

**NEW  
MEXICO  
REGISTER**



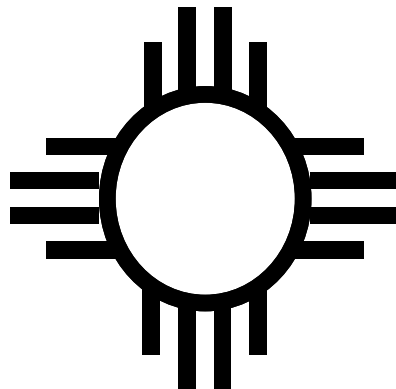
Volume XX  
Issue Number 4  
February 27, 2009



# **New Mexico Register**

**Volume XX, Issue Number 4**

**February 27, 2009**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2009

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# New Mexico Register

Volume XX, Number 4

February 27, 2009

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***A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered***

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

Public Accountancy Board  
Notice of Proposed Rulemaking

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and regular Board meeting on Monday, April 20, 2009. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.1 NMAC	General Provisions

Notice of the hearing and Board meetings has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at [www.rld.state.nm.us/b&c/accountancy](http://www.rld.state.nm.us/b&c/accountancy). Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Friday, April 17, 2009; however the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Monday, April 13, 2009.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND RULE MAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public rule making hearing on May 4, 2009 at 10:00 a.m. at the State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, New Mexico, to further consider amendments to 11.5.2, 11.5.3 and 11.5.4 NMAC (Occupational Health and Safety). The Board previously considered amendments to these regulations on December 1, 2008.

The proponent of the amendments is the New Mexico Environment Department ("NMED").

NMED has revised its proposed amendments and proposes to add the following language to 11.5.2 NMAC, which governs general industry employers; 11.5.3 NMAC, which governs construction industry employers; and 11.5.4 NMAC, which governs agriculture employers:

**“PROHIBITION AGAINST UNLAWFUL DRUG USE AND ALCOHOLIC BEVERAGE USE IN THE PLACE OF EMPLOYMENT**

**A.** Employers shall provide a place of employment that is free of unlawful drug use by employees and free of alcoholic beverage use by employees except as provided for in Subsection B of 15.10.51.11 NMAC. To determine whether an employer has violated this subsection, the department shall consider whether the employer knew, or with the exercise of reasonable diligence could have known, of the presence of the prohibited unlawful drug or alcohol use.

**B.** Employers shall develop and implement a written policy prohibiting unlawful drug use and alcoholic beverage use by employees in the place of employment.

**C.** For purposes of this section, "place of employment" does not include a location where employees of an employer are present to participate in an event, the primary purpose of which is not work-related."

The proposed amendments make it clear that the illegal use of drugs and the use of alcoholic beverages in the place of employment is prohibited. The proposed amendments establish a new requirement for employers to have in place a written policy regarding the illegal use of drug and alcohol in the place of employment.

The proposed changes may be reviewed during regular business hours at the NMED Occupational Health and Safety Bureau

office, 525 Camino de los Marquez, Suite 3, Santa Fe, New Mexico. A full text of NMED's proposed changes are available on NMED's web site at [http://www.nmenv.state.nm.us/Common/regs\\_idx.html](http://www.nmenv.state.nm.us/Common/regs_idx.html), or by contacting Harry Buysse at (505) 476-8712 or at [harry.buysse@state.nm.us](mailto:harry.buysse@state.nm.us).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board; the Environmental Improvement Act, Section 74-1-9 NMSA 1978; the Occupational Health and Safety Act, Section 50-9-12 NMSA 1978; and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any interested person may also submit a written statement prior to the hearing or at the hearing. Written statements should reference the rules to be amended, 11.5.2, 11.5.3 and 11.5.4 NMAC, and the date of the hearing. Written statements submitted prior to the hearing must be filed with:

Joyce Medina, Board Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2150/2153  
Santa Fe, NM 87502  
Telephone: (505) 827-2425  
Facsimile (505) 827-2836

Any member of the general public may testify at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by April 17, 2009 at the NMED, Human Resources Bureau, P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502-5469, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may deliberate and rule on the proposed amendments at the close of the hearing or the Board may convene a meeting after the hearing to consider action on the proposal.

**NEW MEXICO DEPARTMENT OF HEALTH**

**PUBLIC HEALTH DIVISION**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Health will hold a public hearing on 7.32.7 NMAC, "Authorization to Administer Opioid Antagonists". The Hearing will be held on Monday, April 6, 2009 at 9:00 a.m. in the Harold Runnels Building auditorium, located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The public hearing will be conducted to receive public comment regarding proposed changes to the rule, as well as public comment regarding the emergency amendment to the definition of "opioid antagonist" at 7.32.7.7(F) NMAC that took effect on January 29, 2009.

A copy of these materials may be obtained from, and written comments may be submitted to:

Dominick Zurlo, Harm Reduction Program Manager  
Infectious Disease Bureau  
New Mexico Department of Health  
1190 St. Francis Drive, Suite S1310  
Tel.: (505) 670-3885

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Dominick Zurlo at the above address or telephone number. The Department requests at least ten (10) days' advance notice for special accommodations requests.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF A RULEMAKING TO )  
REVISE NMPRC RULE 17.7.2 NMAC ) Case No. 08-00024-UT  
TO IMPLEMENT THE )  
EFFICIENT USE OF ENERGY ACT )  
)**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission ("NMPRC" or "Commission") proposes to amend its existing Energy Efficiency Rule, which is contained in the New Mexico Administrative Code ("NMAC") at 17.7.2 NMAC. This matter comes before the Commission upon its own Motion; whereupon,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Commission is required to adopt energy efficiency rules in order to implement the Efficient Use of Energy Act, NMSA 1978, § 62-17-1, *et seq.* ( the "EUEA" or "Act"), and, further, is considering amendments to its existing Energy Efficiency Rule, currently codified at 17.7.2 of the New Mexico Administrative Code ("NMAC") in order to implement the substantive legislative changes effected by New Mexico House Bill 305 ("H.B. 305"), which was enacted by the New Mexico Legislature during the 48<sup>th</sup> Legislature (Second Session, 2008) and was signed into law by the Governor of New Mexico on February 27, 2008.

2. The Commission has jurisdiction over public utilities in the State of New Mexico. N.M. Const., Art. XI, § 2, NMSA 1978 § 62-1-1, *et seq.* The proposed rule amendments would be adopted under the authority granted the Commission by the New Mexico Constitution, art. XI, § 2, the Public Regulation Commission Act (*see* NMSA 1978, §§ 8-8-4 and 8-8-15), the State Rules Act, NMSA 1978, § 14-4-2(C), and applicable portions of the EUEA, as amended by H.B. 305.

3. On January 29, 2008, the Commission issued in this docket a Notice Of Inquiry ("NOI"), commencing an inquiry and investigation regarding the implementation of

the Efficient Use Of Energy Act ("EUEA"), NMSA 1978, § 62-17-1, *et seq.* In that NOI, the Commission required detailed written comment to be submitted by each electric, natural gas, or combination utility operating within the State of New Mexico on a number of specific issues.

4. On February 28, 2008, the Commission's Utility Division Staff ("Staff") filed the Petition To Amend Proceeding To Initiate A Rulemaking To Revise 17.7.2 NMAC. In that Petition, Staff pointed out that the 49<sup>th</sup> New Mexico Legislature (First Session, 2007), had amended the EUEA through its enactment of House Bill 305, and that the issues set out in the NOI would require, at a minimum, a different analysis. Staff also asked that the Commission add to the list of issues set out for consideration and comment while retaining any relevant questions set out in the NOI. Staff's Petition included a number of issues pertaining particularly to H.B. 305 on which Staff urged the Commission to seek comment.

5. Subsequently, Public Service Company of New Mexico ("PNM"), El Paso Electric Company ("EPE"), and Southwestern Public Service Company ("SPS") all conveyed their support for refining or eliminating some of the issues set out in NOI (as appropriate pursuant to H.B. 305), and for expanding the proceeding into a rulemaking. Motion to Vacate Requirements To Submit Written Comments Or, In The Alternative, For Extension Of Time, filed March 17, 2008, and PNM's Addendum to the same Motion, filed March 19, 2008; EPE's Response To Staff's Petition and PNM's Motion To Vacate Or Extend Deadline, filed March 17, 2008.

6. On April 1, 2008, the Commission issued in this and other cases a Procedural Order. (Through the cited procedural order as issued in this case, Case Nos. 07-00424-UT and 08-00013-UT were closed. *Procedural Order*, at 5-6, ¶ E.) Among other things, that Order provided that this case would be conducted as a rule-making proceeding and would take into appropriate consideration the issues set out in the Notice Of Inquiry as well as those proposed for consideration in Staff's Petition and any other suggested issues that may be relevant. *Id.* at 5, ¶ A.

7. William Herrmann was appointed as Hearing Examiner or the purpose of conducting any necessary workshop and hearings, and to take any other action consistent with Commission procedure. Procedural Order at 5, ¶ C.

8. On May 14, 2008,



Hearing Examiner Herrmann Issued the Order Setting Pre-Workshop Conference.

9. Workshops were held in this case in 2008, with the interim result that a new rule has been proposed that has at least partial support from among the workshop participants.

10. Remarks made during the Workshops, and any items of information that have been submitted heretofore, are not evidence and are not part of the record of the rulemaking. Any person having submitted such information who desires it to be considered hence as part of the rulemaking process should file it as a formal comment.

11. We have already concluded that the Energy Efficiency Rule should be amended in order to effectuate fully the EUEA, NMSA 1978, § 62-17-1, *et seq.*, as amended by H.B. 305, and that a rulemaking process should be instituted. Procedural Order, issued on April 1, 2008. Consistent with our Procedural Order, we now direct that this proceeding go forward as a formal rulemaking. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

12. All interested persons should be afforded the opportunity to receive notice of, and to comment upon, the attached Proposed Rule.

13. A copy of the proposed amendments to be considered for promulgation as amendments to 17.7.2 NMAC is attached hereto as "Exhibit 1." Additional copies of the proposed amendments to the cited Rule can be obtained from:

Mr. Ron X. Montoya  
Records Management Bureau  
Marian Hall  
224 East Palace Avenue  
Santa Fe, New Mexico 87501  
Telephone: (505) 827-6940.

**IT IS THEREFORE ORDERED:**

A. A rulemaking proceeding having been instituted through this Commission's Procedural Order, as issued on April 1, 2008, and workshops having taken place, the Commission seeks comment from all interested persons concerning the manner in which the Commission's *Energy Efficiency Rule*, as it is currently set forth in the New Mexico Administrative Code ("NMAC") at 17.7.2 NMAC, should be amended.

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

C. Any person wishing to comment on the proposed amendments to 17.7.2 NMAC may do so by submitting written comments no later than **March 2, 2009**. Any person wishing to respond to comments may do so by submitting written response comments no later than **March 13, 2009**. Comments suggesting changes to the rule amendments as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the draft rule amendments shall be provided in a format consistent with that of the existing rule.

D. All pleadings, including comments, shall bear the caption and case number contained at on the first page of this Notice. Comments on the Proposed Rule shall be filed with the Commission's Records Division, at the address set out herein at ¶ 13.

E. A public hearing on the proposed rule amendments, to be presided over by Commission Chairman Sandy Jones or his designee, shall be held beginning at **10:00 A.M. or immediately after the conclusion of the Commission's Open Meeting on March 24, 2009** at the offices of the Commission, at the following location:

**4<sup>th</sup> Floor Hearing Room  
PERA Building  
1120 Paseo de Peralta  
Santa Fe, New Mexico 87501  
Tel. (800) 827-4500.**

F. All persons attending the hearing should be prepared to address the issues set forth herein. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at 827-6947 at least 48 hours prior to the commencement of the Hearing.

G. Pursuant to NMSA 1978, § 8-8-15(B), this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be mailed **at least thirty days prior to the hearing date** to all persons who have made a written request for advance notice and to all electric utilities subject to the jurisdic-

tion of the Commission, including rural electric cooperatives. Copies of this *Notice of Proposed Rulemaking* shall be provided promptly by e-mail or by facsimile transmission to any persons who have so requested.

H. This *Notice of Proposed Rulemaking*, without Exhibit 1, shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of this *Notice of Proposed Rulemaking* as described above shall be filed in this docket.

I. In addition, this Notice shall be posted on the Commission's official Web site.

J. Copies of any forthcoming final order adopting proposed rule amendments shall be mailed, along with copies of the particular rules amended, to all affected utilities, all commenters in this case, and all individuals requesting such copies.

K. This *Notice of Proposed Rulemaking* is effective immediately.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 29th day of January, 2009.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

\_\_\_\_\_  
**SANDY JONES, CHAIRMAN**

\_\_\_\_\_  
**DAVID W. KING, VICE CHAIRMAN**

\_\_\_\_\_  
**JASON MARKS, COMMISSIONER**

\_\_\_\_\_  
**JEROME D. BLOCK, COMMISSIONER**

\_\_\_\_\_  
**CAROL K. SLOAN, COMMISSIONER**

## NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

### NEW MEXICO DEPARTMENT OF PUBLIC SAFETY NOTICE OF PUBLIC HEARING

The New Mexico Department of Public Safety (NMDPS) will be holding a Public Hearing for the sake of receiving comments on proposed amendment to Title 10, Chapter 10, Part 2 of NMAC, the application procedures governing the Edward Byrne Memorial Justice Assistant Grant Program. The hearing will be held at 1:30 P.M. on Friday, March 27, 2009 at the New Mexico Law Enforcement Academy Auditorium, 4491 Cerrillos Road, Santa Fe, New Mexico 87507. Proposed amendments to the Rule include, but not limited to, changes, additions, deletions, and clarifications of the application proceed.

Copies of the proposed amendments shall be made available to the public ten days prior to the Public Hearing and may be obtained by calling 505-827-9112. Comments on these amendments are invited. Oral comments may be made at the hearing, or written comments may be submitted by mail to the Grants Accountability and Compliance Section, New Mexico Department of Public Safety, Post Office Box 1628, Santa Fe, New Mexico 87504-1628, no later than April 1, 2009. Any individual with a disability, who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing, should contact Evelyn Romero, 505-827-3347 at least ten (10) day prior to the hearing.

## NEW MEXICO SIGNED LANGUAGE INTERPRETING PRACTICE BOARD

### LEGAL NOTICE

#### Public Rule Hearing

The New Mexico Signed Language Interpreting Practice Board will hold three public rule hearings. The first hearing will be held on Thursday, April 2, 2009 at the Regulation and Licensing Department located at 5200 Oakland Ave. NE in Albuquerque, New Mexico from 4:00 pm until 6:00pm. The second rule hearing will

be held on Wednesday, April 8, 2009 at the Las Cruces Public Schools Building located at 505 S. Main St., Suite 249 in Las Cruces, New Mexico from 4:00pm until 6:00pm and the final rule hearing will be held on Wednesday April 15, 2009 at the Farmington Civic Center located at 200 West Arrington in Farmington, New Mexico from 4:00pm until 6:00pm. The purpose of these rule hearings is to consider the adoption of proposed rules 16.24.1 NMAC: General Provisions, 16.24.2 Educational and Continuing Education Requirement, 16.24.3 Application and Licensure Requirements, 16.24.4 Complaint Procedures; Adjudicatory Proceedings, 16.24.5 Code of Professional Conduct. Persons who wish to present their views on the proposed rules may do so by sending your comments in writing to the Signed Language Interpreters Board at 2550 Cerrillos Rd., Santa Fe, NM 87501, e-mailing the board at [signlanguage.board@state.nm.us](mailto:signlanguage.board@state.nm.us), or by attending one of the three scheduled rule hearings. Written public comment will be accepted beginning April 1, 2009 until April 30, 2009.

Interested parties can obtain draft copies of the proposed rules by visiting the Board's website <http://www.rld.state.nm.us/SignedLanguage>. You may also obtain copies of the proposed rules by writing to or visiting the Board office at 2550 Cerrillos Road in Santa Fe, New Mexico 87504 or by calling the Board at (505) 476-4606.

Signed language interpreters will be provided for each of the rule hearings. If you have further questions, or if you are an individual with a disability who wishes to attend the hearings, but you need a reader, assistive listening device, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4606 at least two weeks prior to the hearing or as soon as possible.

Shannon Garcia, Administrator  
PO Box 25101- Santa Fe, New Mexico  
87504

## NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

### LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Social Work Examiners will hold a Rule Hearing on Friday, April 17, 2009. Following the Rule

Hearing the New Mexico Board of Social Work Examiners will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Social Work Examiners Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, 5200 Oakland Ave, NE, Albuquerque, NM 87113.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.63 NMAC: Part 16 Code of Conduct.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4890 after March 17, 2009. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than April 1, 2009. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4890 at least two weeks prior to the meeting or as soon as possible.

Vadra Baca, Administrator  
PO Box 25101- Santa Fe, New Mexico  
87504

## End of Notices and Proposed Rules Section

## Adopted Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC Sections 9 and 15, effective 02-27-2009.

#### 16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:

**A.** An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts;

(2) meets the education, experience and examination requirements of the board; and

(3) passes the American institute of certified public accountants ethics examination with a score of 90 percent or higher.

**B.** Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an applicant's history of dishonest or felonious acts.

**C.** Criminal history background check: Pursuant to Section 61-28B-8.1 of the act, all applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) An applicant shall submit two completed fingerprint cards to the board office with the initial application for licensure or the application for licensure reinstatement.

(2) Blank fingerprint cards shall be obtained from the board office.

(3) Fingerprints shall be taken:

(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the board, by a private agency qualified to take and certify fingerprints[ ~~provided the agency submits to the board written authorization from any of the agencies referenced in Subparagraphs (a) and (b) above~~].

(4) Completed fingerprint cards shall be submitted to the board office with the prescribed fee.

(5) The board shall not issue a certificate or license until an applicant's background check has been successfully completed.

**D.** Education and examination requirements: Education and exami-

nation requirements are specified in Section 8 of the act and are further delineated in Part 2 of board rules. An applicant who has passed the uniform CPA examination prior to July 1, 2004, is exempt from the 150-semester-hour requirement.

