Acknowledgement of grievance. Within three (3) working days after receipt of an administrative grievance, the health care insurer shall send the grievant a written acknowledgment that it has received the administrative grievance. The acknowledgment shall contain the name, address, and direct telephone number of an individual representative of the health care insurer who may be contacted regarding the administrative grievance.

C. Initial review. The health care insurer shall promptly review the administrative grievance. The initial review shall:

(1) be conducted by a health care insurer representative authorized to take corrective action on the administrative grievance; and

(2) allow the grievant to present any information pertinent to the administrative grievance.

[13.10.17.33 NMAC - Rp, 13.10.17.34 NMAC, 5-3-04]

13.10.17.34 INITIAL INTERNAL REVIEW DECISION ON ADMINISTRATIVE GRIEVANCE:

The health care insurer shall mail a written decision to the grievant within fifteen (15) working days of receipt of the administrative grievance. The fifteen (15) working day period may be extended when there is a delay in obtaining documents or records necessary for the review of the administrative grievance, provided that the health care insurer notifies the grievant in writing of the need and reasons for the extension and the expected date of resolution, or by mutual written agreement of the health care insurer and the grievant. The written decision shall contain:

A. the name, title, and qualifications of the person conducting the initial review;

B. a statement of the reviewer's understanding of the nature of the administrative grievance and all pertinent facts;

C. a clear and complete explanation of the rationale for the reviewer's decision;

D. identification of the health benefits plan provisions relied upon in reaching the decision;

E. reference to evidence or documentation considered by the reviewer in making the decision;

F. a statement that the initial decision will be binding unless the

grievant submits a request for reconsideration within twenty (20) working days of receipt of the initial decision;

G. a description of the procedures and deadlines for requesting reconsideration of the initial decision, including any necessary forms.

[13.10.17.34 NMAC - Rp, 13.10.17.35 NMAC, 5-3-04]

13.10.17.35 RECONSIDERATION OF INTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE:

A. Committee. Upon receipt of a request for reconsideration, the health care insurer shall appoint a reconsideration committee consisting of one or more employees of the health care insurer who have not participated in the initial decision. The health care insurer may include one or more covered persons other than the grievant to participate on the reconsideration committee.

B. Hearing. The reconsideration committee shall schedule and hold a hearing within fifteen (15) working days after receipt of a request for reconsideration. The hearing shall be held during regular business hours at a location reasonably accessible to the grievant, and the health care insurer shall offer the grievant the opportunity to communicate with the committee, at the health care insurer's expense, by conference call, video conferencing, or other appropriate technology. The health care insurer shall not unreasonably deny a request for postponement of the hearing made by a grievant.

C. Notice. The health care insurer shall notify the grievant in writing of the hearing date, time and place at least ten (10) working days in advance. The notice shall advise the grievant of the rights specified in Subsection E of this section. If the health care insurer will have an attorney represent its interests, the notice shall advise the grievant that the health care insurer will be represented by an attorney and that the grievant may wish to obtain legal representation of her own.

D. Information to grievant. No fewer than three (3) working days prior to the hearing, the health care insurer shall provide to the grievant all documents and information that the committee will rely on in reviewing the case.

E. Rights of grievant. A grievant has the right to:

(1) attend the reconsideration committee hearing;

(2) present her case to the reconsideration committee;

(3) submit supporting material both before and at the reconsideration committee hearing;

(4) ask questions of any represen-

tative of the health care insurer; and

(5) be assisted or represented by a person of her choice.

[13.10.17.35 NMAC - Rp, 13.10.17.36 NMAC, 5-3-04]

13.10.17.36 DECISION OF RECONSIDERATION COMMITTEE:

The health care insurer shall mail a written decision to the grievant within seven (7) working days after the reconsideration committee hearing. The written decision shall include:

A. the names, titles, and qualifications of the persons on the reconsideration committee;

B. the reconsideration committee's statement of the issues involved in the administrative grievance;

C. a clear and complete explanation of the rationale for the reconsideration committee's decision;

D. the health benefits plan provision relied on in reaching the decision;

E. references to the evidence or documentation relied on in reaching the decision;

F. a statement that the initial decision will be binding unless the grievant submits a request for external review by the superintendent within twenty (20) working days of receipt of the reconsideration decision; and

G. a description of the procedures and deadlines for requesting external review by the superintendent, including any necessary forms. The notice shall contain the toll-free telephone number and address of the superintendent's office.