**E.** Experience required: Applicants documenting their required experience for issuance of an initial certificate pursuant to Section 7H of the act, and after July 1, 2004 Section 8H of the act shall:

(1) provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills; acceptable experience shall include experience gained through employment in industry, government, academia or public practice;

(2) have their experience verified by an active, licensed CPA as defined in the act or by an active, licensed CPA from another state; the board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted:

(a) one year of experience shall consist of full or part-time employment that extends over a period of no less than 1 year and no more than 3 years and includes no fewer than 2,000 hours of performance of services described above;

(b) experience documented in support of an initial application must be obtained within the 7 years immediately preceding passing of the examination or within 7 years of having passed the examination upon which the application is based; this does not apply to applicants who qualified and sat for the examination during or prior to the November 2001 administration;

(c) any licensee requested by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal; the board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information;

(d) the board may inspect documentation relating to an applicant's claimed experience; any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

**F.** Swearing in ceremony: Every new licensee must participate in a swearing in ceremony before the board within one year from the date of the issuance of the initial license. Swearing in ceremonies shall be held two times per year in locations to be determined by the board. Upon good cause presented in writing prior

to the expiration of the one-year period of initial licensure, the board may extend the period for being sworn in or arrange an alternate method for the licensee to be sworn in. If an extension for good cause is granted, the licensee shall arrange with the board director to present him or herself for swearing in before the board within the time prescribed by the board. Failure to appear at a swearing in ceremony before the board may result in the imposition of a fine or other disciplinary action, as deemed appropriate by the board.

**G.** Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is requested, the certificate/license holder must return the original certificate/license or submit a notarized affidavit describing the occurrence that necessitated the replacement certificate or license.

**H.** Renewal requirements: Certificates/licenses for individuals will have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the CPA or RPA certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

(2) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(3) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Sections 9E and 12A of the act and of these rules.

(4) The board shall mail renewal application notices no less than 30 days prior to the renewal deadline.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 02-14-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 07-29-2005; A, 11-30-2007; A, 06-30-2008; A, 02-27-2009]

**FESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:**

A. The following requirements of continuing professional education apply to certificate/license renewals and reinstatements pursuant to Sections 9E and 12A of the act. An applicant for certificate/license renewal shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 36-month period ending on the last day of the certificate/license holder's birth month.

(1) Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board.

(2) Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the preceding 36-month period ending on the last day of the certificate/license holder's birth month, with a minimum of 20 hours completed in each year. For any CPE reporting period which begins on or after January 1, 2010, continuing professional education must include a minimum of 4 hours of ethics education during the 36-month period after January 1, 2010. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

(3) The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

(4) Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be post-marked or hand-delivered no later than the renewal deadline date or the next business day if the deadline date falls on a weekend or holiday.

(5) In the event that a renewal applicant has not completed the requisite CPE by the renewal deadline, he shall provide a written explanation for failure to complete CPE; request an extension for completion of the required CPE; and shall provide a written plan of action to remediate the deficiency.

(a) The extension request and action plan shall accompany the renewal application.

(b) The provisions of the action plan shall be executed within 60 days of the expiration date of the license.

(c) The board reserves the right not to approve a plan of action or grant an extension.

(d) Although a plan of action may be approved immediately upon receipt, the board reserves the right to levy a fine at a later date for late CPE of \$10.00 per day not to exceed \$1,000.

(e) The board may waive this fine for good cause.

(f) If all CPE requirements are not met within 90 days beyond the expiration date of the license, the license shall be subject to cancellation.

(6) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(7) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the CPE requirements of Sections 9E and 12A of the act and of these rules.

(8) Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of 40 hours of CPE for each year the certificate/license was expired, not to exceed 200 hours. If the license was expired for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was expired, the continuing professional education must include a minimum of 4 hours of ethics education during the 36 months preceding reinstatement.

(a) The length of expiration shall be calculated from the date the license expired to the date the application for reinstatement was received by the board office.

(b) If the license was expired for less than one year, documented evidence of 40 hours of CPE earned within the 12 months immediately preceding the date of application for reinstatement must be provided.

(c) If the license was expired for longer than one year, for the purpose of determining the number of CPE hours required, the length of expiration shall be rounded down to the last full year if the partial year was less than six months and rounded up to the next full year if the partial year was more than six months.

B. Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status.

(1) Pursuant to Section 9E of the act, the board may grant an exception to CPE requirements for certificate holders who do not provide services to the public. Public means any private or public corporate or governmental entity or individual. An individual who holds an inactive certificate/license is prohibited from practicing public accounting and may only use the CPA-inactive designation if they are not offering accounting, tax, tax consulting, management advisory, or similar services either in New Mexico or in another state or country. Persons desiring exemption from CPE rules requirements may request to change from "active" to "inactive" or "retired" certificate/license status, provided that they:

(a) complete board-prescribed change-of-status forms and remit related fees;

(b) not practice public accountancy as defined in Section 3M of the act; public accountancy means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters; and

(c) place the word "inactive" or "retired" adjacent to their CPA or RPA title on a business card, letterhead or other documents or devices, except for a board-issued certificate.

(2) Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE for each year the certificate/license was inactive, not to exceed 200 hours; if the license was inactive for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months.

(3) The effective date of this provision shall be January 1, 2007. An individual who holds an inactive certificate/license as of January 1, 2006 and expects to be subject to the provisions of this rule shall be permitted to obtain an active certificate/license between January 1, 2006 and December 31, 2006 provided they:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE earned between January 1, 2005 and December 31, 2006 or complete 120 hours of CPE within the three-year period immediately prior to the date of

application for active status, provided that the application is received by the board no later than December 31, 2006.

(4) An individual who obtains an active certificate/license during this transitional period of January 1, 2006 to December 31, 2006 shall not be subject to the provisions of sub-paragraph (b) of paragraph (2) above.

C. Hardship exceptions: The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

D. Programs qualifying for CPE credit: A program qualifies as acceptable CPE for purposes of Sections 9E and 12A of the act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the statement on standards for continuing professional education programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

(1) The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

(a) an hour is considered to be a 50-minute period of instruction;

(b) a full 1-day program will be considered to equal 8 hours;

(c) only class hours or the equivalent (and not student hours devoted to preparation) will be counted;

(d) one-half credit increments are permitted after the first credit has been earned in a given learning activity;

(e) for reporting periods on or after January 1, 2010, acceptable ethics topics may include, but are not limited to, instruction focusing on the AICPA code of professional conduct, the New Mexico occupational and professional licensing code of professional conduct applicable to certified public accountants, Treasury Circular 230, malpractice avoidance, organization ethics, moral reasoning, and the duties of the CPA to the public, clients, and colleagues; ethics hours may be earned as part of any professional development program otherwise qualifying under this rule, provided the ethics content and the time devoted to such content are separately identifiable on the program agenda.

(2) Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence.

(3) Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

(4) Credit allowed as a lecturer, discussion leader, speaker or university professor/instructor will be on the basis of 2 hours for subject preparation for each hour of teaching and 1 hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

(5) Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.

(6) Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit for published articles and books may not exceed one half of an individual's CPE requirement for a 3-year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

(7) For a continuing education program to qualify under this rule, the following standards must be met:

(a) an outline of the program is prepared in advance and preserved;

(b) the program is at least 1 hour in length;

(c) a qualified instructor conducts the program; and

(d) a record of registration or attendance is maintained.

(8) The following programs are deemed to qualify, provided the above are met:

(a) professional development programs of recognized national and state accounting organizations;

(b) technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

(c) no more than 4 hours CPE annually may be earned for board meeting attendance.

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

(10) Non-credit short courses - each class hour shall equal 1 hour toward

the requirement and may include the following:

(a) formal, organized in-firm educational programs;

(b) programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

(c) formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

(11) The board will allow up to a total of 24 hours of CPE credits for firm peer review program participation. Hours may be earned and allocated in the calendar year of the acceptance letter for the firm's CPAs participating in the peer review.

(a) Firms having an engagement or report peer review will be allowed up to 12 hours of CPE credits.

(b) Firms having a system peer review will be allowed up to 24 hours of CPE credits.

(c) Firms having a system peer review at a location other than the firm's office shall be considered an off-site peer review and will be allowed up to 12 hours of CPE credits.

(d) The firm will report to the board the peer review CPE credit allocation listing individual firm CPAs and the number of credits allotted to each CPA. Individual CPAs receiving credit based upon a firm's report to the board may submit firm-reported hours in their annual CPA report forms to the board. If CPE credits will not be used, no firm report will be necessary.

(12) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the NASBA CPE registry, AICPA guidelines, NASBA quality assurance service, or such other programs deemed acceptable to the board.

(13) For each 3-year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical subjects such as audit; attestation; financial reporting; tax, management consulting; financial advisory or consulting; and other areas acceptable to the board as directly related to the professional competence of the individual.

(14) Effective for CPE reporting periods ending on or after July 31, 2007, for each 3-year reporting period, at least 24 of the hours reported shall not include CPE sponsored by the licensee's firm, agency, company, or organization but may include all methods of CPE delivery, provided that each hour meets the standards specified in

paragraphs (1) through (10) of this subsection.

(15) For each 3-year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

E. Programs not qualifying for CPE:

(1) CPA examination review or "cram" courses;

(2) industrial development, community enhancement, political study groups or similar courses, programs or seminars;

(3) courses, programs or seminars that are generally for the purpose of learning a foreign language;

(4) partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning adhering to the standards prescribed in this rule.

F. Continuing professional education records requirements: When applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

(1) Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

(2) Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of 5 years after program completion and at minimum shall consist of the following:

(a) copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

(b) for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course. For non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

(3) Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

(4) The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are required to provide supporting documentation and/or access to such records and documentation as necessary to substantiate

validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of 5 years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

(5) In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

(6) An individual who has submitted a sworn affidavit on their renewal application as evidence of compliance with CPE requirements and is found, as the result of a random audit, not to be in compliance will be subject to a minimum \$250.00 fine and any other penalties deemed appropriate by the board as permitted by Section 20B of the act.

(7) The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of 5 years after program completion.

(8) The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 02-14-2002; A, 09-16-2002; A, 06-15-2004; A, 07-30-2004; A, 12-30-2004; A, 04-29-2005; A, 12-30-2005; A, 05-15-2006; A, 07-29-2007; A, 02-27-2009]

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

**This is an amendment to 20.11.104 NMAC, Sections 7, 102, 104, 105, 106, 107, 108, 110 & 111 effective 3/15/09. These minor modifications were made to clarify that certain program elements are to be met on a statewide basis, with NMED being the point of contact for manufacturing.**

**20.11.104.7 DEFINITIONS:** In addition to the terms defined in 20.11.104.7 NMAC, *Definitions*, the definitions in California code of regulations ("CCR"), Title 13, sections of which are incorporated

by reference in 20.11.104 NMAC, and the definitions in 20.11.1 NMAC apply, except that "California" shall mean "Bernalillo county" or "state", as applicable unless otherwise specified or clearly inappropriate. If there is a conflict between a term defined in 20.11.104.7 NMAC, and CCR, Title 13, Section 1900, or 20.11.1 NMAC, the definition in 20.11.104.7 NMAC shall apply.

**A. "Air contaminant emission control system"** means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine or a system or engine modification on a motor vehicle which causes a reduction of air contaminants emitted from the motor vehicle engine, including but not limited to exhaust control systems, fuel evaporative control systems and crankcase ventilating systems.

**B. "Business"** means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; or a profit-seeking enterprise or concern.

**C. "CARB"** means California air resources board.

**D. "CCR"** means California code of regulations, Title 13.

**E. "California-certified"** means a vehicle having a valid executive order stating that the vehicle meets all applicable requirements of the applicable sections of CCR and is approved for sale in California by CARB.

**F. "California standards"** means the emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which California has received a waiver from the United States environmental protection agency (EPA) pursuant to 42 U.S.C. Section 7543 and which other states are authorized to adopt pursuant to 42 U.S.C. Section 7507.

**G. "Certification"** means a finding by CARB that a motor vehicle, motor vehicle engine, or air contaminant emission control system satisfies the criteria adopted by CARB for the control of specified air contaminants from motor vehicles.

**H. "Clean Air Act"** or "CAA" means the federal Clean Air Act, 42 U.S.C. Sections 7401 et seq.

**I. "Dealer"** means any person actively engaged in the business of offering to sell, solicit or advertise the sale, purchase, transfer, lease, sale or exchange of a new motor vehicle and who has an established place of business.

**J. "Department"** means the Albuquerque environmental health department.

**K. "Emergency vehicle"** means any publicly-owned vehicle operated

by a peace officer in the performance of his duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire calls, any publicly-owned authorized emergency vehicle used by an emergency medical technician or paramedic, or any ambulance used by a private entity under contract with a public agency.

**L. "Emission standards"** means specified limitations on the discharge of air contaminants into the atmosphere.

**M. "Executive order"** means a document issued by CARB certifying that a specified test group or model year vehicle has met all applicable requirements adopted by CARB pursuant to the applicable sections of CCR for the control of specified air contaminants from motor vehicles.

**N. "Fleet average greenhouse gas emission requirement"** means the limitations on greenhouse gas exhaust mass emission values from passenger cars, light-duty trucks and medium-duty passenger vehicles as set forth in CCR, Section 1961.1.

**O. "Fleet-wide average non-methane organic gas exhaust emission requirement"** means, based on the calculation in CCR, Section 1960.1(g)(2), a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this regulation and sold in ~~[Bernalillo county]~~ the state in any model year.

**P. "Gross vehicle weight rating"** means the value specified by the manufacturer as the maximum loaded weight of a single vehicle.

**Q. "Light-duty truck"** means any model year 2000 and subsequent motor vehicle certified to the standards in CCR, section 1961(a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds or less, which is designed primarily for the purposes of transportation of property, is a derivative of such vehicles, or is available with special features enabling off-street or off-highway operation and use.

**R. "Low-emission vehicle"** or "**LEV**" means a motor vehicle which has been certified by CARB.

**S. "Medium-duty passenger vehicle"** or "**MDPV**" means any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium-duty passenger vehicle definition does not include any vehicle which:

(1) is an "incomplete truck", i.e., a truck that does not have primary load-carrying device or container attached;

(2) has a seating capacity of more than 12 persons;

(3) is designed for more than nine persons in seating rearward of the drivers

seat; or

(4) is equipped with an open cargo area of 72.0 inches in interior length or more; a covered box not readily accessible from the passenger compartment shall be considered an open cargo area for the purpose of this definition.

**T. "Medium-duty vehicle"** means any pre-1995 model year heavy-duty vehicle with a manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 through 2006 model year heavy-duty low-emission, ultra-low emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in CCR, Section 1960.1(h)(2) having a manufacturer's gross vehicle weight rating of 14,000 pounds or less; and any 2000 and subsequent model heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in CCR, Sections 1961(a)(1) or 1962 having a manufacturer's gross weight rating between 8,501 and 14,000 pounds.

**U. "Model year"** means the manufacturer's annual production period which includes January 1, or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

**V. "Motor vehicle"** or "**vehicle**" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, except motorized bicycles and devices that run only on rails or tracks.

**W. "Motor vehicle engine"** means an engine that is used to propel a motor vehicle.

**X. "New vehicle"** means any vehicle with 7,500 miles or fewer on its odometer.

**Y. "Non-methane organic gas"** or "**NMOG**" means the sum of non-oxygenated and oxygenated hydrocarbons contained in a gas sample as measured in accordance with the "California non-methane organic gas test procedures", which is incorporated herein by reference.

**Z. "Passenger car"** means any motor vehicle designed primarily for transportation of persons and having a design capacity equal to or less than 12 individuals.

**AA. "Person"** means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any board, commission, employee, agent, officer or political subdivision, or a state, an interstate body or the United States.

**BB. "Placed in service"** means having been sold to an ultimate purchaser and not to a dealer or other entity in the distribution chain, and having been individually registered for on-road use by the New Mexico Motor vehicle division.

chaser and not to a dealer or other entity in the distribution chain, and having been individually registered for on-road use by the New Mexico Motor vehicle division.

**CC. "Sale" or "sell"** means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.

**DD. "State"** means:

(1) for purposes of referring to a governing entity, the ~~[municipality of Albuquerque and the county of Bernalillo]~~ New Mexico environment department; or

(2) for purposes of referring to a geographic area, all geographic areas within the jurisdiction of the Albuquerque-Bernalillo county air quality control board and the environmental improvement board.

**EE. "Test group"** means a grouping of vehicles as defined by 40 CFR 86.1827-01.

**FF. "Ultimate purchaser"** means, with respect to any new motor vehicle or new motor vehicle engine, the first person whom in good faith purchases a new motor vehicle or new motor vehicle engine for a purpose other than resale.

**GG. "Vehicle identification number" or "VIN"** means a unique, 17 digit, alphanumeric code that the vehicle manufacturer assigns to a vehicle.

**HH. "ZEV credit bank"** means a system designated by the ~~[department]~~ state that records and tracks the generation, verification, transfer, voluntary retirement, use, and invalidation of vehicle credits.

[20.11.104.7 NMAC - N, 1/1/08; A, 3/15/09]

#### 20.11.104.102 INCORPORATION BY REFERENCE:

**A.** For the purpose of applying the incorporated sections of CCR, "California" means the municipality of Albuquerque and the county of Bernalillo, or the state, as applicable and "CARB" means Albuquerque-Bernalillo county air quality control board or New Mexico environment department, as applicable, unless otherwise specified or clearly inappropriate.

**B.** Each manufacturer of a new model year 2011 and subsequent model year passenger car, light-duty truck, medium-duty passenger vehicle, or medium-duty vehicle must comply with each applicable standard in the CCR as incorporated by reference in 20.11.104 NMAC. The department shall maintain copies of these sections for public inspection. The following sections of are incorporated in 20.11.104 NMAC:

(1) **Section 1900: Definitions.** CCR effective date 1/1/2006.

(2) **Section 1956.8(g) and (h): Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model**

**Heavy Duty Engines and Vehicles.** CCR effective date 11/15/06.

(3) **Section 1960.1: Exhaust Emission Standards and Test Procedures - 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles.** CCR effective date 3/26/04.

(4) **Section 1961: Exhaust Emission Standards and Test Procedures - 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles.** CCR effective date 2/17/2007.

(5) **Section 1961.1: Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles.** CCR effective date 01/01/06.

(6) **Section 1962: Zero-Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles.** CCR effective date 3/26/04.

(7) **Section 1962.1: Electric Vehicle Charging Requirements.** CCR effective date 7/24/02.

(8) **Section 1965: Emission Control and Smog Index Labels - 1979 and Subsequent Model Year Vehicles.** CCR effective date 12/04/03.

(9) **Section 1968.2: Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles.** CCR effective date 04/21/03.

(10) **Section 1968.5: Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines.** CCR effective date 04/21/03.

(11) **Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.** CCR effective date 2/17/07.

(12) **Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions.** CCR effective date 2/17/07.

(13) **Section 2035: Purpose, Applicability and Definitions.** CCR effective date 12/26/90.

(14) **Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles.** CCR effective date 11/27/99.

(15) **Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty**

**Vehicles and Motor Vehicle Engines Used in Such.** CCR effective date 11/27/99.

(16) **Section 2039: Emission Control System Warranty Statement.** CCR effective date 12/26/90.

(17) **Section 2040: Vehicle Owner Obligations.** CCR effective date 12/26/90.

(18) **Section 2041: Mediation; Finding of Warrantable Condition.** CCR effective date 12/26/90.