[13.10.17.36 NMAC - Rp, 13.10.17.37 NMAC, 5-3-04]

13.10.17.37 EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCES:

A. Right to external review. Every grievant who is dissatisfied with the results of the internal review of an administrative decision shall have the right to request external review by the superintendent.

B. Exhaustion of remedies. The superintendent may require the covered person to exhaust any grievance procedures adopted by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act or a health care insurer, as appropriate, before accepting an administrative grievance for external review.

[13.10.17.37 NMAC - Rp, 13.10.17.38 NMAC, 5-3-04]

13.10.17.38 FILING REQUIREMENTS FOR EXTERNAL REVIEW

OF ADMINISTRATIVE GRIEVANCE:

A. Deadline for filing request. To initiate an external review, a grievant must file a written request for external review with the superintendent within twenty (20) working days from receipt of the written notice of reconsideration decision. The request shall either be:

(1) mailed to the Superintendent of Insurance, Attn: Managed Health Care Bureau – External Review Request, New Mexico Public Regulation Commission, Post Office Box 1269, 1120 Paseo de Peralta, Santa Fe, New Mexico 87504-1269;

(2) e-mailed to mhcb.grievance@state.nm.us, subject External Review Request; or

(3) faxed to the Superintendent of Insurance, Attn: Managed Health Care Bureau – External Review Request, (505) 827-4734.

B. Documents required to be filed by the grievant. The grievant shall file the request for external review on the forms provided to the grievant pursuant to Subsection G of 13.10.17.36 NMAC, and shall include in the filing a copy of the reconsideration decision.

C. Other filings. The grievant may also file any other supporting documents or information the grievant wishes to submit to the superintendent for review.

[13.10.17.38 NMAC - Rp, 13.10.17.39 NMAC, 5-3-04]

13.10.17.39 ACKNOWLEDGEMENT OF REQUEST FOR EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE AND COPY TO HEALTH CARE INSURER:

A. Upon receipt of a request for external review, the superintendent shall immediately send the:

(1) grievant an acknowledgment that the request has been received;

(2) health care insurer a copy of the request for external review.

B. Upon receipt of the copy of the request for external review, the health care insurer shall provide to the superintendent and the grievant by any available expeditious method all necessary documents and information considered in arriving at the administrative grievance decision.

[13.10.17.39 NMAC - Rp, 13.10.17.40 NMAC, 5-3-04]

13.10.17.40 REVIEW OF ADMINISTRATIVE GRIEVANCE BY SUPERINTENDENT: The superintendent shall review the documents submitted by the health care insurer and the grievant, and may conduct an investigation or inquiry or

consult with the grievant, as appropriate. The superintendent shall issue a written decision on the administrative grievance within twenty (20) working days of receipt of the request for external review.

[13.10.17.40 NMAC - Rp, 13.10.17.41 NMAC, 5-3-04]

HISTORY OF 13.10.17 NMAC:

NMAC history:

13.10.17 NMAC, Grievance Procedures, effective 7-1-00.

13.10.17 NMAC, Grievance Procedures, effective 3-31-04

History of repealed material:

13 NMAC 10.17, Grievance Procedure for Enrollees Covered by Risk Management Division (filed 11-02-98), repealed, 7-1-00
13.10.17 NMAC, Grievance Procedures (filed 06-14-00), repealed 3-31-04.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.5.6 NMAC, Subsection F of Section 12, effective 07-01-04.

14.5.6.12 GENERAL ELECTRICAL LICENSE INFORMATION:

A. Journeyman certificate of competence required: A journeyman certificate of competence in the proper trade classification for the work being performed is required of all individuals performing electrical work, except where an apprentice is working under the supervision of a properly licensed and certified contractor or certified journeyman. Journeyman certifications shall be issued such that the certificates parallel the electrical license classification numbers and scopes.