(19) **Section 2046: Defective Catalyst.** CCR effective date 2/15/79.

(20) **Section 2109: New Vehicle Recall Provisions.** CCR effective date 12/30/83.

(21) **Section 2111: Applicability.** CCR effective date 12/13/06.

(22) **Section 2112: Definitions.** CCR effective date 11/15/03.

(23) **Section 2113: Initiation and Approval of Voluntary and Influenced Recalls.** CCR effective date 1/26/95.

(24) **Section 2114: Voluntary and Influenced Recall Plans.** CCR effective date 11/27/99.

(25) **Section 2115: Eligibility for Repair.** CCR effective date 1/26/95.

(26) **Section 2116: Repair Label.** CCR effective date 1/26/95.

(27) **Section 2117: Proof of Correction Certificate.** CCR effective date 1/26/95.

(28) **Section 2118: Notification.** CCR effective date 1/26/95.

(29) **Section 2119: Record keeping and Reporting Requirements.** CCR effective date 11/27/99.

(30) **Section 2120: Other Requirements Not Waived.** CCR effective date 1/26/95.

(31) **Section 2121: Penalties.**

(32) **Section 2122: General Provisions.** CCR effective date 1/26/95.

(33) **Section 2123: Initiation and Notification of Ordered Emission-Related Recalls.** CCR effective date 1/26/95.

(34) **Section 2124: Availability of Public Hearing.** CCR effective date 1/26/95.

(35) **Section 2125: Ordered Recall Plan.** CCR effective date 1/26/95.

(36) **Section 2126: Approval and Implementation of Recall Plan.** CCR effective date 1/26/95.

(37) **Section 2127: Notification of Owners.** CCR effective date 1/26/95.

(38) **Section 2128: Repair Label.** CCR effective date 1/26/95.

(39) **Section 2129: Proof of Correction Certificate.** CCR effective date 1/26/95.

(40) **Section 2130: Capture Rates and Alternative Measures.** CCR

effective date 11/27/99.

(41) **Section 2131: Preliminary Tests.** CCR effective date 1/26/95.

(42) **Section 2132: Communication with Repair Personnel.** CCR effective date 1/26/95.

(43) **Section 2133: Record keeping and Reporting Requirements.** CCR effective date 1/26/95.

(44) **Section 2135: Extension of Time.** CCR effective date 1/26/95.

(45) **Section 2137: Vehicle and Engine Selection.** CCR effective date 12/28/2000.

(46) **Section 2138: Restorative Maintenance.** CCR effective date 11/27/99.

(47) **Section 2139: Testing.** CCR effective date 8/21/2002.

(48) **Section 2140: Notification and Use of Test Results.** CCR effective date 8/21/2002.

(49) **Section 2141: General Provisions.** CCR effective date 12/28/00.

(50) **Section 2142: Alternative Procedures.** CCR effective date 2/23/90.

(51) **Section 2143: Failure Levels Triggering Recall.** CCR effective date 11/27/99.

(52) **Section 2144: Emission Warranty Information Report.** CCR effective date 11/27/99.

(53) **Section 2145: Field Information Report.** CCR effective date 11/27/99.

(54) **Section 2146: Emissions Information Report.** CCR effective date 11/27/99.

(55) **Section 2147: Demonstration of Compliance with Emission Standards.** CCR effective date 8/21/02

(56) **Section 2148: Evaluation of Need for Recall.** CCR effective date 11/27/99.

(57) **Section 2149: Notification of Subsequent Action.** CCR effective date 2/23/90

(58) **Section 2151: New Motor Vehicle Dealer Surveillance.** CCR effective date 12/13/83.

(59) **Section 2235: Requirements.** CCR effective date 9/17/91.

[20.11.104.102 NMAC - N, 1/1/08; A, 3/15/09]

**20.11.104.104 FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS AND REPORTING:**

**A. Fleet average requirement.** Effective model year 2011 and each model year thereafter, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars, light-duty trucks and medium-duty vehicles delivered for



sale in Bernalillo county shall not exceed the Fleet Average NMOG Exhaust Emission Requirement set forth in CCR, Section 1961. Compliance ~~[shall be based on the number of]~~ averaging on a statewide basis is authorized, including vehicles that are subject to 20.11.104 NMAC and ~~[are]~~ delivered for sale in Bernalillo county.

**B. Fleet average NMOG exhaust emission credits and debits.** Effective model year 2011 and each model year thereafter, each motor vehicle manufacturer may accrue NMOG emission credits and debits and use credits in accordance with the procedures in CCR Section 1961. Debits and credits accrued and used ~~[shall be based on the number of]~~ are authorized for vehicles subject to 20.11.104 NMAC that are delivered for sale in Bernalillo county.

**C. Reporting.** Effective model year 2011 and for each model year thereafter, each motor vehicle manufacturer shall submit a report to the ~~[department]~~ state no later than March 1, that follows the procedures in CCR, Section 1961 and in the same format used to report such information to CARB.

[20.11.104.104 NMAC - N, 1/1/08; A, 3/15/09]

#### 20.11.104.105 ZEV SALES:

**A.** Effective model year 2011 and each model year thereafter, manufacturers subject to 20.11.104 NMAC shall produce and deliver for sale in ~~[Bernalillo county]~~ the state vehicles that comply with the ZEV sales requirement set forth in, Section 1962.

**B.** An intermediate volume or large volume manufacturer of ZEVs, ATPZEVs or PZEVs may use previously earned credits in accordance with CCR, Section 1962 to offset the ZEV sales requirement in Subsection A of 20.11.104.105 NMAC.

[20.11.104.105 NMAC - N, 1/1/08; A, 3/15/09]

#### 20.11.104.106 ZEV CREDIT BANK AND REPORTING:

**A.** Manufacturers shall establish a ZEV credit bank with the ~~[department]~~ state on or before January 1, 2011, and establish reporting procedures to report additions and deletions to that bank in accordance with CARB manufacturers advisory correspondence (MAC) #06-03 zero emission vehicle (ZEV) credit reporting and tracking system and Subsections B, C, D, E and F of 20.11.104.106 NMAC.

**B.** The ~~[department]~~ state shall set aside a number of New Mexico ZEV credits proportionally equivalent to the number of ZEV credits possessed by the requesting manufacturer for use in the state of California at the beginning of the 2011

model year. This transfer shall be performed only after all credit obligations for model years 2010 and earlier have been satisfied in California. Each manufacturer's California credit balances shall be multiplied by the ratio of the average number of PCs and LDT1s produced and delivered for sale in New Mexico to the combined average number of PCs and LDT1s produced and delivered for sale in California in model years 2003 through 2005, or, alternatively, by the ratio of PCs and LDT1s produced and delivered for sale in New Mexico to the combined number of PCs and LDT1s produced and delivered for sale in California in model year 2011. In either case, the time period used to determine the credit transfer ratio shall be used to determine model year 2011 ZEV sales requirements in New Mexico. The ~~[department]~~ state shall establish ZEV compliance accounts for each manufacturer and allocate the credits calculated under this subsection to such compliance accounts, including separate accounts for PZEV, AT-PZEV, NEV, Type 0 ZEVs, Type I ZEVs, Type II ZEVs, Type III ZEVs, transportation system, and extended service. The ~~[department]~~ state shall notify each manufacturer of the number of ZEV credits available for use by July 31, 2011. Credits issued pursuant to this subsection may only be used in New Mexico for compliance with the ZEV provisions subject to the same requirements and limitations on credit use set forth in CCR, Section 1962, adjusted for New Mexico specific vehicle numbers. Each manufacturer operating in accordance with this subsection shall do the following.

(1) By May 1, 2011, provide the ~~[department]~~ state with the total number of PC and LDT1 vehicles produced and delivered for sale in New Mexico and California for 2003 through 2005 model years.

(2) Alternatively, by May 1, 2011, provide the ~~[department]~~ state with the total number of PC and LDT1 vehicles to be produced and delivered for sale in New Mexico and California in model year 2011. By March 1, 2012, provide the ~~[department]~~ state with actual model year 2011 PC and LDT1 vehicles produced and delivered for sale in New Mexico and California. By May 31, 2012, the ~~[department]~~ state shall adjust and notify each manufacturer of the number of ZEV credits established based on actual model year 2011.

(3) By May 1, 2011, provide the ~~[department]~~ state with the total number of banked California credits after all model year 2010 and earlier obligations have been met.

**C.** In addition to the credits transferred in accordance with Subsection B of 20.11.104.106 NMAC, manufacturers may also generate and deposit credits for vehicles delivered for sale within ~~[Bernalillo county]~~ the state dur-

ing the 2009 through 2010 model years, a manufacturer shall open an account with the ZEV credit bank and submit an appropriate notice of credit generation to the ~~[department]~~ state by the time such vehicles are delivered.

**D.** A manufacturer shall be entitled to full credit for each type III ZEV placed in service prior to model year 2012 in any state that has adopted the California ZEV regulations contained in CCR, section 1962.

**E.** A manufacturer with an account in the ZEV credit bank may acquire credits from another manufacturer with an account in the ZEV credit bank, provided that if the credits are to be used for future compliance with the ZEV sales requirement in 20.11.104.105 NMAC, ZEV Sales, the transaction shall be recorded in the ZEV credit bank and certified by both parties to the transaction.

**F.** A vehicle equivalent credit shall not constitute or convey a property right.

[20.11.104.106 NMAC - N, 1/1/08; A, 3/15/09]

#### 20.11.104.107 FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSIONS AND REPORTING:

**A.** Effective model year 2011 and each model year thereafter, each manufacturer subject to 20.11.104 NMAC shall comply with greenhouse gas emissions standards~~[, fleet average greenhouse gas exhaust mass emission requirements]~~ for passenger car, light-duty truck, medium-duty passenger vehicle weight classes, and other requirements of CCR Section 1961.1, for vehicles delivered for sale in Bernalillo county.

**B. Requirements for large volume manufacturers.** The fleet average greenhouse gas exhaust emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles delivered for sale within ~~[Bernalillo county]~~ the state by a large volume manufacturer for model year 2011 and each model year thereafter are set forth in CCR, Section 1961.1.

**C. Requirements for small, intermediate, and independent manufacturers.** The fleet average greenhouse gas exhaust emission requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles delivered for sale within ~~[Bernalillo county]~~ the state by small volume, intermediate volume and independent low volume manufacturers for model year 2016 and each model year thereafter are set forth in CCR, Section 1961.1.

**D. Greenhouse gas emission credits and debits.** Greenhouse gas credits and debits may be accrued and used based on each manufacturer's sale of vehi-

cles within ~~[Bernalillo county]~~ the state as set forth in CCR, Section 1961.1.

**E. Optional alternative compliance with greenhouse gas emission standards.** Greenhouse gas vehicle test groups that are certified pursuant to CCR, Section 1961.1(a)(1)(B)2 in the state of California may obtain equivalent credit if delivered for sale and use within Bernalillo county.

**F. Alternative compliance credit.** To receive the credit authorized by subsection E of 20.11.104.107 NMAC, a manufacturer shall submit to the ~~[department]~~ state the data set forth in CCR, Section 1961.1(a)(1)(B)2.a.i ~~[for Bernalillo county specific sale and use].~~

**G. Reporting on greenhouse gas requirements.** Beginning model year 2011 and for each model year thereafter, each manufacturer shall submit a report to the ~~[department]~~ state that includes end-of-model year data that calculates the fleet average greenhouse gas emissions for the model year just ended; the report shall include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to CCR Section 1961; the report shall follow the procedures in CCR, Section 1961.1 and be in the same format used to report such information to CARB.

[20.11.104.107 NMAC - N, 1/1/08; A, 3/15/09]

#### 20.11.104.108 ADDITIONAL REPORTING:

**A.** To determine compliance with 20.11.104 NMAC, the department may require a motor vehicle manufacturer to submit any documentation that the department deems necessary to the effective administration and enforcement of 20.11.104 NMAC, including all certification materials submitted to CARB.

**B.** In addition to the reporting requirements in 20.11.104.106 NMAC, *ZEV Credit Bank and Reporting*, and NMAC 20.11.104.111, *Registration and Fees*, beginning with the 2011 model year and each model year thereafter, each manufacturer of a vehicle subject to 20.11.104.100 NMAC, *Applicability*, shall submit annually to the ~~[department]~~ state, no later than March 31 following the close of the model year, a report documenting the total deliveries for sale within ~~[Bernalillo county]~~ the state of vehicles in each test group during that model year.

[20.11.104.108 NMAC - N, 1/1/08; A, 3/15/09]

#### 20.11.104.110 RECALLS:

**A.** Any order issued or enforcement action taken by CARB to correct noncompliance with any section of CCR, Title 13, that results in the recall of a vehicle pursuant to CCR, Sections 2109

through 2135, shall be prima facie evidence of noncompliance of a vehicle registered in Bernalillo county. ~~[#] In such cases, recalls may be initiated by the state unless the manufacturer demonstrates to the [department's] state's satisfaction that the order or action is not applicable to a vehicle registered in Bernalillo county [the department shall not pursue a recall of that vehicle].~~

**B.** A voluntary or influenced emission-related recall campaign initiated by a manufacturer pursuant to CCR Sections 2113 through 2121 shall include all affected vehicles registered in Bernalillo county.

**C.** For any vehicle subject to an order or action under Subsection A of 20.11.104.110 NMAC, each manufacturer shall send to each owner of a vehicle registered in Bernalillo county a notice that complies with the requirements in CCR Sections 2118 or 2127, including a telephone number for owners to obtain answers to questions regarding the recall.

[20.11.104.110 NMAC - N, 1/1/08; A, 3/15/09]

#### 20.11.104.111 REGISTRATION AND FEES:

**A.** After January 1, 2010, no large-volume or intermediate-volume vehicle manufacturer shall deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive, or register a motor vehicle subject or potentially subject to 20.11.104 NMAC without first obtaining a registration from the department.

**B.** The registration shall have a term no more than 10 years and each large and intermediate-volume manufacturer shall pay an annual registration fee to the ~~[department]~~ state.

**C.** The ~~[department]~~ state shall assess an annual registration fee of \$10,000 to each large and intermediate-volume manufacturer for the period beginning July 1 and ending June 30 of the subsequent year.

**D.** By April 1 each year, each large and intermediate-volume manufacturer shall pay the annual registration fee to the ~~[department]~~ state.

[20.11.104.111 NMAC - N, 1/1/08; A, 3/15/09]

### NEW MEXICO OFFICE OF THE STATE AUDITOR

#### NOTICE:

The Office of the State Auditor is repealing 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies* effective February 27, 2009. It will be replaced with 2.2.2 NMAC,

*Requirements for Contracting and Conducting Audit of Agencies*, which will become effective February 27, 2009.

### NEW MEXICO OFFICE OF THE STATE AUDITOR

#### TITLE 2 PUBLIC FINANCE CHAPTER 2 AUDITS OF GOVERNMENTAL ENTITIES PART 2 REQUIREMENTS FOR CONTRACTING AND CONDUCTING AUDITS OF AGENCIES

##### 2.2.2.1 ISSUING AGENCY: Office of the State Auditor

[2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 2-27-09]

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

[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 2-27-09]

##### 2.2.2.3 STATUTORY AUTHORITY:

The Audit Act, Section 12-6-12 NMSA 1978, requires the state auditor to promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with auditing standards generally accepted in the United States of America. The regulations become effective upon filing in accordance with the State Rules Act, Chapter 14, Article 4 NMSA 1978. The Audit Act, Chapter 12, Article 6 NMSA 1978, requires the state auditor to conduct financial and compliance audits of every agency in accordance with governmental auditing, accounting and financial reporting standards, and local, state and federal laws, rules, and regulations. The Audit Act also gives the state auditor the authority to cause the financial affairs and transactions of an agency to be audited in whole or in part, in addition to the annual audit.

[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 2-27-09]

##### 2.2.2.4 DURATION:

Permanent  
[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 2-27-09]

**2.2.2.5 EFFECTIVE DATE:** February 27, 2009, unless a later date is cited at the end of a section.

[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 2-27-09]

**2.2.2.6 OBJECTIVE:** The objective is to establish policies, procedures, rules and requirements for contract-

ing and conducting audits of governmental agencies of the state of New Mexico [2.2.2.6 NMAC - Rp, 2 2.2.6 NMAC, 2-27-09]

**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; land grants; drainage, conservancy, irrigation, mutual domestic water consumer associations, public improvements 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. "CFR" means code of federal regulations.

E. "CPE" means continuing professional education.

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

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

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

I. "FDIC" means federal deposit insurance corporation.

J. "FDS" means financial data schedule.

K. "GAAP" means accounting principles generally accepted in the United States of America.

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

M. "GASB" means governmental accounting standards board.

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

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

P. "HED" means the New

Mexico higher education department.

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

R. "IPA" means independent public accountant.

S. "IRC" means internal revenue code.

T. "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 the United States office of management and budget.

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

Z. "PHA" means public housing authority.

AA. "REAC" means real estate assessment center.

BB. "REC" means regional education cooperative.

CC. "RSI" means required supplemental information.

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

FF. "UFRS" means uniform financial reporting standards.

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

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 2-27-09]

**2.2.2.8 THE AUDIT CONTRACT:**

A. Section 12-6-3 NMSA 1978 (Annual and Special Audits) mandates that: (1) the financial affairs of every agency be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him, or by independent auditors approved by him; (2) the comprehensive annual financial report for the state be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him; and (3) the audits be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. 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 pro-

cedures prescribed by rules of the state auditor; provided, however that an agency subject to oversight by the state department of public education 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(B) of the 1999 Public Accountancy Act states that a firm with an office in New Mexico must hold a permit issued pursuant to this section of the 1999 Public Accountancy Act (61-28B-1 NMSA 1978) in order to provide attest services including audits of financial statements. A permit is also required for a firm that does not have an office in New Mexico but performs attest services for a client whose principal place of business is in New Mexico. Pursuant to Section 16.60.3.14 A NMAC, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from another state shall be presumed to have qualifications substantially equivalent to New Mexico's requirements if the person meets the requirements of Section 26, Subsection A of the Act. IPAs shall submit a firm profile to the state auditor. Firms are required to notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts only with IPAs who have **submitted a complete and correct** firm profile that has been approved by the office and who have complied with all the requirements of this rule including:

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

(2) Section H 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;

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

(c) Paragraph (6) of Subsection A of 2.2.2.9 NMAC, notifying the state auditor regarding why audit reports will be late.

B. If the audit is to be con-

ducted by an IPA, the agency shall comply with the following procedures to obtain audit services: It is unnecessary for the agency to include a copy of this audit rule when mailing requests for proposals to IPAs because it is posted on the state auditor's website at [www.osanm.org](http://www.osanm.org).

(1) Upon receipt of notification to proceed from the office, the agency shall identify all elements or services to be solicited and request quotations or proposals for each applicable element of the annual financial audit as follows:

- (a) financial statement audit;
- (b) federal single audit (if applicable);
- (c) financial statement preparation (if applicable);
- (d) other nonaudit services like depreciation schedule dates; and
- (e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(2) Audit services that cost **no more than \$50,000 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. Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency on the date the contractor signs the contract. A multi-year proposal (not to exceed three years) exceeding \$50,000 plus for all three years is not considered a small purchase.

(3) For audit services that cost **over \$50,000 excluding gross receipts tax**, the agency shall seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (Chapter 13, Article 1 NMSA 1978); GSD Rule 1.4.1 NMAC, *Procurement Code Regulations*, if applicable; and DFA Rule 2.40.2 NMAC, *Governing the Approval of Contracts for the Purchase of Professional Services*. Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency as part of the competitive sealed proposal. In addition, if the agency intends to allocate a portion of the audit cost to federal funds as direct or indirect charges, the agency should comply with procurement requirements stated in the Federal Office of Management and Budget's *Grants and Cooperative Agreements with State and Local Governments*, (OMB Circular A-102, Common Rule). Institutions of higher education and state and local hospitals should comply with procurement standards stated in OMB Circular A-110, *Uniform Administrative Requirements for Grants*

**and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.**

(4) 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 described above in Paragraphs (2) and (3) of Subsection B of 2.2.2.8 NMAC to solicit services.

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

- (a) the capability of the IPA, including:
  - (i) whether the IPA has the resources to perform the type and size of the audit required;
  - (ii) the results of the IPA's most recent external quality control review (peer review); and
  - (iii) the organization and completeness of the IPA's proposal or bid for audit services;
- (b) The work requirements and audit approach of the IPA, including:
  - (i) the IPA's knowledge of the agency's need and the product to be delivered;
  - (ii) whether the IPA's proposal or bid contains a sound technical plan and realistic estimate of time to complete the audit;
  - (iii) plans for using agency staff, including internal auditors; and
  - (iv) if the proposal or bid is for a multi-year contract, the IPA's approach for planning and conducting the work efforts of subsequent years;
- (c) the IPA's technical experience, including:
  - (i) the governmental audit experience of the IPA and the special-

ization in the agency's type of government (e.g., state agencies, schools, hospitals, counties, cities, etc.), including component units (housing authorities, charter schools, foundations); and

(ii) the IPA's attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and the agency.

(6) After completing the evaluations for each IPA and making the IPA selection, each agency shall submit the following information to the state auditor on or before June 1, 2009; 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 fiscal year end being audited, the oversight agency approval signature (if required, 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; part I of the evaluation form must include information regarding the bids that were obtained by the agency; if bids were not obtained, the agency is required to submit a detailed explanation regarding why the bids were not obtained; furthermore, the agency must include a separate page or pages explaining the evaluation process the agency used to select the IPA and the agency's rationale for choosing the selected IPA; if the agency is in year 2 or 3 of a multi-year proposal, the agency shall submit a copy of part II of the evaluation form from the previous year;
  - (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 up until the date of submission, including the contract date, contract amount, and a specific description of the services provided; and
  - (d) agencies that are subject to oversight by the state public education department (PED) or the higher education department (HED) have the additional requirement of submitting their IPA recommendation to PED or HED for approval prior to submitting the recommendation to the state auditor (Section 12-6-14(A) NMSA 1978); an agency may use the sample cover letter in Appendix A to document the required oversight agency approval; the sample cover letter is available on the office's website at [www.saonm.org/financial-audits/procuring-contracts](http://www.saonm.org/financial-audits/procuring-contracts).
- (7) The state auditor will 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) Pursuant to Section 12-6-14(A) NMSA 1978, "The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit."

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

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

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

(a) lack of experience of the IPA;

(b) the following criteria for required auditor rotation apply:

(i) the IPA is prohibited from conducting the agency audit for a period of two years because the IPA conducted the agency audit for a period of: (a) six consecutive years and for at least one of those years the audit fees exceeded \$50,000, excluding gross receipts tax; or (b) ten consecutive years and each year the audit fees did not exceed \$50,000, excluding gross receipts tax;

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

(iii) if the firm resulting from a merger or acquisition is determined to be a same firm, as before, and it is in the middle of multiple year award, there will be a mandatory rotation of the audit manager;

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

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

(c) lack of competence or staff availability;

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

(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 interests 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 H of 2.2.2.8 of NMAC);

(f) failed to respond, in a timely and 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 A and B of 2.2.2.14 NMAC;

(j) has a history of excessive errors or omissions in audit reports or working papers; or

(k) released the audit report to the agency or the public before the release letter was received from the office; or

(l) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded a contract;

(3) an audit recommendation for 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 the agency was previously designated for audit by an IPA.

D. 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 office's IPA approval letter;

(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.

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

F. A breach of any terms of the contract shall be grounds for immediate termination of the contract. **The injured party may seek damages for such breach from the offending party.** Any IPA who knowingly makes false statements, assurances, or disclosures will be disqualified from conducting audits of agencies in New Mexico.

G. 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. If approved by 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. See appendix F for the applicable form.

H. The GAGAS *July 2007 Revision* was issued by the United States government accountability office (GAO) on July 27, 2007. It is effective for financial audits and attestation engagements for periods beginning on or after January 1, 2008 (FY09). According to *GAGAS 3.02*, the general standard on independence is: "In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, must be **free from personal, external, and organizational impairments to independence and must avoid the appearance of such**

**impairments of independence.**” As required by GAGAS 3.03, “Auditors and audit organizations must maintain independence so that their opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by objective third parties with knowledge of the relevant information.” As required by GAGAS 3.22, the audit organization must apply the following two overarching independence principles when assessing the impact of performing a nonaudit service for an audited program or entity: “Audit organizations must not provide nonaudit services that involve performing management functions or making management decisions and audit organizations must not audit their own work or provide nonaudit services in situations in which the nonaudit services are significant or material to the subject matter of the audits. To ensure compliance with the independence standards, the following rules apply to the approval of professional service contracts for nonaudit services:

(1) An IPA who performs the agency’s annual financial audit shall not enter into any special audit or nonaudit service contract without the prior written approval of the state auditor. The proposed professional services contract must be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA. The contract must include the contract fee, start and completion date, and the specific scope of services to be performed by the IPA. The IPA must also submit documentation to the state auditor demonstrating compliance with the first two supplemental safeguards noted in Subparagraph (a) and (b) of Paragraph (5) below. Upon completion of the nonaudit services, the IPA must provide the state auditor with a copy of any report submitted to the agency.

(2) Except as provided in Section 2.2.2.15 NMAC, an agency and an IPA who does not perform that agency’s annual financial audit shall submit a copy to the state auditor of each professional services contract entered into between the agency and the IPA for a special audit, agreed upon procedures or any other nonaudit services. The contract shall not require approval by the state auditor but shall be submitted to the state auditor within 30 days of execution.

(3) The state auditor will not approve any contract for the following nonaudit services to be provided by the same IPA who performs the agency’s annual financial audit: maintaining or preparing the audited agency’s basic accounting records or taking responsibility for basic financial or other records that the audit organization will audit; posting transactions (whether coded or not coded) to the

agency’s financial records or to other records that subsequently provide data to the agency’s financial records; determining account balances or determining capitalization criteria; designing, developing, installing, or operating the entity’s accounting system or other information systems that are material or significant to the subject matter of the audit; providing payroll services that are material to the subject matter of the audit or the audit objectives or involve making management decisions; recommending a single individual for a specific position that is key to the entity or program under audit, ranking or influencing management’s selection of the candidate, or conducting an executive search or a recruiting program for the audited entity; developing an entity’s performance measurement system when that system is material or significant to the subject matter of the audit; developing an entity’s policies, procedures, and internal controls; performing management’s assessment of internal controls when those controls are significant to the subject matter of the audit; providing services that are intended to be used as management’s primary basis for making decisions that are significant to the subject matter under audit; carrying out internal audit functions, when performed by external auditors; and serving as voting members of an entity’s management committee or board of directors, making policy decisions that affect future direction and operation of an entity’s programs, supervising entity employees, developing programmatic policy, authorizing an entity’s transactions, or maintaining custody of an entity’s assets (GAGAS 3.29).

(4) The state auditor **may** approve a contract for the following nonaudit services to be provided by the same IPA who performs the agency’s annual financial if the two overarching principles noted in Subsection H of Section 8 above are not violated and the supplemental independence safeguards noted in Subparagraphs (a)-(b) of Paragraph (5) below are met (GAGAS 3.28):

(a) Providing basic accounting assistance limited to services such as preparing draft financial statements that are 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; preparing a trial balance based on management’s chart of accounts; maintaining depreciation schedules for which management has determined the method of depreciation, rate of depreciation, and salvage value of the asset;

(b) providing payroll services when payroll is not material to the subject matter of the audit or to the audit objective;

such services are limited to using records and data that have been approved by the entity’s management;

(c) providing appraisal or valuation services limited to services such as reviewing the work of the entity or a specialist employed by the entity where the entity or the specialist provides the primary evidence for the balances recorded in financial statements or other information that will be audited; valuing an entity’s pension, other post-employment benefits, or similar liabilities provided management has determined and taken responsibility for all significant assumptions and data; converting cash-based financial statements to accrual-based financial statements, as long as management is in the position to make informed judgments to review, approve, and take responsibility for the appropriateness of the conversion;

(d) preparing an entity’s indirect cost proposal or cost allocation plan provided that the amounts are not material to the financial statements and management assumes responsibility for all significant assumptions and data; maintaining depreciation schedules for which management has determined the method of depreciation, rate of depreciation, and salvage value of the asset;

(e) providing advisory services on information technology limited to services such as advising on system design, system installation, and system security if management, in addition the safeguards in GAGAS 3.30, acknowledges responsibility for the design, installation, and internal control over the entity’s system and does not rely on the auditors’ work as the primary basis for determining whether to implement a new system, the adequacy of the new system design, the adequacy of major design changes to an existing system, and the adequacy of the system to comply with regulatory or other requirements; proposing adjusting and correcting entries that are identified during the audit so long as management makes the decision on accepting the entries;

(f) providing human resource services to assist management in its evaluation of potential candidates when the services are limited to activities such as serving on an evaluation panel of at least three individuals to review applications or interviewing candidates to provide input to management in arriving at a listing of best qualified applicants to be provided to management; and

(g) preparing routine tax filings based on information provided by the audited entity.

(5) For nonaudit services that do not violate the two overarching independence principles, the audit organization should comply with each of the following

supplemental safeguards:

(a) document its consideration of the nonaudit services, including its conclusions about the impact on independence;

(b) establish in writing an understanding with the audited entity regarding the objectives, scope of work, and product or deliverables of the nonaudit service, and management's responsibility for the subject matters of the nonaudit services, the substantive outcomes of the work, and making any decisions that involve management functions related to the nonaudit service and accepting full responsibility for such decisions;

(c) exclude personnel who provided the nonaudit services from planning, conducting, or reviewing audit work in the subject matter of the nonaudit service (per Question 46 of GAO's, *Government Auditing Standards Answers to Independence Standard Questions*, there is an exemption from this safeguard when the nonaudit services are the preparation of a trial balance, draft financial statements, and notes from appropriate books and records that balance); and

(d) do not reduce the scope and extent of the audit work below the level that would be appropriate if the nonaudit service were performed by an unrelated party (GAGAS 3.30a-d).

I. The state auditor will approve progress and final payments for the annual audit contract as follows:

(1) Section 12-6-14(A) NMSA 1978 (Contract Audits) also provides that "payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section."

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

(3) Progress payments up to 69% **do not** require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. **The agency must monitor audit progress and make progress payments only up to the percentage that the audit is completed** prior to making the 69% payment. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Progress payments from 70% to 90% require state auditor approval after being approved by the agency.

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

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

J. Preparation of financial statements:

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

(2) **The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records**, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date deadline imposed in Subsection A of 2.2.2.9 NMAC.

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

(4) If the IPA prepared the financial statements for management's review and approval, in conformance with Subsection H of 2.2.2.8 NMAC including documenting the safeguards as required by GAGAS 3.30, the fact that the auditor prepared the financial statements must be disclosed in the exit conference page of the audit report. If the IPA prepared the financial statements, **the auditor must determine whether an audit finding should be reported**. The SAS 112 Appendix lists circumstances that may be a control deficiency, significant deficiency, or a material weakness. Employees or management who lack the qualifications and training to apply generally accepted accounting principles in recording the entity's financial transactions or preparing its financial statements is one set of circumstances in the SAS 112 Appendix list that should be considered in this determination. SAS 112 Paragraph 18 lists insufficient expertise in selecting and

applying accounting principles as "at least a significant deficiency in internal control."

K. Audit documentation:

(1) As required by SAS 103 Paragraph 32, the IPA's audit documentation must be retained for a minimum of five years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor.

(3) The audit documentation of a predecessor IPA must 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 audit documentation does not comply with applicable auditing standards and this rule, or do not support the financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations and this rule, any or all of the following actions may be taken:

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

(b) the state auditor may deny or limit the issuance of future audit contracts; or

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

L. Auditor communication:

(1) **GAGAS (July 2007 Revision)** Sections 4.05 through 4.08 provide standards regarding auditor communication requirements in financial audits and broadens the parties with whom auditors must communicate during the planning stages of the audit. Section 4.06 states "auditors should communicate certain information in writing to management of the audited entity, those charged with governance, and to the individuals contracting for or requesting the audit." SAS 114, which is effective for FY08, also requires this and additional information to be communicated to those charged with governance of the agency. Auditors should specifically communicate this information during the planning stages of a financial audit:



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

(b) the nature of planned work and level of assurance to be provided related to internal control over financial reporting and compliance with laws, regulations, and provisions of contracts or grant agreements including:

(i) planned testing of compliance with applicable state and federal laws and regulations shown in Subsections 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 4.07); or

(iii) any agreed upon procedures such as the HUD requirement for a SAS 29 opinion on the FDS schedule required in Subparagraph (a) 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 auditor's 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 4.06); the appropriate officials of the agency may include:

(i) the head of the audited entity;

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

(iii) the individual who possesses a sufficient level of authority and responsibility for the financial reporting process, such as the chief financial officer (See GAGAS Appendix I, Paragraphs A1.05 through A1.07 for additional information);

(e) in those situations where auditors are performing the audit under a contract with a party other than the officials of the audited entity, or pursuant to a third party request, auditors should also communicate with the individuals contracting for or requesting the audit, such as contracting officials or members or staff of legislative committees (GAGAS 4.06);

(f) GAGAS 4.07 acknowledges the AICPA and GAGAS standards concerning tests of internal control over financial reporting and compliance with laws, regulations, and provisions of contracts or grant

agreements in a financial statement audit, and the supplemental reporting prescribed by laws or regulations to meet the needs of certain report users; SAS 112 is effective for periods ending on or after December 15, 2006 (FY07), with earlier application permitted; it provides guidance on evaluating the severity of control deficiencies identified in an audit and defines the terms "significant deficiency" and "material weakness;" **SAS 112 requires the auditor to communicate, in writing, to management and those charged with governance, significant deficiencies and material weaknesses identified in an audit;** in addition, Paragraph (8) of Subsection I of 2.2.2.10 below requires the auditor to report any deficiencies in internal controls, immaterial violations of provisions of contracts or grant agreements, or abuse per Section 12-6-5 NMSA 1978 and GAGAS 5.14 and 5.16 (2007), that do not rise to the level of significant deficiencies or material weaknesses under SAS 112.

(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. A separate engagement letter and list of client prepared documents is required for each fiscal year audited.

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

M. Contract amendments:

(1) Contract amendments to contracts for audit services or nonaudit services shall be approved in writing by the state auditor if the original contract requires state auditor approval pursuant to the audit rule. Amendment of any of the contract provisions will be made upon forms used in the normal course of business by the agency. **Audit report due dates are not subject to amendment.**

(2) Contract amendments submitted for state auditor approval shall include a detailed explanation of:

(a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment;

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

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

(3) Contract amendments will only be approved for extraordinary circumstances or a significant change in the scope of an audit; for example, if an audit contract did not include a federal single audit, a contract amendment will be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and special procedures required by a regulatory body or a local, state or federal grantor. Contract amendments will not be approved to perform additional procedures to achieve an unqualified opinion. Contract amendments will not be approved for audit procedures required by generally accepted auditing standards or government auditing standards. The state auditor shall also consider the auditor independence requirements of Subsection H of 2.2.2.8 NMAC when reviewing contract amendments for approval. Requests for contract amendments should be submitted to the office by the 5<sup>th</sup> of each month. The office will review the requests and respond to the agency and the IPA by the 25<sup>th</sup> of each month. Requests for contract amendments submitted after the 5<sup>th</sup> of each month will not be reviewed and responded to by the office until the 25<sup>th</sup> of the following month.

(4) The audit engagement letter shall not be interpreted as amending the contract. No fee contingencies will be included in the engagement letter. The original contract and the contract amendments approved by the state auditor constitute the entire agreement. 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.

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

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 2-27-09]

## 2.2.2.9 REPORT DUE DATES:

A. The auditor shall deliver the organized and bound annual financial



audit report to the state auditor by 5:00 p.m. on the date specified in the audit contract or send it post marked by the due date.

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

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

(b) hospitals and special hospital districts: **October 15**;

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

(d) municipalities, special districts, public improvement districts, mutual domestic water consumer associations, soil and water conservation districts, land grants, and local workforce investment boards: **December 1**.

(e) councils of governments, district courts, and district attorneys: **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); once the agency and auditor have certified to the financial control division that the agency's books and records are ready and available for audit, if the auditor or agency find that the scheduled audit deliverables or agreed upon milestones are not accomplished timely and there is a possibility the audit report will be late, the auditor or agency shall immediately write a dated letter to the state auditor describing the problems; the financial control division must be sent a photocopy of the letter;

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

(2) If an audit report is not delivered on time to the state auditor, the auditor must include this instance of noncompliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. If appropriate, the finding should also be

reported as an instance of significant deficiency in the operation of internal control in the agency's internal controls over financial reporting per the SAS 112 Appendix.

(3) An organized bound hard copy of the report should be submitted for review by the office with the following: a copy of the signed and dated engagement letter if not previously submitted; a copy of the signed management representation letter; a list of the passed audit adjustments and adjusting journal entries, clearly labeled "passed adjustments" (or memo stating there are none); and a copy of the completed state auditor report review guide (available at [www.saonm.org](http://www.saonm.org)). The report review guide should reference applicable page numbers in the audit report and be signed by the person completing the review guide. The audit manager should either complete the report review guide or sign off as having reviewed it. A report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed engagement letter (if not previously submitted), a copy of the signed management representation letter, the list of passed adjustments, and the completed report review guide are also submitted to the office. All separate reports prepared for component units should also be submitted to the office for review, along with a copy of the representation letter, a list of passed audit adjustments and a completed report review guide for each separate audit report. A separate component unit report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed management representation letter, the passed adjustments, and the completed report review guide are also submitted to the office. If a due date falls on a weekend or holiday, or if the office is closed due to inclement weather, the audit report is due the following workday by 5:00 p.m. If the report is mailed to the state auditor, it should be postmarked no later than the due date to be considered filed by the due date. The state auditor will grant no extensions of time to the established due dates.