B. Conduit installation: All conduit installations within, or on, buildings shall be performed by a contractor holding a EE-98 license, except where ER-1 licensees and journeymen are installing conduit that is incidental to residential wiring. Specialty electrical license holders (ES-1, 2, 3, and/or 7) shall not install conduit within, or on, buildings.

C. Implementation of new license classifications; renewal of existing license classifications:

(1) The electrical license and journeyman certificate of competence classifications specified immediately below become effective on November 1, 1998. All licenses and certificates of competence tested for on, or after, November 1, 1998 will be issued pursuant to the classifications set

forth below.

(2) All licenses and journeyman certificates of competence tested for and/or issued prior to November 1, 1998 under the prior license and journeyman classifications will be renewed under the prior classifications until the license or certificate of competence ceases to exist. However, if a licensee or journeyman fails to renew his license or certificate of competence in a timely manner as required in the Construction Industries Licensing Act and the construction industries division rules and regulations, or otherwise allows his license or certificate of competence to lapse, be voided and/or canceled, the licensee and/or journeyman will be required to obtain the proper license under the new classification system becoming effective on November 1, 1998. Obtaining the proper license and/or journeyman certificate of competence under the new classification system in these circumstances will require that the licensee and/or journeyman take the appropriate examination and make application to the division.

D. Electrical contracting defined: The definition of contracting is set forth in Section 60-13-3 of the Construction Industries Licensing Act. Nothing in this rule shall be construed to conflict with the Act's definition. However, for the purposes of clarity in this rule, contracting is understood to include: installations, alterations, repairs, servicing and maintenance involving electrical work.

E. Electrical customer-owned distribution system electrical customer-owned distribution systems are subject to all adopted codes, standards, and regulations. Customer-owned distribution systems include all (non-utility owned or operated) overhead or underground primary or secondary voltage electrical power line construction, installation, alteration, repairs, or maintenance.

F. Continuing education:

(1) Pursuant to the Construction Industries Licensing Act, New Mexico Statutes Annotated, Section 60-13-38F, there is created a continuing education requirement as a condition for renewal or reinstatement of a journeyman electrician certificate of competence.

(2) Prior to renewal of a journeyman electrician certificate of competence, or reinstatement of such a certificate after revocation, the journeyman certificate holder is required to complete sixteen (16) hours of approved course work.

(3) A minimum of eight (8) hours shall comprise instruction on changes in the currently adopted New Mexico electrical code and national electrical code since the date on which the certificate to be renewed or reinstated was issued, last renewed or

reinstated.

(4) To qualify as approved course work, continuing education courses must comply with the following standards:

(a) the course content must be relevant to the electrical trade and consistent with the laws and rules of the state of New Mexico;

(b) the course may be conducted in a classroom, seminar or in a home study format;

(c) the course must be taught by an approved instructor.

(5) To be approved an instructor must either be currently teaching or have taught at least one course related to the electrical trade within the preceding two (2) years in one of the following programs:

(a) an electrical program that is approved by the vocational education division of the state of New Mexico department of public education and offered in the curriculum of a New Mexico trade school, college or university;

(b) a program, the objectives of which relate to the electrical trade, that is offered through a professional association or organization representing licensed electricians;

(c) an apprenticeship program approved by the state of New Mexico apprenticeship council or the bureau of apprenticeship and training;

(d) a program offered by a nationally recognized testing laboratory, or product manufacturer and the instructor has at least (5) years practical experience in the subject taught;

(e) an organization that provides electrical continuing education unit courses, and the instructor has at least five (5) years of practical experience in the subject taught;

(f) construction industries division electrical bureau code education program.

(6) Instructors must submit to the construction industries division an application for approval, on a form approved by the division, and must be approved by the division before the course taught will qualify for approved course work under this section.

(7) For each journeyman certificate holder who successfully completes an approved course, the instructor is required to submit to the construction industries division the following:

(a) the name of the certificate holder;

(b) his/her address;

(c) and journeyman certificate number within thirty (30) days of course completion.