(4) SAS No. 103 requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the financial statements have been prepared and the management representation letter has been signed. SAS No. 113 Paragraph 14 requires the management representation letter to be dated the same date as the independent auditor's report.

(5) **As soon as the auditor becomes aware that circumstances exist that will make an agency's audit report late, the auditor shall notify the state auditor and oversight agency of the situation in writing. There must be a separate notification for each late audit report. The notification**

**must include a specific explanation regarding why the report will be late and a concurring signature by the agency.** A copy of the letter must be sent to the legislative finance committee and the applicable oversight agency: public education department, DFA's financial control division, DFA's local government division, or the higher education department. At the time the audit report is due, if circumstances still exist that will make the report late, the IPA or agency may consult the state auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the auditor to go beyond the scope of auditing standards generally accepted in the United States of America, or the audit report due date, to assure an unqualified opinion.

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

C. Delivery and release of the audit report:

(1) All audit reports (and all separate reports on component units) must be organized, bound and paginated. **The office does not accept facsimile or emailed versions of the audit reports for review.** The IPA shall deliver to the state auditor a hard copy of the audit report for review by 5:00 p.m. on the day the report is due. Reports postmarked by the due date will be considered received by the due date. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the IPA and the office may take action in accordance with Subsection C of 2.2.2.13 NMAC.

(2) The IPA should review the report using the appropriate report review guide available on the office's website prior to submitting the report to the office. All questions in the guide must be answered, and the reviewer must sign and date the last page of the guide. The audit manager must either complete the report review guide or sign off as having reviewed the completed questionnaire.

(3) The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. After its review of the audit report pursuant to 2.2.2.13 NMAC, the office will authorize the IPA to print and submit the final audit report; the required number of hardcopies specified in the audit contract and an electronic version of the audit report, in PDF format, must be delivered to the state auditor within two business days.

(4) The IPA shall deliver to the

agency the number of copies of the audit report indicated in the audit contract **only** after the state auditor has officially released the audit report with a "release letter." Release of the audit report to the agency or the public prior to it being officially released by the state auditor will result in an audit finding. 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. If the office rejects and returns a substandard audit report to the IPA, the office will consider the audit report late if the corrected report is not submitted by the due date. The IPA will also be required to report a finding for the late audit report.

[2.2.2.9 NMAC - Rp, 2.2.2.9 NMAC, 2-27-09]

#### 2.2.2.10 GENERAL CRITERIA:

A. Scope of annual financial audit:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and any component units of the primary government.

(a) Entities must be reported as component units within the financial statements of the primary government, if the primary government is financially accountable for the entity (GASBS 14 Paragraph 10) or if the nature and significance of the entity to the primary government warrants inclusion (GASBS 39 Paragraphs 5 and 6). The primary government, in conjunction with its auditors, must determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14 and 39. The flowchart at GASBS 14 Paragraph 132 is useful for this determination. All agencies that meet the criteria of GASBS 14 or 39 to be a component unit of the primary government **must be included with the audited financial statements of the primary government by discrete presentation unless otherwise approved by the state auditor**. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government (GASBS 14 Paragraphs 44 through 50). Exceptions may occur when an agency requires presentation other than discrete. An exemption must be requested by the

agency, in writing, from the state auditor in order to present a component unit as other than a discrete component unit. The request for exemption must include a detailed explanation, conclusion and supporting documentation. The approval of the state auditor for the exemption is required prior to issuing the report. Per Paragraph 1.01 of AAG-SLV, not-for-profit component units should be reported using the government financial reporting format if they have one or more of the following characteristics: popular election of officers or appointment of a controlling majority of the members of the organization's governing body by officials of one or more state or local governments; the potential for unilateral dissolution by a government with the net assets reverting to the government; or the power to enact and enforce a tax levy. If a not-for-profit does not qualify to be reported using the governmental format under the above criteria, that fact should be explained in the notes to the financial statements (summary of significant accounting policies-financial reporting entity).

(b) If a primary government has no component units, that fact should be disclosed in the notes to the financial statements (summary of significant accounting policies - financial reporting entity). If the primary government has component units that are not included in the financial statement due to materiality, that fact must also be disclosed in the notes. However, if the primary government is a school, college, or university, Section 6-5A-1(4)a NMSA 1978 requires all 501(c) 3 component unit organizations with a gross annual income in excess of \$100,000 to receive an audit. Such component units cannot be excluded from the audit based on the "materiality" criterion.

(c) **The state auditor requires the component unit(s) to be audited by the same auditor who audits the primary government** (except for public housing authority component units that are statutory exempt). 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 Section 2.2.2.13 NMAC.

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

(e) The following supplemental information (SI) pertaining to component units should be included in the scope of the audit and opined on (as allowed by SAS 98):

(i) component unit fund financial statements, and the combining and individual fund financial statements if separately issued financial statements of the component units are not available (AAG-SLV 3.20); and

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

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

(a) The level of planning materiality required by the state auditor is at the **individual fund level**. The state auditor requires that the budgetary comparison statements be audited and included as part of the basic financial statements consistent with GASBS 34 footnote 53 and AAG-SLV 11.13. 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) budgetary comparison statements (for **only** the general fund and major special revenue funds when the budget information is available on the same fund structure basis as the GAAP fund structure); and

(iv) notes to the financial statements.

(c) The auditor must audit the following required supplemental information, if applicable, and include it in the auditor's

opinion (AAG-SLV 14.53). Budgetary comparisons for the general fund and major special revenue fund data presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds (*GASB Statement No. 41, Budgetary Comparison Schedules-Perspective Differences an amendment of GASB Statement No. 34*).

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

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

(ii) combining and individual fund financial statements; and

(iii) individual fund budgetary comparison statements for the remaining funds that have a legally adopted budget **including any major capital project or debt service funds, nonmajor governmental funds, enterprise funds and internal service funds** that are not presented as part of the basic financial statements.

(e) The auditor 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) management's discussion and analysis (GASBS 34.8-.11);

(ii) RSI data required by GASBS 25 and 27 for defined pension plans;

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

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

(v) schedules derived from asset management systems (GASBS 34 Paragraphs 132 and 133).

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

C. Legislation can designate a fund as reverting or non-reverting. The IPA must review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation must be reverted and to whom. The law will also indicate the deadline for the required rever-

sion. Appropriate audit procedures must be performed to determine compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes should fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements must disclose the specific legislation that makes a fund or appropriation non-reverting. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements must disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of 2.2.2.12 NMAC and the DFA white papers "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis."

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

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

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

(3) **OMB Circular A-13, Audits of States, Local Governments and Non-Profit Organizations (July 28, 2003 revision which raised the threshold for Single Audits from \$300,000 to \$500,000 of federal expenditures)** as recently amended for SAS 112;

(4) **AICPA Audit Guide, Governmental Auditing Standards and Circular A-133 Audits**, latest edition;

(5) **AICPA Audit and Accounting Guide, State and Local Governments**, latest edition; and

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

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

F. IPAs who perform government audits are expected to maintain professional libraries including current editions of the publications and standards

noted above. The audit guides published by the practitioners publishing company (PPC) or similar authors are practice aides only and are not considered to be authoritative.

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

(1) Procurement Code (Section 13-1-1 to 13-1-199 NMSA 1978) and State Purchasing Regulations 1.4.1 NMAC;

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

(3) Personnel Act (Section 10-9-1 to 10-9-25 NMSA 1978) and State Personnel Administration 1.7.1 NMAC (state agencies only);

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

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

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

(7) Public Employees Retirement Act (Section 10-11-1 to 10-11-141 NMSA 1978). Auditors should test to **ensure 100% of payroll is reported to PERA**. This is a new PERA requirement. PERA membership is mandatory under the PERA Act, unless membership is specifically excluded by statute for: seasonal employees; student employees; certain elected officials who exercise an option to exclude themselves from PERA membership; and employees that participate in a private retirement program paid for by their government employer, that are ERA retirees and PERA retirees who return to work under Section 10-11-8 and Section 10-11-3 (2005) NMSA 1978,

(8) Educational Retirement Act (Section 22-11-1 to 22-11-53 NMSA 1978);

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

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

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

(12) State Budgets (Section 6-3-1 to 6-3-25 NMSA 1978), state agencies only;

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

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

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

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

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

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

(19) Laws of 2007, Regular Session, Chapter 28, Section 3, Subsection L states, "Except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9(I) NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2007 may be expended for payment of agency-issued credit card invoices."

H. Federal compliance:

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

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

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

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

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

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

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

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

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

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

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

(a) Employee fringe benefits are presumed by the IRS to be income to the

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

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

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

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

(d) The social security administration now requires all state and local government employers to disclose to all new employees the fact that their job is not covered by social security if they were hired for

a position not covered by social security. These employees must sign a statement that they are aware of a possible reduction in their future social security benefit entitlement. See the website at [www.socialsecurity.gov/form1945](http://www.socialsecurity.gov/form1945) for the required form and instructions.

(e) For more information regarding these and other IRS issues please contact the federal state and local government specialist with the IRS in Las Cruces, NM at 575-527-6900 ext. 232, or in Albuquerque, NM at 575-837-5554.

I. Audit findings:

(1) GAGAS Paragraphs 5.10 and 5.11 states that "auditors should report, as applicable to the objectives of the audit, and based upon the audit work performed, (1) significant deficiencies in internal control, identifying those considered to be material weaknesses; (2) all instances of fraud and illegal acts unless inconsequential; and (3) violations of provisions of contracts or grant agreements and abuse that could have a material effect on the financial statements. For all financial audits, auditors should report the following deficiencies in internal control: significant deficiency - a deficiency in internal control, or combination of deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliability in accordance with GAAP such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected; material weakness - a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected. Qualitative and quantitative factors should also be taken into consideration in determining whether a misstatement is inconsequential (SAS 112 Paragraph 7 and 8). Auditors should include all significant deficiencies in the auditor's report on internal control over financial reporting and indicate those that represent material weaknesses (GAGAS 5.13, July 2007 Revision).

(a) Per SAS 112 Paragraph 9, the auditor must evaluate control deficiencies found during test work and determine whether they individually or in combination, are significant deficiencies or material weaknesses. Evaluation guidance is provided by SAS 112 Paragraphs 9 through 19. The SAS 112 Appendix lists examples of circumstances that may be control deficiencies, significant deficiencies, or material weaknesses. SAS 112 Paragraph 18 describes areas in which deficiencies are ordinarily at least significant deficiencies in internal controls. SAS 112 Paragraph 19 describes indicators of control deficiencies that should be treated as at least a signifi-

cant deficiency and are a strong indicator of a material weakness in internal control.

(b) Section 12-6-5 NMSA 1978 (Reports of Audits) states "each report shall set out in detail, in a separate section, **any** violation of law or good accounting practices found by the audit or examination." **Therefore, all such findings must be included in the annual financial audit report.**

(i) All deficiencies in internal control must be reported.

(ii) All instances of fraud, illegal acts or abuse must be reported.

(iii) All violations of provisions of laws, regulations, contracts, grant agreements and other matters must be reported.

(2) GAGAS Section 4.09 (July 2007 Revision) requires auditors to "evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements. When planning the audit, auditors should ask management of the audited entity to identify previous audits, attestation engagements, and other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented. Auditors should use this information in assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives." In addition to this standard, the IPA will report the status of **all** prior-year findings in the current year audit report including the prior year number, the title of the finding, and whether the finding has been resolved or repeated in the current year. Findings from special audits performed by the state auditor must be included in the findings of the annual financial and compliance audits of the related fiscal year.

(3) Current-year audit findings:

(a) All current-year audit findings must have a reference number such as 2006-1, 2007-2, and 2008-1 and a short title that summarizes the finding. Any unresolved prior year findings must be repeated in the current year using the original finding number to preserve the audit trail.

(b) Written audit findings should be prepared and submitted to the agency management as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. **Findings are not subject to negotiation.** The agency should also prepare a corrective action plan as required by GAGAS 5.32 (July 2007 Revision). The agency shall respond, in writing, to the

IPA's audit findings within 10 workdays. The agency's responses to the audit findings and the corrective action plan should be included in the finding after the recommendation. When the audited entity's comments are inconsistent or in conflict with findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditor's recommendations, the auditors should evaluate the validity of the audited entity's comments. If the auditors disagree with the comments, they should explain their reasons for disagreement after the agency's response. Conversely, the auditors should modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence (GAGAS 5.37). Lack of agency responses within the 10 days does not warrant a delay of the audit report. If the audited entity refuses to provide comments or is unable to provide comments within a reasonable period of time, indicate that the responses to the findings were not received and the reason why after the recommendation (GAGAS 5.38).

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

(i) condition (provides a description of a situation that exists and should include the extent of the condition and an accurate perspective; the number of instances found and the dollar amounts involved, if any, should be reported in the condition);

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

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

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

(v) recommendation addressing each condition and cause; and

(vi) agency response (agency's comments about the finding including a specific corrective action plan).

(4) Failure to file the audit report by the due date set in 2.2.2.9 NMAC is considered noncompliance with this rule and shall be reported as a current-year compli-

ance finding. If appropriate in the auditor's professional judgment, the finding should also be reported as a significant deficiency in the operation of internal control over financial reporting per the SAS 112 Appendix.

(5) If an agency has entered into any professional services contract with the IPA who performs the agency's annual financial audit and the contract was not approved by the state auditor, this should be reported as a finding of noncompliance with Subsection H of 2.2.2.8 NMAC.

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

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

(8) When auditors detect deficiencies in internal controls or immaterial violations of provisions of contracts or grant agreements or abuse that are required to be reported by Section 12-6-5 NMSA 1978, and GAGAS 5.14 and 5.16 (2007), but do not rise to the level of significant deficiencies or material weaknesses under SAS 112, the auditor must communicate those deficiencies, in written findings, and refer to those findings in the report on internal control in the second paragraph of the "compliance and other matters" section of the report. The paragraph should use wording similar to "We noted certain matters that are required to be reported under *Government Auditing Standards* 5.14 and 5.16, and Section 12-6-5 NMSA 1978, which are described in the accompanying schedule of findings and responses as findings 09-1 and 09-2." (See the report example at [www.saonm.org](http://www.saonm.org).)

J. Exit conference and related confidentiality issues:

(1) The IPA must hold an exit conference with representatives of the agency's governing authority, or the governing authority's designee, and top management including representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.) if applicable. If component unit representatives cannot attend the combined exit conference, a separate exit conference must be held with the component unit's governing authority and top management. The exit conference must be held in person; a telephone exit conference will not meet this requirement unless a telephonic exit conference is approved in writing by the state auditor. The date of the conference(s) and the names and titles of personnel attending must be stated in the last page of the audit report.

(2) The IPA shall deliver to the agency a complete and accurate draft of the audit report (stamped "draft"), a list of the "passed audit adjustments," and a copy of all the adjusting journal entries at the exit conference. The draft audit report shall include the MD&A, independent auditor's report, a complete set of financial statements, notes to the financial statements, required schedules, audit findings that include responses from agency management, status of prior-year audit findings, and the reports on internal control and compliance required by government auditing standards and the Single Audit Act. The agency will have at least 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.

(3) **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 has been officially released by the state auditor and 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 (Section 10-15-1 to 10-15-4 NMSA 1978), any closed meetings shall be held only after reasonable notice to the public.

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

(c) The attorney general's *Open Meetings Act Compliance Guide* states that if 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 audit report is officially released to the agency by the state auditor (by an authorizing letter) and the required waiting period of ten calendar days has passed, the audit report **shall** be presented to a quorum of the governing authority of the agency for approval at a public meeting. See SAS 114 Paragraph 34 through 36 for information that should be communicated to those charged with governance.

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

(1) SAS 99, *Consideration of Fraud in a Financial Statement Audit*, was effective for fiscal periods beginning on or after December 15, 2002 (FY04). This SAS significantly changed what auditors were required to 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 fraudulent actions; and

(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 implica-

tions;

(g) communicate about fraud to management, the audit committee, and others (SAS 99 Paragraph 79 through 82 and Paragraph (3) of Subsection K of 2.2.2.10 NMAC;

(h) document the auditor's consideration of fraud; and

(i) SAS 113 amends SAS 99 (effective FY08) by inserting two new footnotes in SAS 99 that link the auditor's consideration of fraud, assessment of risk and response to the assessed risks.

(2) GAGAS (2007) Paragraphs 4.10 to 4.13 state that "auditors should design the audit to provide reasonable assurance of detecting misstatements that result from violations of provisions of contracts or grant agreements and could have a direct and material effect on the determination of financial statement amounts or other financial data significant to the audit objectives. If specific information comes to the auditors' attention that provides evidence concerning the existence of possible violations of provisions of contracts or grant agreements that could have a material indirect effect on the financial statements, the auditors should apply audit procedures specifically directed to ascertaining whether such violations have occurred. When the auditors conclude that a violation of provisions of contracts or grant agreements has or is likely to have occurred, they should determine the effect on the financial statements as well as the implications for other aspects of the audit. Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement. If during the course of the audit, auditors become aware of abuse that could be quantitatively or qualitatively material to the financial statements, auditors should apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives. After performing additional work, auditors may discover that the abuse represents potential fraud or illegal acts. Because the determination of abuse is subjective, auditors are not required to provide reasonable assurance of detecting abuse."

(3) An agency or IPA, pursuant to Section 12-6-6 NMSA 1978 (Criminal Violations), shall notify the state auditor immediately, in writing, upon discovery of any violation of a criminal statute in con-

nection with financial affairs. The notification shall include an estimate of dollar amount involved, and a complete description of the violation, including names of persons involved and any action taken or planned. 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 the requirements of this rule subject to the **prior written approval** of the state auditor. A copy of the audit report must be provided to the state auditor.

(4) Section 12-6-6 NMSA 1978 states that 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.

L. Compensated absences:

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

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

(3) A liability for compensated absences should not be reported in the governmental fund balance sheet unless it was actually due and payable at year-end for payments due to retired or terminated employees, but not paid for until shortly after year end.