[F-] **G. GENERAL ELECTRICAL LICENSE CLASSIFICATIONS:**

(1) EE-98. Residential and commercial electrical. (Requires four years experience.) A contractor under this classification is authorized to bid and contract for all electrical work, including work identified in less comprehensive electrical classifications, including premises, wiring underground distribution trenching, duct work, cables and terminations 600 volts and under, with the exception of additional work identified under the EL-1 classification. He may bid and contract as the prime contractor of an entire project provided the electrical contractor's portion of the contract, based on dollar amount, is the major portion of the contract.

(2) ER-1. Residential electrical wiring. (Requires two years experience.) A contractor under this classification is authorized to bid and contract for electrical systems for residential dwelling units and multi-family dwellings when all such units are all on the ground floor with no occupancies above or below as defined by the New Mexico electrical code. This contractor shall not install wiring for commercial use, such as motels, hotels and similar occupancies. He shall not undertake to contract for more than four (4) multi-family units in any one single project.

(3) EL-1. Electrical distribution systems, including transmission lines. (Requires four years experience.) A contractor under this classification is authorized to bid and contract for overhead or underground electrical distribution and transmission lines and associated towers, tower foundations and/or other supporting structures, trenching and ductwork and substations and terminal facilities. (Interior wiring of buildings housing any of the above equipment shall require an EE-98 license).

(4) [RESERVED]

[G] H. ELECTRICAL SPECIALTY LICENSES:

(1) ES-1. Electrical signs and outline lighting. (Requires two years experience.)

A contractor under this classification is authorized to bid and contract for electrical signs and outline lighting. He is authorized to bid and contract for electrical wiring to connect signs installed by him where a "sign circuit" has been provided within ten (10) feet. He is also authorized to bid and contract for concrete for the foundation of poles and build structures for the support of such signs. Outline lighting is an arrangement of incandescent lamps or gaseous tubes to outline and call attention to certain features such as the shape of a building or the decoration of a window and may or may not contribute to the general illumination of an area.

(2) ES-2. Cathodic protection

and lightening protection systems. (Requires two years experience.) A contractor under this classification is authorized to bid and contract for electrically activated systems to prevent galvanic damage to metallic pipelines or structures, usually underground. He is also authorized to bid and contract for the electrical work involved in the equipment for connection rectifier systems. He is also authorized to bid and contract for lightning protection systems. He is not authorized to install the service riser, main service or service grounding.

(3) ES-3. Low voltage special systems (under 50 volts). (Requires two years experience.)

A contractor under this classification is authorized to bid and contract for public address or other sound, voice communication systems normally involving low energy signal circuits. Also, electrical burglar and fire alarm systems, computer data systems, and cable TV systems normally involving coaxial cable for the purpose of transmitting R.F. signals and other intelligence by wire and cable. This classification also includes other low voltage specialty systems such as, but not limited to, door and gate operated control circuits, and temperature control circuits. The installer of a TVRO (dish) will not be required to have a contractor's license when such installations are installed in single family dwellings and do not require the use of 120 volts for tracking.

(4) ES-7. Telephone communication systems. (Requires two years' experience.) A contractor under this classification is authorized bid and contract for in-plant and out-plant telephone systems, telephone interconnections in public or privately owned buildings, and underground cables or aerial supporting structures, trenching, duct work, terminal facilities, repeaters, including the installation of instruments at their terminating locations. (Interior wiring of building housing any of the above equipment shall require an EE-98 classification.)

Note: Refer to GF-9 classification for additional underground telephone cable installations. This classification does not include conduit installation.

[14.5.6.12 NMAC - Rp, 14 NMAC 5.6.12, 12-1-00; A, 07-01-04]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

**TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 17 CREDIT UNIONS
PART 13 APPLICABILITY OF HOME LOAN PROTECTION ACT**

12.17.13.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.17.13.1 NMAC - N, 3/31/2004]

12.17.13.2 SCOPE: All state chartered credit unions otherwise subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2004) ("Act").
[12.17.13.2 NMAC - N, 3/31/2004]

12.17.13.3 STATUTORY AUTHORITY: Section 58-11-20 NMSA 1978.
[12.17.13.3 NMAC - N, 3/31/2004]

12.17.13.4 DURATION: Permanent.
[12.17.13.4 NMAC - N, 3/31/2004]

12.17.13.5 EFFECTIVE DATE: March 31, 2004, unless a later date is cited at the end of a section.
[12.17.13.5 NMAC - N, 3/31/2004]

12.17.13.6 OBJECTIVE: The objective of this part is to grant state chartered credit unions the same powers and authority that federally chartered credit unions are authorized, empowered, permitted or otherwise allowed to exercise.
[12.17.13.6 NMAC - N, 3/31/2004]

12.17.13.7 DEFINITIONS:
A. "Director" means the director of the financial institutions division of the regulation and licensing department.
B. "Division" means the financial institutions division of the regulation and licensing department.
[12.17.13.7 NMAC - N, 3/31/2004]

12.17.13.8 FINDINGS:
A. Section 58-11-20 NMSA 1978, authorizes the director to grant by regulation the powers and authority that federal credit unions are authorized, empowered, permitted or otherwise allowed to exercise under federal statutes, rules or regulations.

B. The national credit union administration ("NCUA") is authorized by federal legislation to regulate and supervise federally chartered credit unions throughout the United States.

C. By regulation, the NCUA has determined that federal law pre-empts any state law that regulates the rates, terms of repayment and other conditions of federally chartered credit union loans and lines of credit to members. (Code of Federal Regulations Section 701.21(b)).

D. On February 10, 2004, the NCUA issued a letter ruling regarding "preemption of the New Mexico Home

Loan Protection Act" ("NCUA Preemption") clarifying the fact that the New Mexico Home Loan Protection Act is preempted by federal law from applying to federally chartered credit unions operating in New Mexico.

[12.17.13.8 NMAC - N, 3/31/2004]

12.17.13.9 AUTHORITY: State chartered credit unions are provided the same powers and authority granted to federally chartered credit unions as a result of the NCUA Preemption.

[12.17.13.9 NMAC - N, 3/31/2004]

HISTORY OF 12.17.13 NMAC:
[RESERVED]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

**TITLE 12 TRADE, COM-
MERCE AND BANKING
CHAPTER 20 SAVINGS AND
LOAN ASSOCIATIONS
PART 71 APPLICABILITY OF
HOME LOAN PROTECTION ACT**

12.20.71.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.20.71.1 NMAC - N, 03/03/2004]

12.20.71.2 SCOPE: All state chartered savings and loan associations otherwise subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003) ("Act").
[12.20.71.2 NMAC - N, 03/03/2004]

12.20.71.3 STATUTORY AUTHORITY: Sections 58-10-50 and 58-10-72 NMSA 1978.
[12.20.71.3 NMAC - N, 03/03/2004]

12.20.71.4 DURATION: Permanent.
[12.20.71.4 NMAC - N, 03/03/2004]

12.20.71.5 EFFECTIVE DATE: March 3, 2004, unless a later date is cited at the end of a section.
[12.20.71.5 NMAC - N, 03/03/2004]

12.20.71.6 OBJECTIVE: The objective of this part is to grant state chartered savings and loan associations the same powers and authority that federally chartered savings associations are authorized, empowered, permitted or otherwise allowed to exercise.
[12.20.71.6 NMAC - N, 03/03/2004]

12.20.71.7 DEFINITIONS:
[RESERVED]
[12.20.71.7 NMAC - N, 03/03/2004]

12.20.71.8 FINDINGS:
A. Section 58-10-50 NMSA 1978, authorizes the director to grant by regulation the rights, powers, privileges, immunities and exceptions possessed by federally chartered savings associations.

B. The office of thrift supervision, department of the treasury, the "OTS," is authorized by federal legislation to regulate and supervise federally chartered savings associations throughout the United States.