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

(5) GASBS 34 Paragraph 119 requires the following disclosures of the agency’s long-term compensated absences (and other long term liabilities) presented in the statement of net assets: beginning and end-of-year balances; increases and decreases shown separately; the portion due within one year; and which governmental funds typically have been used to liquidate the liabilities in prior years. GASBS 38 Paragraph 12 requires similar disclosures for the short-term debt activity during the year even if no short-term debt is outstanding at year-end.

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

N. Public monies:

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

(2) Compliance issues - The auditor should test for compliance with:

(a) the requirements of Sections 6-10-10(A) and (B) NMSA 1978, that county and municipal treasurers deposit money in banks, savings and loan association or credit unions located in **their respective counties**; and

(b) the requirements of Section 6-10-17 NMSA 1978, that the public official or public board has **received a joint safe keeping receipt** for pledged collateral from the custodial bank for the collateral delivered by the depository institution.

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

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council) and the statewide human resources accounting and management reporting system (SHARE) fund number (state agencies only);

(b) account name;

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

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

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

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

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

(f) the following rule pertains to audits of state agencies; with the implementation of the SHARE system, both the “book” and “bank” information reside on this unified system; there are no longer stand-alone systems providing single-source information; bank balance information is now available and retrievable at each state agency being audited; this information is identical to what DFA or the state treasurer can obtain from the system; the office of the state treasurer no longer can act in the capacity of an independent third-party to provide account balance confirmations to other agencies or auditors, IPAs can now access account balance information by having the agency run a query in SHARE; therefore, IPAs and state agencies should not request bank confirmations from the office of the state treasurer.

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

(i) Total on deposit in bank or credit union	\$450,000
(ii) Less: FDIC or NCUSIF coverage*	\$ <u>250,000</u>



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

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

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

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

\*The 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 (including bank money market accounts) and \$100,000 for demand deposits deposited within the state in compliance with 12 CFR Subsection 330.15. **Congress has temporarily increased FDIC deposit insurance from \$100,000 to \$250,000 per depositor through December 31, 2009. Changes have also been made to other account types. For more information, visit [www.fdic.gov](http://www.fdic.gov).**

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

(d) Per Sections 6-10-16(A) NMSA, "Deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten by a member of the national association of securities dealers, known as "N.A.S.D.", and are rated "BAA" or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank.

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

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

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

(5) Applicable standards:

(a) GASB Statement No. 40, **Deposit and Investment Risk Disclosures**, is effective for financial statements for periods beginning after June 15, 2004 (FY05). This statement requires disclosure of the following when applicable:

(i) "credit risk is disclosed by describing the credit quality ratings of investments in debt securities as described by rating agencies; obligations of the U.S. government or obligations explicitly guaranteed by the U.S. government are exempt;"

(ii) custodial credit risk for deposits should be disclosed as described above in subsection (4)(b); "investment securities are exposed to custodial credit risk when the securities are: uninsured and not registered in the name of the government, and are held by either the counterparty or the counterparty's trust department or agent, but not in the agency's name; disclosure for investments exposed to custodial credit risk should be by type of investment", the reported amount, and how the investments are held; investments in

external investment pools and in open-end mutual funds are not exposed to custodial credit risk;" custodial credit risk disclosure is required for securities lending collateral that is reported in the statement of net assets and for the underlying securities per guidance in GASB 40 Paragraph 10;

(iii) concentration of credit risk exists when an agency has investments in any one issuer that represent five percent or more of total investments of the agency or of a fund of the agency; disclosure by amount and issuer is required when concentration of credit risk exists for an agency; concentration of credit risk does not apply to investments issued by or explicitly guaranteed by the U.S. government or investments in mutual funds, external investment pools, and other pooled investments;

(iv) disclosure of an agency's interest rate risk related to debt investments should be organized by investment type, using one of the following five methods: segmented time distribution; specific identification; weighted average maturity; duration; or the simulation model; pooled investments that do not meet the definition of a 2a7-like pool should disclose interest rate risk information according to one of these methods; and

(v) "if an agency's deposits or investments are exposed to foreign currency risk, the government should disclose the U.S. dollar balances of such deposits or investments, organized by currency denomination and, if applicable, investment type."

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

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

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

(c) the pool does not have unit shares; per Section 6-10-10.1F NMSA 1978, at the end of each month all interest earned is distributed by the state treasurer to the contributing entities in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts were invested;

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

(e) the local government investment pool is rated AAAM (credit risk) by standard & poors; and

(f) the end of the fiscal year weighted average maturity (interest rate risk in number of days) is available on the state treasurer's website at www.stonm.org.

O. Budgetary presentation:

(1) Prior year balance included in budget:

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

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

(2) The differences between the budgetary basis and GAAP basis revenues

and expenditures should be reconciled.

**This reconciliation is required at the individual fund level.** If the required budgetary comparison information is included in the basic financial statements, the reconciliation should be included on the statement itself (preferred) or in the notes to the financial statements. If the budgetary comparison is presented as supplemental information as required by Subsection (3)(c) below, the reconciliation to GAAP basis should be presented at the bottom of the budgetary comparison. If the required budgetary comparison is presented as RSI [for reasons described below in subsection (3)(b) below] the reconciliation should appear in either a separate schedule or in notes to RSI according to the *AICPA Audit and Accounting Guide, State and Local Governments*, (AAG-SLV 11.14). Also, the notes to the financial statements should disclose any excess of expenditures over appropriations at the legal level of budgetary control.

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

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

(b) The required supplemental information section is the place where the budgetary comparisons should appear for the general fund and major special revenue funds if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for 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 budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data. See GASB Statement No. 41, *Budgetary Comparison Schedules - Perspective Differences*, Paragraphs 3 and 10. When budgetary comparisons have to be presented as required supplemental information (RSI) due to such perspective differences it is a requirement of the state auditor that they be audited and included in the auditor's opinion. See AAG-SLV 14.53 and AAG-SLV 14.79 (Example A-14) in the *AICPA Audit and Accounting Guide, State and Local Governments (latest edition)*.

(c) Supplemental information (SI) is the place where all other budgetary comparison information should appear except the general and major special revenue fund budgetary comparisons. Nonmajor governmental funds and proprietary funds that have legally adopted budgets (including budgets approved by a resolution) should have budgetary comparisons appearing in the SI section of the report. It is a requirement of the state auditor that budgetary comparison statements presented in the basic financial statements or as required supplemental information (RSI) or supplemental information (SI) be audited and included in the auditor's opinion. For an example of an opinion that includes SI or RSI see Example A-14 in the *AICPA Audit and Accounting Guide, State and Local Governments (latest edition)*.

P. Appropriations to agencies:

(1) The budgetary 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 at the legal level of budgetary control, that fact must be reported in a finding and disclosed in the notes to the financial statements. If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables required to balance the budget), that fact must also be reported in a finding since budget deficits are generally not allowed. If the agency budgets cash or fund balance that did not exist at the beginning of the fiscal year, a finding should be reported.

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

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

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

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

(1) Internal control:

(a) SAS No. 105, *Amendment to Statement on Auditing Standards No. 95, Generally Accepted Auditing Standards*, is

effective for audits of periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS updates the scope of the second standard of field work, revises the third standard of field work, and also adds clarifying terminology to the standards of field work.

(b) SAS No. 109, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*, is effective for audits of periods beginning on or after December 15, 2006 (FY08) with earlier application permitted. SAS 109 requires the auditor to obtain an expanded understanding of the entity and also the environment in which the entity operates. Paragraph 122 of SAS 109 lists additional documentation requirements of this new SAS.

(c) SAS No. 112, *Communicating Internal Control Related Matters Identified in an Audit*, is effective for audits of periods ending on or after December 15, 2006 (FY07), with earlier application permitted. This SAS requires the auditor to communicate in writing, to management and those charged with governance, significant deficiencies and material weakness identified in an audit. See Paragraph (1) of Subsection I of 2.2.2.10 NMAC above, for definitions of significant deficiencies and material weaknesses. See the additional audit rule requirement per section Paragraph (8) of Subsection I of 2.2.2.10 NMAC, that the auditor also report any deficiencies in internal controls, abuse or immaterial violations of provisions laws, regulations, contracts or grant agreements that do not rise to the level of significant deficiencies or material weaknesses under SAS 112 but are required to be reported by Section 12-6-5 NMSA 1978 and GAGAS 5.14 and 5.16 (2007).

(2) All financial audits performed under this rule are required to include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. Inquiry alone is not sufficient testing of internal controls. The requirement to test internal controls applies even in circumstances when the auditor has assessed control risk at maximum. **This is a special requirement of the state auditor.** This requirement does not require an auditor to retest controls previously tested during the performance of a SAS 70 audit, when the auditor is relying on the SAS 70 audit report.

(3) Risk assessment:

(a) SAS No. 104, *Amendment to Statement on Auditing Standards No. 1, Codification of Auditing Standards and Procedures ("Due Professional Care in the Performance of Work")*, is effective for periods beginning on or after December 15,

2006 (FY08) with earlier application permitted. The SAS expands the definition of the term reasonable assurance.

(b) SAS No. 110, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*, is effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS provides the auditor with guidance in: (1) determining overall responses to address risks of material misstatement at the financial statement level; (2) designing and performing further audit procedures that are responsive to the assessed risks of material misstatement at the relevant assertion level; and (3) evaluating whether the risk assessments remain appropriate and to conclude whether sufficient appropriate audit evidence has been obtained; and (4) the related documentation.

(c) SAS No. 111, *Amendment to Statement on Auditing Standards No. 39, Auditing Sampling*, is effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS amends SAS No. 39 regarding auditing sampling to incorporate guidance from SAS No. 107, *Audit Risk and Materiality in Conducting an Audit*, and from SAS No. 99, *Consideration of Fraud in a Financial Statement Audit*, and from SAS No. 110, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*. This SAS also enhances guidance relating to the auditor's judgment about establishing tolerable misstatement for a specific audit procedure and on the application of sampling to tests of controls.

(d) SAS No. 113, *Omnibus Statement on Auditing Standards*, Paragraphs 1 through 5 are effective for periods beginning on or after December 15, 2006 (FY08) with earlier application permitted. This SAS clarifies terminology used to describe professional requirements imposed on auditors in the 10 standards. This SAS adds to SAS No. 99, *Consideration of Fraud in a Financial Statement Audit*: (1) footnote 15 linking the auditor's consideration of fraud to the auditor's assessment of risk; and (2) footnote 21 linking the auditor's consideration of fraud and the auditor's response to assessed risks.

R. Lease purchase agreements:

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

**Gabaldon**, 108 N.M. 94, 766 P.2d 1328).

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

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

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

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

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

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

(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 8.12).

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

(i) At the time of the lease purchase, record the capitalized asset and related credit to net assets-invested in capital assets, net of related debt. The amount recorded is generally the lesser of

the net present value of the minimum lease payments or the fair value of the leased property excluding executory costs and profit (NCGAS 5 Paragraph 16 and AAG-SLV 7.33).

(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) Per GASB 34 Paragraph 33, 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.

S. Interfund activity: Under the GASBS 34 reporting model (AAG-SLV 9.07) interfund activities and balances that must be reported are:

(1) "interfund loans that are generally reported as interfund receivables/payables;

(2) interfund services provided and used that generally appear as revenues and expenditures/expenses;

(3) interfund transfers that appear as other financing sources/uses or after non-operating revenues/expenses; and

(4) interfund reimbursements that should appear as expenditures/expenses only in the funds that are responsible for them."

T. Required auditor's reports:

(1) The independent auditor's report should follow the examples contained in the *AICPA Audit and Accounting Guide, State and Local Governments (latest edition)*, Appendix 14A-Illustrative Auditor's Reports. Example A-14 illustrates how to opine on the basic financial statements and the combining and individual fund financial statements presented as supplementary information. See also the guidance provided in Chapter 14, Appendix A, Footnote 3 regarding wording that should be used when opining on budgetary statements. All independent auditor's reports should include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America and with applicable *Government Auditing Standards* per GAGAS 5.05 (July 2007). This statement should be modified in accordance with GAGAS 1.12b (July 2007) if some GAGAS requirements were not followed. As applicable, the first sentence of the SAS 29 opinion paragraph should state that the audit was conducted for the purpose of forming opinions on the basic financial statements, the combining and individual financial state-

ments, and the budgetary comparisons.

(2) Dating of the independent auditor's report:

(a) SAS No. 103, *Audit Documentation*, became effective for audits of periods ending on or after December 15, 2006 (FY07) with earlier application permitted.

(b) The independent auditor's report should be dated no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion:

(i) there should be evidence that the audit documentation has been reviewed;

(ii) the agency financial statements including disclosures have been prepared;

(iii) agency management has asserted that it has taken responsibility for the financial statements; and

(iv) the report date will ordinarily be close to the report release date (the date the auditor grants the agency permission to use the auditor's report in connection with the financial statement); delays in releasing the report may require the auditor to perform additional procedures regarding subsequent events per SAS No. 1, *Codification of Auditing Standards and Procedures*.

(v) SAS No. 113, *Omnibus Statement on Auditing Standards-2006*, Paragraphs 7 through 14 are effective for audits of periods ending on or after December 15, 2006 (FY07), with earlier application permitted; this SAS amends SAS numbers 101, 59, 57, and 1 to **change old references to completion of fieldwork to the date of the auditor's report** because SAS 103 changed the date of the audit report from the date of completion of fieldwork to "the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion on the financial statements"; SAS 113 also amends SAS 85 so that the date of the management representations is "the date of the auditor's report."

(3) **The report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards** should follow the AICPA report examples that have been updated for the implementation of SAS No. 112. The report examples are available on the AICPA governmental audit quality center website at [www.gaqc.aicpa.org](http://www.gaqc.aicpa.org). Click on illustrative auditor's reports now available" and choose "illustrative auditor's reports under government auditing standards." The state auditor requires these report examples to be modified as described in Paragraph (8) of

Subsection I of 2.2.2.10 NMAC above when the auditor detects deficiencies in internal controls or immaterial violations of provisions of contracts or grant agreements or abuse (that do not rise to the level of significant deficiencies or material weaknesses under SAS 112) that must be reported pursuant to Section 12-6-5, NMSA 1978 and GAGAS 5.14 and 5.16 (July 2007).

(a) The state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be **dated the same date as the independent auditor's report**.

(b) Section 12-6-5 NMSA 1978, states that each report shall set out in detail, in a separate section, any violation of law or good accounting practices by the audit or examination. Therefore, all findings must be reported in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards.

(c) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency will be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Paragraph (3) of Subsection J of 2.2.2.8 above, regarding this issue.

(4) **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 report examples that have been updated for SAS 112 should be used. They are available on the AICPA governmental audit quality center website at [www.gaqc.aicpa.org](http://www.gaqc.aicpa.org). Click on "Illustrative Auditor's Reports Now Available" and choose "illustrative auditor's reports under circular A-133."

(5) One report cover: The state auditor requires the following reports to be **included under one report cover**: the independent auditor's report; Report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards (required by GAGAS 5.07 and SAS 112); and the report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133, if applicable, the independent auditor's report must include the SAS 29 opinion on the schedule of expenditures of federal awards and the HUD financial data schedule (required by SAS AU 551 and

HUD Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards). The report must also contain a table of contents and an official roster. 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.

U. Service organizations:

(1) An auditor should obtain an understanding of each of the five components of the agency's internal control sufficient to plan the audit. This understanding may encompass controls placed in operation by the agency and controls placed in operation by a service organization whose services are part of the agency's information system. According to SAS AU 324.03, a service organization's activities are part of an agency's information system if they affect any of the following:

(a) the classes of transactions in the agency's operations that are significant to the agency's financial statements;

(b) the procedures, both automated and manual, by which the entity's transactions are initiated, recorded, processed, and reported from their occurrence to their inclusion in the financial statements;

(c) the related accounting records, whether electronic or manual, supporting information, and specific accounts in the agency's financial statements involved in initiating, recording, processing and reporting the agency's transactions;

(d) how the agency's information system captures other events and conditions that are significant to the financial statements; and

(e) the financial reporting process used to prepare the entity's financial statements, including significant accounting estimates and disclosures.

(2) When an agency uses a service organization that affects the agency's financial statements (as described above), the agency's auditor must obtain an understanding of the internal controls of both the agency and the internal controls of the service organization in order to plan the audit. The auditor's understanding of the service organization's internal controls can be obtained either by the auditor performing procedures to obtain the understanding, or by the auditor relying on a SAS 70 audit performed by another auditor. The understanding obtained should be documented.

(3) Some examples of service organizations and potential service organizations are:

(a) the New Mexico statewide human resources accounting and management reporting system (SHARE) system;

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

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

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

(e) public housing authority fee accountants; and

(f) tax collection authorities.

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

V. Disposition of property:

(1) Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of obsolete, worn-out or unusable tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least thirty days prior to any such disposition of property on the agency inventory list described below in Subsection Y of 2.2.2.10 NMAC, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action must be sent to the state auditor.

(2) In the event a computer is included in the planned disposition, the agency shall "sanitize" 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 \$5,000 and was not included in the capital asset inventory. According to the May 5, 2002 memorandum from the chief information technology security and privacy office 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 \$5,000.

W. Joint powers agreements and memorandums of understanding:

(1) All joint powers agreements

(JPA) and memorandums of understanding (MOU) must be listed in a supplementary schedule in the audit report. The schedule should include the following information for each JPA or MOU:

(a) participants;

(b) party responsible for operations;

(c) description;

(d) beginning and ending dates of the JPA or MOU;

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

(f) amount the agency contributed in current fiscal year;

(g) audit responsibility;

(h) fiscal agent if applicable; and

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

(2) For self-insurance obtained under joint powers agreements or memorandum of understanding, see Subsection X of 2.2.2.10.NMAC (self-insurance).

X. Self insurance: Those agencies that have self-insurance agreements should disclose the data in the notes to the financial statements. The note should include the name of the agency that is providing the insurance and the amount of contribution by the agency to the fund during the year. There should be full disclosure in the notes to the financial statements per the requirements of GASBS 10.

Y. Capital asset inventory:

(1) The Audit Act (Section 12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment that cost over \$5,000. All agencies are required to update their capitalization policies and implement it in accordance with the law. This change in capitalization threshold should be accounted for prospectively as a change in estimate per APB 20 paragraph 31. Older capital assets that were capitalized under previous lower capitalization thresholds should not be removed from the capital assets list during the implementation of this latest capitalization threshold amount. Any new items received after June 17, 2005 should be added to the inventory list only if they meet the new capitalization threshold. Regarding safeguarding and management of assets that do not meet the capitalization threshold, the state auditor encourages agencies to maintain a separate accountability report for those items that cost \$5,000 or less.

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

## Z. Audit documentation:

(1) SAS No. 103, *Audit Documentation*, supersedes SAS No 96 and SAS AU 339, *Audit Documentation*, and amends SAS AU 530, *Dating of the Independent Auditor's Report*. This SAS is effective for audits of financial statements for periods ending on or after December 15, 2006 (FY07), with earlier application permitted establishes.

(2) See Paragraphs 10, 13, 14, 18, 20, 22, 26, 27, and 34 for some of the specific principles of audit documentation clarified by SAS No. 103. Note that this SAS requires the audit file to be completed 60 days after the report release date.

(3) The Appendix of SAS No. 103 includes references to various other SAS requirements for documentation.

(4) There are additional documentation requirements set forth in several of the other new SAS's that become effective in FY08. The auditor should follow the SAS guidance regarding these documentation requirements.

AA. GASBS 34 implementation issues: Agency funds are excluded from the statement of changes in fiduciary net assets (GASBS 34 Paragraph 110) because they have no "net assets." Therefore it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the agency funds be included as supplemental information (SI) for all agencies that have agency funds. This schedule should appear toward the end of the table of contents and requires a SAS 29 opinion in the independent auditor's report. See also Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC for more information regarding the presentation of the statements of changes in assets and liabilities - agency funds for school districts.

BB. Accounting for forfeiture property:

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

(2) Once the judgment of forfeiture is made, the property should be accounted for in a special revenue fund because the revenues are legally restricted for specified purposes. The balance sheet of such a special revenue fund that accounts for seized property may have zero balances at the end of a fiscal year because net balance amounts may have been transferred to the general fund of the governing body of the seizing law enforcement agency, or the general fund to be used for drug abuse treatment services, for drug prevention and education programs, for other substance abuse demand-reduction initiatives or for enforcing narcotics law violations. Exceptions are

forfeitures of property arising from: violations of hunting or fishing regulations that must be deposited in the game protection fund; and violations against cultural properties that must be used for the restoration of the affected cultural property, with net balances being deposited into the general fund.

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

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

CC. SAS No. 106, *Audit Evidence*: SAS 106 supersedes SAS No. 31, *Evidential Matter*, as amended, and is effective for audits of financial statements for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This statement provides guidance about the third standard of field work, obtaining audit evidence. SAS 106 Paragraph 22 requires tests of controls in two sets of circumstances. However, the audit rule requires tests of controls in every audit, pursuant to Paragraph (2) of Subsection Q of 2.2.2.10 above. SAS 106 also discusses qualitative aspects that the auditor considers with regard to audit evidence.

DD. SAS No. 107, *Audit Risk and Materiality in Conducting an Audit*: SAS No. 107 supersedes SAS No. 47, *Audit Risk and Materiality in Conducting an Audit*, as amended, and is effective for audits of financial statements for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. SAS 107 Paragraph 19 requires the auditor to consider audit risk at the individual account balance, class of transactions, or disclosure level.

EE. SAS No. 108, *Planning and Supervision*: This statement supersedes *Appointment of the Independent Auditor* as amended, of Statement on Auditing Standards No. 1 and SAS No. 22, *Planning and Supervision*, as amended. SAS No. 108 is effective for audits of financial statements for periods beginning on or after December 15, 2006 (FY08). This statement requires the auditor to plan the audit so it is responsive to the assessment of the risk of material misstatement and to change the audit strategy as appropriate throughout the audit.

FF. Financial reporting for postemployment benefit plans (OPED) other than pension plans: GASBS 43

**requirements for OPEB plan reporting** are effective (FY07, FY08, and FY09) one year prior to the effective date of the related statement for the employer (single-employer plan) or for the largest participating employer in the plan (multiple-employer plan). The requirements of the related statement are effective in three phases based on a government's total annual revenues, as defined in that statement, in the first fiscal year ending after June 15, 1999—the same criterion used to determine a government's phase for implementation of GASBS 34. The statement establishes uniform financial reporting standards for OPEB plans and supersedes the interim guidance included in Statement No. 26, *Financial Reporting for Postemployment Healthcare Plans Administered by Defined Benefit Pension Plans*. The approach followed in this statement generally is consistent with the approach adopted in Statement No. 25, *Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans*, with modifications to reflect differences between pension plans and OPEB plans. GASBS 43 Paragraphs 16 through 40 provide reporting requirements for OPEB plans that are **administered as trusts**, or equivalent arrangements. If the fund used to accumulate assets and to pay benefits in a multiple-employer OPEB plan does not meet the trust-type criteria described in GASBS 43 Paragraph 4, the plan administrator or sponsor should report the fund as an **agency fund**, following the guidance of GASBS 43 Paragraph 41. GASBS 45 "establishes standards for the measurement, recognition, and display of OPEB, expense/expenditures and related liabilities (assets), note disclosures, and if applicable, required supplementary information (RSI) in the financial reports of state and local governmental employers. From an accrual accounting perspective, the cost of OPEB, like the cost of pension benefits, generally should be associated with the periods in which the exchange occurs, rather than with the periods (often many years later) when benefits are paid or provided. This statement improves the relevance and usefulness of financial reporting by (a) requiring systematic, accrual-basis measurement and recognition of OPEB cost (expense) over a period that approximates employees' years of service and (b) providing information about actuarial accrued liabilities associated with OPEB and whether and to what extent progress is being made in funding the plan." Implementation is required in three phases: FY08; FY09; and FY10. A government's total annual revenues in the first fiscal year ending after June 15, 1999, determines which phase applies to it. All state agencies are required to implement GASBS 45 in FY08 because

they are part of the state. For employers that participate in the state's retiree health care authority's postemployment benefit plan, the notes to the financial statements must include the standard note disclosure for the plan which is posted on the office's website under "audit firms/report review guides." The standard note disclosure will comply with the requirements of GASBS 45.24.

GG. GASBS No. 48, *Sales and Pledges of Receivables and Future Revenues and Intra-Entity Transfers of Assets and Future Revenues*: "The requirements of GASB Statement No. 48 are effective for financial statements for periods beginning after December 15, 2006 (FY08). This statement establishes criteria that governments will use to determine whether the proceeds received from the sale or pledge of receivables and future revenue should be reported as revenue or as a liability. The transaction will be treated as a collateralized borrowing unless the criteria are met that indicate a sale has taken place. The statement also stipulates that governments should not revalue assets that are transferred between financial reporting entity components. The statement also includes guidance to be used for recognizing other assets and liabilities arising from a sale of specific receivables or future revenues, including residual interests and recourse provisions."

HH. GASBS No. 49, *Pollution Remediation Obligations*: The requirements of this statement are effective for financial statements for periods beginning after December 15, 2007 (FY09). "This statement addresses accounting and financial reporting standards for pollution (including contamination) remediation obligations, which are obligations to address the current or potential detrimental effects of existing pollution by participating in pollution remediation activities such as site assessments and cleanups. Once any of five specified obligating events occurs, a government is required to estimate the component of expected pollution remediation outlays and determine whether outlays for those components should be accrued as a liability or, if appropriate, capitalized when goods and services are acquired."

II. GASBS 50, *Pension Disclosures*: This statement is effective for periods beginning after June 15, 2007 (FY08). "This statement is intended to improve the transparency and usefulness of financial reporting by pension plans and employers by amending Statements 25 and 27 to conform with the applicable note disclosure and RSI modifications adopted in the OPEB Statements, 43 and 45." For employers that participate in the retirement plans administered by the public employees retirement association or the educational retirement board, the notes to the financial

statements must include the standard note disclosure for the plan which is posted on the office's website under "audit firms/report review guides." The standard note disclosures will comply with the requirements of GASBS 27.20 and 50.7.

JJ. GASBS 51, *Accounting and Financial Reporting for Intangible Assets*: This statement is effective for periods beginning after June 15, 2009 (FY10), and earlier application is encouraged. "The objective of this statement is to establish accounting and financial reporting requirements for intangible assets and reduce inconsistencies in the areas of recognition, initial measurement, and amortization, thereby enhancing the comparability of the accounting and financial reporting of such assets among state and local governments."

KK. GASBS 52, *Land and Other Real Estate Held as Investments by Endowments*: "This statement is effective for financial statements for periods beginning after June 15, 2008 (FY09). Earlier application is encouraged. "In the first period this statement is applied, the financial statements should disclose the nature of the restatement and its effect." "This statement establishes consistent standards for the reporting of land and other real estate held as investments by essentially similar entities. It requires endowments to report their land and other real estate investments at fair value. Governments also are required to report the changes in fair value as investment income and to disclose the methods and significant assumptions employed to determine fair value, and other information that they currently present for other investments reported at fair value." "This statement does not apply to lands granted by the federal government in connection with a state being admitted to the United States."

LL. GASBS 53, *Accounting and Financial Reporting for Derivative Instruments*: The requirements of this statement are effective for financial statements for periods beginning after June 15, 2009 (FY10). Earlier application is encouraged. This statement addresses the recognition, measurement, and disclosure of information regarding derivative instruments entered into by state and local governments. Derivative instruments are often complex financial arrangements used by governments to manage specific risks or to make investments. By entering into these arrangements, governments receive and make payments based on market prices without actually entering into the related financial or commodity transactions. Derivative instruments associated with changing financial and commodity prices result in changing cash flows and fair values that can be used as effective risk management or investment tools. Derivative instru-

ments, however, can also expose governments to significant risks and liabilities. Common types of derivative instruments used by governments include interest rate and commodity swaps, interest rate locks, options (caps, floors, and collars), swaptions, forward contracts, and futures contracts.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 2-27-09]

#### 2.2.2.11 THE ACCOUNTABILITY IN GOVERNMENT ACT:

A. This section applies to agencies that have performance measures associated with their budgets. The purpose of the Accountability in Government Act (Section 6-3A-1 to 6-3A-9 NMSA 1978) is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

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

C. The auditor's responsibilities for performing procedures and reporting on required supplemental information (RSI) 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 the 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 proce-

dures, if any, that other AICPA SASSs, SAS interpretations, audit and accounting guides, or statements of position prescribe for specific types of RSI.

E. Make additional inquiries 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, 2-27-09]

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

**A. PERTAINING TO AUDITS OF STATE AGENCIES:**

(1) Due dates for agency audits: Section 12-6-3(C), NMSA 1978 states that state agency reports are due no later than 60 days after the financial control division of DFA provides the state auditor with notice that the agency's books and records are ready and available for audit. The financial control division 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 shall immediately write a dated letter to the state auditor describing the problems. The letter must have a concurring signature from the head of the audited agency, the audit committee or board of directors or equivalent oversight body, or an individual who possesses a sufficient level of authority and responsibility for the financial reporting process, such as the chief financial officer. The financial control division of the department of finance administration must be sent a photocopy of the letter.

(2) Materiality at **the individual fund level** means at the individual statewide human resources accounting and management reporting system (SHARE) fund level for state agencies. All the individual SHARE funds should be reported in the financial statements and opined on in the independent auditor's report.

(3) Accounts payable at year-end: If goods and services were received by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable should be recorded for the respective amount due in both the government-wide financial statements and the fund financial statements (NCGAS 1 Paragraph 70). Per Section 6-10-4 NMSA 1978, the "actual" expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore required a request to DFA to pay prior year bills out of current year budget. They will be paid out of the budget of the following fiscal year. An agency's reversions should be calculated using the budgetary basis expenditures because the agency does not have the legal right to keep the cash related to accounts payable that were not paid timely. This will result in a negative fund balance in the modified accrual basis financial statements of a reverting fund.

(4) Net assets/fund balance:

(a) The government-wide statement of net assets and the proprietary fund balance sheet should show net assets as: (1) invested in capital assets, net of related debt; (2) restricted; and (3) unrestricted. GASBS 34 Paragraphs 33 through 37 explain the components of net assets. Net assets are restricted when constraints placed on net asset use are either: externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or imposed by law through constitutional provisions or enabling legislation. Per GASBS 46 Paragraph 6 the definition of "legally enforceable" should be included in deter-

mining the net assets that are shown as "restricted." Note that restricted net assets are not the equivalent of reserved fund balances. Encumbrances should not be shown as restricted net assets. The amount of the government's net assets that are restricted by enabling legislation at the end of the reporting period should be disclosed in the notes.

(b) Governmental fund financial statement fund balances should be segregated into reserved fund balances and unreserved and legally designated fund balances (GASBS 34 Paragraph 84). In general, an agency should show reserved fund balance related to encumbrances (only for an appropriation period that extends beyond the fiscal year), inventories, and petty cash. All other reservations must be specifically required or authorized by legislation and the notes to the financial statements must disclose the specific legal authority for all such 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 (GASBS 34 Paragraph 84).

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

(5) Books of record:

(a) DFA maintains a statewide human resources accounting and management reporting system (SHARE). DFA provides: a three-volume set of DFA model accounting practices (MAPs) that describes state agency accounting policies, procedures, and document processing; a GASBS 34 implementation guide; and various white papers. These documents provide guidance for an auditor regarding policy and procedure requirements and they are available on DFA's website at [www.dfafcd.state.nm.us](http://www.dfafcd.state.nm.us).

**The SHARE data and reports are the original books of record that the auditor is auditing.** If the agency maintains a separate accounting system it should be reconciled with the SHARE system.

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



Appropriation Unit Code	Appropriation Unit Description
200	Personal Services & Employee Benefits
300	Contractual Services
400	Other
500	Other Financing Uses
600	Non-budgeted

Revenue categories of appropriations to state agencies are listed below. The budgetary comparison statements for state agencies must be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency's final approved budget:

- (i) state general fund;
- (ii) other state funds;
- (iii) internal service funds/inter-agency transfers; or
- (iv) federal funds.

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

(6) Reversions to state general fund:

(a) All reversions to the state general fund must be identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund -FY 09). The gross amount of the appropriation and the gross amount of the reversion must be shown separately.

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

(7) Nonreciprocal (not payments for materials or services rendered) interfund (internal) activity includes (a) transfers (redefined to include activities previously known as "operating transfers" and "residual equity transfers") and (b) reimbursements (GASBS 34 Paragraph 410):

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

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

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

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

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

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

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

(e) Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements should not be

reported as interfund activity in the financial statements.

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

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

(10) Independent auditor's report:

(a) The independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Section 11, **must include an explanatory paragraph preceding the opinion paragraph**. The explanatory paragraph should reference the summary of significant accounting principles disclosure regarding the reporting agency, and indicate that the financial statements are intended to "present the financial position and changes in financial position and, where applicable, cash flows of only that portion of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the state that is attributable to the transactions of the department. They do not purport to, and do not, present fairly the financial position of the state as of June 30, 20XX, the changes in its financial position, or where applicable, its cash flows for the year then ended." See Example A.16 in Appendix A of AAG-SLV 14.79 in the *AICPA Audit and Accounting Guide State and Local Governments* (latest edition).

(b) A statement should be included that the audit was made in accordance with generally accepted government auditing standards per GAGAS (2007) Paragraphs 5.05 and 1.12 and 1.13.

(11) Budgetary basis for state agencies: Per the General Appropriation Act, Laws of 2007, Chapter 28, Section 3, item N, "For the purpose of administering the General Appropriation Act of 2007 and approving operating budgets, the state of



New Mexico shall follow the modified accrual basis of accounting for governmental funds in accordance with the manual of model accounting practices issued by the department of finance and administration.” The budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get paid by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely must be paid out of the next year’s budget. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of twelve months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the budget also lapses and encumbrances can no longer be charged to that budget. The legal level of budgetary control should be disclosed in the notes to the financial statements.

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

(a) The state treasurer’s office (STO) administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO should not report in its basic financial statements bonds payable that are obligations of the state of New Mexico. The proper reporting of these payables and the related bond face amounts (proceeds) is in the state’s comprehensive annual financial report (CAFR). The STO audit report, notes to the financial statements must: (1) explain the following: by statute STO is responsible for making the state’s bond payments and keeping the related records; however, it is not responsible for the related debt, the state is; and (2) refer the reader to the detailed supplemental information in the STO audit report and the statewide CAFR. The STO’s financial statements include **audited** supplemental information (SI) regarding the state of New Mexico bond obligations. The SI schedules must show: (1) the beginning and end-of-year bond payable balances, increases and decreases (separately presented), and the portions of each bond issuance that are due within one year, as required by GASBS 34 Paragraph 119; (2) the details of debt service requirements to maturity required by GASBS 38 Paragraph 10; and (3) any violations of bond covenants and related actions taken to address violations of bond covenants, required by GASBS 38 Paragraph 9 and Section 12-6-5 NMSA 1978.

(b) State agencies that receive or administer any special capital outlay appropriations from the state legislature that are financed by bond proceeds should account for the transactions as follows:

(i) The transactions (revenues, expenditures, and related assets and liabilities) accounted for by state agencies that manage the capital project activity and request draw downs (capital project disbursements) from DFA’s board of finance division (DFA-BOF) should be recognized in accordance with GASBS 33 as detailed in the instructions (“accounting and financial statement presentation of appropriated bond proceeds”) that are posted on DFA’s financial control division (DFA-FCD) website at <http://fcdsu.dfa.state.nm.us/forums>. The revenues (other financing sources - transfers in) and receivables should be recognized when all of the eligibility requirements established by the board of finance (2.61.6 NMAC) have been met and the resources are available (when DFA-BOF approves the draw down request).

(ii) In the statement of activities, the bond proceeds for the capital project should be reported as transfers in - general obligation bond appropriation or severance tax bond appropriation.” In the statement of revenues, expenditures, and changes in fund balances - special revenue fund, the bonds proceeds should be reported under other financing sources as transfers in - general obligation bond proceeds or severance tax bond proceeds.” The expense should be reported at the program level in the statement of activities, and the expenditure should be reported at the appropriation unit level in the fund financial statements. A special revenue fund should be used to account for the bond proceeds and related expenditures. Refer to DFA’s instructions to review the applicable journal entries.

(iii) In the notes to the financial statements, agencies should disclose that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients, and the agency is not obligated in any manner for the related indebtedness. Agencies should also disclose the specific revenue recognition policy for these appropriations.

(iv) The budgetary comparisons for the capital project activity should be presented in accordance with the instructions (“budgetary presentation for multi-year appropriations”) posted on DFA’s website at <http://fcdsu.dfa.state.nm.us/forums>.

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

(14) Investments in the state treasurer’s general fund investment pool

(GFIP): These investments should be recorded as investments on the statement of net assets and the balance sheet, not as cash or cash equivalents. The notes to the financial statements should contain the following disclosures for the GFIP as required by GASBS 40:

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

(b) Interest rate risk:

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

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

(iii) a statement that the agency does not have an investment policy that limits investment interest rate risk.

(c) The disclosure should also refer the reader to the separate audit report for the state treasurer’s office for additional information regarding the GFIP.

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

## **B. PERTAINING TO HOUSING AUTHORITIES:**

(1) Housing authorities within the state of New Mexico consist of regional housing authorities, component units or departments of local governments, component units of housing authorities, and a component unit of the state of New Mexico.