C. On September 2, 2003 the OTS issued a letter ruling (the "OTS preemption") clarifying the fact that the following sections and subsections of the act (the "preempted sections of the act") are pre-empted by federal law from applying to federally chartered savings associations operating in New Mexico:

(1) Section 58-21A-4.A. and B. (Prohibited practices and provisions regarding home loans);

(2) Section 58-21A-5.A., B., C., D., E., G., H., I., J., K., L., M., N., O., and P (Limitations and prohibited practices for high-cost home loans);

(3) Section 58-21A-6.A., B., C., D., and E. (default; notice; right to cure);

(4) Section 58-21A-9.A., B., and C. (civil action);

(5) Section 58-21A-11.B. and C. (actions based on home loans);

(6) Section 58-21A-12. (application of Unfair Practices Act); and

(7) Section 58-21A-13. (attorney general; enforcement of rules).

[12.20.71.8 NMAC - N, 03/03/2004]

12.20.71.9 AUTHORITY: State chartered savings and loan associations are provided the same powers and authority granted to federally chartered savings associations as a result of the OTS preemption.
[12.20.71.9 NMAC - N, 03/03/2004]

HISTORY OF 12.20.71 NMAC:
[RESERVED]

**NEW MEXICO BOARD OF
VETERINARY MEDICINE**

This is an amendment to 16.25.2 NMAC, Section 11, effective April 15, 2004.

16.25.2.11 LICENSURE BY ENDORSEMENT: A veterinarian who has been licensed in another state and has done at least five years of clinical veterinary practice immediately preceding application for a New Mexico license - with at least

6,000 hours of clinical practice within those five years - may qualify for licensure by endorsement. A qualified endorsement applicant:

~~**A.** does not need to take the clinical practice portion of the state examination;~~

~~**B.] A.** does not need to provide his/her score from the national licensing examination;~~

~~**C.] B.** may take the jurisprudence exam at a special time, for the standard endorsement fee, as arranged through the board office, rather than at one of the board's regularly scheduled exam times.~~

[16.25.2.11 NMAC - Rp, 16 NMAC 25.2.8.1.7 and 25.2.11, 7-25-01; A, 4-15-04]

**NEW MEXICO BOARD OF
VETERINARY MEDICINE**

This is an amendment to 16.25.6 NMAC, Section 10, effective April 15, 2004. This rule was also reformatted and renumbered from 16 NMAC 25.6 to comply with current NMAC requirements.

16.25.6.10 RENEWAL OF LICENSE:

A. License will be issued annually, and to qualify for renewal, the applicant must:

~~(1) [Have paid the annual renewal fee.] New licensee's first-year (partial-year) -- fee prorated from date of license issue until renewal date January 1. Annual RVT license renewal -- \$35.00.~~

(2) A late penalty will be assessed if not postmarked prior to midnight of December 31.

(3) Certify that the applicant has completed at least eight (8) hours of approved continuing education during the preceding year. The hours will be derived from seminars, short courses, or scientific programs approved by the board, sponsored by a veterinary, or veterinary technician organization or university approved by the board.

(a) There will be no exemptions for age or retirees.

(b) A waiver of delinquent hours may be granted by the board if a request is made in writing. The hours must be made up in the next calendar year, in addition to the regular requirement.

(c) Hours will be accumulated on a yearly basis from January through December.

(d) A maximum of eight (8) credit hours may be accrued as excess and carried forward to the succeeding licensing year.

(e) A form will be sent out by the executive director of the board of veterinary

medicine to be filled out and returned by the technician at the time of annual registration renewal.

(f) The burden of proving the validity of the reported hours lies solely with the technician reporting.

(g) New graduates do not have to comply with the continuing education requirement until the next full calendar year after graduation.

B. Licensee shall have displayed at the business location, in full view of the public, the original New Mexico registered veterinary technician certificate and the current year's license renewal certificate.

C. All correspondence will be addressed to the executive director of the New Mexico board of veterinary medicine. [01/05/76...05/31/96; 16.25.6.10 NMAC - Rn & A, 16 NMAC 25.6.10, 04-15-04]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

Volume XV	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 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 13
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 14
Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
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