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

(a) Discrete presentation shows financial data of the component unit in a column, to the right of and separate from the financial data of the primary government. See GASBS 14 Paragraphs 44 through 50 for additional guidance.

(b) The primary government in cooperation with its auditor must make the determination whether the housing authority is a component unit of the primary gov-

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

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

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

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

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

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

(a) Local governments are encouraged to include representatives from the public housing authorities that are departments in the IPA selection process.

(b) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold a separate entrance and exit conference with housing authority's management and a member of the governing board.

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

(a) must account for financial activity in proprietary funds;

(b) are authorized by the amendment to Section 12-6-3(D) NMSA 1978, in Senate Bill 263, "at the public housing authority's discretion, to be audited separately from the audit of its local primary government entity; if a separate audit is made, the public housing authority audit shall be included in the local primary gov-

ernment entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity;" the amendment further stipulates in Section 12-6-4(A) NMSA 1978, that "a public housing authority (other than a regional housing authority) shall not bear the cost of an audit conducted solely at the request of its local primary government entity."

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

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

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

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

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

(v) All component unit findings must be disclosed in the primary government's audit report.

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

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

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

(a) Housing authority audit contracts must include the cost of the audit firm's SAS 29 opinion on the financial data schedule (FDS) if the public housing authority expended \$500,000 or more of federal funds or is part of a local government that expended \$500,000 or more of federal funds. The PHA must electronically submit a final approved FDS based on the audited financial statements no later than 9 months after the PHA's fiscal year end. The auditor must:

(i) electronically report on his comparison of the electronic FDS

submission in the REAC staging data base through the use of an ID and password;

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

(iii) render a SAS 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.**

(b) 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 U of 2.2.2.10 NMAC, 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 is the auditor who reports on the processing of transactions by a service organization. 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) The IPA shall provide the housing authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the housing authority.

(6) Single audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority schedule of expenditures of federal awards, then the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation the housing

authority federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards. See Paragraph 6.12 of *the AICPA Audit Guide, Government Auditing Standards* and *Circular A-133* audits for more information regarding this issue.

### 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) Audit planning level of materiality:

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

(b) If a 501(c) 3 component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-1 NMSA 1978 requires that entity to be audited regardless of its materiality in relation to the primary government.

(3) Regional education cooperative (REC) audits:

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

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

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

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

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

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

(b) The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule will account for cash in the same categories as used by the district in its monthly cash reports to the PED.

(c) On-behalf payments of salaries and fringe benefits made for school district employees by RECs must be accounted for in accordance with GASB Cod. Sec. N50.129 through .133 and disclosed in accordance with Sec. N50.134. "Employer governments should obtain information about the amount of on-behalf payments for fringe benefits and salaries from the paying entity or the third-party recipient; inter-entity cooperation is encouraged. If information cannot be obtained from those sources, employer governments should make their best estimates of the amounts" (GASBS 24 Paragraph 9).

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

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

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

(g) Functions of the general fund: The school district audit reports must include individual fund financial statements and budgetary comparisons for the following functions of the general fund: opera-

tional, transportation, instructional material, and teacherage (if applicable).

(5) Pertaining to charter schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board 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 GASBS 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. Charter schools chartered by the public education department (PED) pursuant to the Charter Schools Act (Section 22-8B-1 through 17 NMSA 1978) are component units of PED for financial reporting purposes. The charter schools must be included in the financial statements of their sponsoring school districts or PED by discrete presentation. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government.

(c) The financial statement for charter schools should be presented and opined on in the following manner:

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

(ii) When separate audited financial statements are not available for a charter school, the fund financial statements for that charter school must be presented in the primary government's financial statements on the modified accrual basis of accounting. If applicable, combining and individual fund financial statements should also be presented for the non-major funds. The financial statements should be presented as supplemental information (SI) according to AAG-SLV 3.20 (latest edition).

(d) The state auditor requires that

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

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

**D. PERTAINING TO COUNTIES:**

(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: audit reports for counties must include two supplementary schedules. The first one is a “tax roll reconciliation of changes in the county treasurer’s property taxes receivable” showing the June 30th receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Section 7-38-81(C) NMSA 1978, property taxes that have been delinquent for more than ten years, together with any penalties and interest, are presumed to have been paid. The second schedule titled “county treasurer’s property tax schedule” must show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. Property taxes levied in January 2008 are budgeted for the fiscal year July 1, 2008 through June 30, 2009. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, a finding is required to be reported.

(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, 2009	
Property taxes receivable, beginning of year	\$ 641,290
Changes to Tax Roll:	
Net taxes charge d 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, 2009	(4,330,993)
Property taxes receivable, end of year	<u>\$ 773,821</u>
Property taxes receivable by years:	
2000-2008	226,344
2009	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 higher education department (HED) 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 HED approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Budgetary comparisons: The legal level of budgetary control per 5.3.4.10 NMAC should be disclosed in the notes to the financial statements. The state auditor requires that every college and university’s audit report include budgetary comparisons as supplementary information (SI). **The budgetary comparisons must be audited and an auditor’s opinion must be rendered.** A SAS 29 opinion does not meet this requirement. See Section 14.53 of the *AICPA Audit and Accounting Guide, State and Local Governments (2008)* (AAG-SLV). The budgetary comparisons must show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column. The auditor must confirm the final adjusted and approved budget with the HED. The auditor’s opinion on the budgetary comparisons should follow Example A-14 in AAG-SLV 14.79 (2008) and footnote 3. A reconciliation of actual revenue and expense

amounts on the budgetary basis to the GAAP basis financial statements should be disclosed at the bottom of the budgetary comparisons (preferred) or in the notes to the financial statements. The reconciliation is required only at the “rolled up” level of unrestricted and restricted - all operations and should include revenues and expenses. The HED approved the following format which must be used for the budgetary comparisons:

(a) Unrestricted and restricted - all operations (Schedule 1)
Beginning fund balance: Unrestricted and restricted revenues: State general fund appropriations, federal revenue sources, tuition and fees, land and permanent fund, endowments and private gifts, other
Total unrestricted and restricted revenues
Fund balance budgeted
Total unrestricted and restricted revenues and fund balance budgeted
Unrestricted and restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant, student social and cultural activities, research, public service, internal service, student aid grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness, other (student aid, grants and stipends; and independent operations)
Total unrestricted and restricted expenditures
Change in fund balance net assets (budgetary basis) , ending fund balance
(b) Unrestricted - Non Instruction & General (Schedule 2)
Beginning fund balance: Unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Fund balance budgeted
Total unrestricted revenues and fund balance budgeted
Unrestricted expenditures: Student social and cultural activities, 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 : net transfers
Change in fund balance (budgetary basis) ,ending fund balance
(c) Restricted - Non-Instruction and General (Schedule 3)
Beginning fund balance: Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Fund balance budgeted
Total restricted revenues and fund balance budgeted
Restricted expenditures: Student and social activities, 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
Net transfers
Changes fund balance (budgetary basis) , ending fund balance
(d) Unrestricted - instruction and general (Schedule 4)
Beginning fund balance, unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/ grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Fund balance budgeted
Total unrestricted revenues and fund balance budgeted
Unrestricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total unrestricted expenditures
Net Transfers
Change in net assets (budgetary basis)

Ending fund balance
(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
Fund balance budgeted
Total restricted revenues and fund balance budgeted
Restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total restricted expenditures
Change in net assets (budgetary basis)

(3) The level of planning materiality required by the state auditor follows: Institutions should present their financial statements using the business type activities (BTA) model. The level of planning materiality described in the *AICPA Audit and Accounting Guide, State and Local Governments (2008)*, Section 4.31, must be used for the audit of these institutions. Planning materiality for component units is at the individual component unit level. **If a 501(c) 3 component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-1, NMSA 1978, requires that entity to be audited regardless of materiality.** See Paragraph (1) of Subsection A of 2.2.2.10 NMAC for more information about contracting for these required audits.

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

(5) Component unit issues: Legally separate entities that meet the criteria set forth in GASBS 14 as amended by GASBS 39 to qualify as a component unit of an educational institution must be included in the educational institution's audit report **as a discrete component unit**. An exemption must be obtained from the state auditor in order to present any component unit as blended. **The same auditor must audit the component unit and the educational institution unless an exemption is obtained from the state auditor. 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) Individual component unit budgetary comparisons are required if the component unit has a "legally adopted budget." A component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law.

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

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

(7) Required note disclosure for donor-restricted endowments:

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

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

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

[2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 2-27-09]

### 2.2.2.13 REVIEW OF AUDIT REPORTS AND AUDIT DOCUMENTATION:

A. Section 12-6-14(B), NMSA requires that the state auditor or personnel of his office designated by him examine all audit reports of agencies made pursuant to contract. All audits under contracts approved by the state auditor are subject to review. The office will review all reports submitted by the IPA to determine if the reports are presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards. The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date.

B. Released audit reports are subject to a comprehensive report and audit documentation review by the state auditor. Reviews of audit documentation maintained by the audit firm may include the review of:

(1) continuing professional education (CPE) for compliance with GAGAS Paragraph 3.46 requirements;

(2) the independence safeguards on nonaudit services, for compliance with GAGAS (July 2007) Paragraph 3.30 requirements;

(3) working papers to determine compliance with governmental auditing, accounting and financial reporting standards issued by GASBS, AICPA, GAO, and OMB Circular A-133, and the requirements of this rule; and

(4) documentation of any additional audit procedures performed after the date of the independent auditor's report, as required by SAS 103 Paragraphs 23 through 26.

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

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

(2) the IPA's future audit engagement may be limited in number;

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

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

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

D. Results of review:

(1) After the review is completed, the office will issue a letter to advise the IPA about the results of the review. The IPA is required to respond to all review comments as directed.

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

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

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

[2.2.2.13 NMAC - Rp, 2.2.2.13 NMAC, 2-27-09]

#### 2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing professional education: U.S. GAO *Government Auditing Standards, July 2007 Revision* (GAGAS), Section 3.46 states "Each auditor performing work under GAGAS should complete, every two years, at least 24 hours of CPE that directly relates to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. For auditors who are involved in any amount of planning, directing, or reporting on GAGAS assignments and those auditors who are not involved in those activities but charge 20 percent or more of their time annually to GAGAS assignments should also obtain at least an additional 56 hours of CPE (for a total of 80 hours of CPE in every two year period) that enhances the auditor's professional proficiency to perform audits or attestation engagements." The GAO issued *Government Auditing Standards: Guidance on GAGAS Requirements for Continuing Professional Education, GAO-05-568G, April 2005*. It provides

helpful guidance to auditors and audit organizations regarding the implementation of the Yellow Book CPE requirements. The guide is available at [www.gao.gov/gov-aud/ybcpe2005.pdf](http://www.gao.gov/gov-aud/ybcpe2005.pdf)

B. Peer review: (GAGAS), Section 3.50 states "each audit organization performing audits or other audits or other attestation engagements in accordance with GAGAS must establish a system of quality control that is designed to provide the audit organization with reasonable assurance that the organization and its personnel comply with professional standards and applicable legal and regulatory requirements, and have an external peer review at least once every 3 years." Appropriate internal quality control system in place and should undergo an external peer review." Section 3.56 states "The audit organization should obtain an external peer review sufficient in scope to provide a reasonable basis for determining whether, for the period under review, the reviewed audit organization's system of quality control was suitably designed and whether the audit organization is complying with its quality control system in order to provide the audit organization with reasonable assurance of conforming with applicable professional standards."

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

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

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

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

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

(b) the peer review report for the

auditor's firm;

(c) the corresponding letter of comments;

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

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

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

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

(6) During the procurement process audit firms shall provide a copy of their most recent external peer review report to the agency upon submitting a bid proposal or offer.

(7) Individuals conducting peer reviews of an audit organization's system of quality control should meet the following requirements per GAGAS (2007) 3.54:

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

(d) the state auditor also requires that the employing organization of the peer reviewers should have received an unqualified opinion on the review of their own organization's system of quality controls.

(8) The New Mexico public accountancy board determined that performing peer review constitutes the practice of public accountancy; therefore, a CPA from another state who enters New Mexico to perform a peer review for a New Mexico CPA firm must file a notification of intent to practice under the substantial equivalency provision.

**(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 (2007) Paragraph 3.55]:

(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 com-

pliance 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 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 exter-

nal quality control report and corresponding letter of comments, the state auditor may no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor will take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 2-27-09]

### **2.2.2.15 SPECIAL AUDITS AND EXAMINATIONS:**

A. Special audit and examination:

(1) Pursuant to Section 12-6-3 NMSA 1978, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. The state auditor may initiate a special audit or examination based on information or a report received from an agency, IPA or member of the public. The state auditor shall have available to him all documents necessary to perform a thorough special audit or examination of every agency in accordance with generally accepted auditing standards. Additionally, pursuant to Section 12-6-11 NMSA 1978, when necessary for an audit or examination, the state auditor may apply to the district court of Santa Fe county for issuance of a subpoena to compel the attendance of witnesses and the production of books and records.

(2) The state auditor may conduct fact-finding procedures in connection with reports of financial fraud, waste and abuse in government. The fact-finding procedures shall comply with professional standards related to the examination of financial fraud, waste and abuse in government.

(3) Pursuant to Section 12-6-6 NMSA 1978 and Subsection K of Section 2.2.2.10 NMAC, every agency and IPA shall notify the state auditor immediately, in writing, upon discovery of any violation of a criminal statute in connection with financial affairs. In addition, upon discovery, the state auditor shall immediately report a violation of a criminal statute in connection with financial affairs to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

(4) An agency, IPA or member of the public may report financial fraud, waste or abuse in government to the state auditor. Reports may be submitted directly to the office orally or in writing. Reports may also be made telephonically or in writing through the fraud hotline or website established by the office for the confidential reporting of financial fraud, waste, and abuse in government. Reports may be made telephonically to the fraud hotline by calling

1-866-OSA-FRAUD (1-866-672-3728) or reported in writing through the office's website at <https://www.reportlineweb.com/welcome.aspx?client=osa>.

B. Confidentiality:

(1) The identity of a person making a report directly to the office orally or in writing, or telephonically or in writing through the office's fraud hotline or website, alleging financial fraud, waste, or abuse in government is confidential and may not be disclosed, unless the person making the report agrees to the disclosure of that person's name.

(2) A report alleging financial fraud, waste, or abuse in government that is made directly to the office orally or in writing, or telephonically or in writing through the office's fraud hotline or website, and any resulting special audit or examination, is confidential and may not be disclosed except as provided in Paragraph (3) of this subsection.

(3) The office may disclose information that is confidential under this subsection:

(a) to the proper prosecuting authority;

(b) to refer to the appropriate agency a report of financial fraud, waste or abuse in government;

(c) to ensure coordination and cooperation between agencies related to a report of financial fraud, waste or abuse in government; or

(d) after a report of a special audit or examination is released and becomes public pursuant to the Section 12-6-5 NMSA 1978, provided that disclosure is consistent with the Inspection of Public Records Act and this rule.

C. Reports of special audit or agreed-upon procedures relating to financial fraud, waste or abuse in government:

(1) An agency or an IPA shall not enter into a professional services contract for a special audit or agreed-upon procedures relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract must be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA. The contract must include the contract fee, start and completion date, and the specific scope of services to be performed by the IPA.

(2) All reports of special audits or agreed-upon procedures made pursuant to contract and that relate to financial fraud, waste or abuse in government are subject to review by the state auditor. Upon completion of the report, the IPA shall deliver the organized and bound report to the state auditor with a copy of the signed and dated engagement letter if not previously submit-



ted and a copy of the signed management representation letter.

(3) The IPA is required to respond to all review comments as directed by the office. After its review of the report, the office will authorize the IPA to print and submit the final report. The required number of hardcopies specified in the contract and an electronic version of the report, in PDF format, must be delivered to the state auditor within the time specified by the office pursuant to the authorization to print and submit the final report.

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

(5) Neither the IPA nor agency personnel shall release any information to the public relating to the special audit or agreed-upon procedures until the report has been officially released by the state auditor and becomes public record.

[2.2.2.15 NMAC - N, 2-27-09]

#### **HISTORY of 2.2.2 NMAC:**

##### **Pre-NMAC Regulatory Filing History:**

The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5-14-71; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5-27-71; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the State of New Mexico, filed 6-1-72; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6-1-72; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2-28-74; SA Rule No. 74-2, Rotation of Assignments, filed 2-28-74; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11-3-78; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5-28-80; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12-17-82; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4-10-84; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1-28-85; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgments and Compensated Absences, filed 4-16-80; SA Rule No. 85-4, Regulations Governing the Auditing of

Housing Authorities of the State of New Mexico, filed 6-12-85; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6-17-85; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6-17-85; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1-20-86; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3-20-86; SA Rule No. 86-3, Professional Services Contracts, filed 7-9-86; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-13-87; SA Rule 87-2, Approval of Audit Contracts, filed 4-2-87; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8-14-87; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-10-88; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-10-89; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-1-90; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5-7-90; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-13-91; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-6-92; SA Rule 93-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-93; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-94; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5-16-94; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-16-95; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4-2-96.

##### **History of Repealed Material:**

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-30-01.  
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-29-02.  
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-30-03.  
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-31-04.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 5-13-05.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-16-06.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-16-07.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-15-08.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 2-27-09.

[See Appendices beginning on page 110]

Date: \_\_\_\_\_

Hector H. Balderas, State Auditor  
2113 Warner Circle  
Santa Fe, NM 87505-5499

Dear Mr. Balderas,

In accordance with the requirements of Paragraph (6) of Subsection B of 2.2.2.8 NMAC Requirements for Contracting and Conducting Audits of Agencies, the \_\_\_\_\_ is recommending that the firm of \_\_\_\_\_ be the agency's Independent Public Accountant (IPA) for the financial and compliance audit of the agency financial statements for the fiscal year ended \_\_\_\_\_; and requesting approval of this selection by the State Auditor.

**(THIS SECTION APPLIES TO SCHOOLS AND UNIVERSITIES ONLY)**

This IPA recommendation has been reviewed and approved by our oversight agency (please circle one) the Higher Education Department (HED) or the Public Education Department (PED) as required by Section 12-6-14 NMSA 1978, and as indicated by the following oversight agency signature and date.

\_\_\_\_\_  
Oversight Agency Signature

\_\_\_\_\_  
Printed name of signer

\_\_\_\_\_  
Date

**Please check the appropriate box:**

- This is a multi-year proposal and we will be in the \_\_\_\_\_ year of a 3 year proposal.
- This is an annual audit for the period indicated above.

**Professional Service Contracts**

Has your agency entered into any contract with any of the audit firms on the State Auditor's approved list of audit firms, from 1/1/08 until the date this form was complete, **with the exception of the annual financial and compliance audit contract?**

**Please check the appropriate box:**

- Yes     No    (If yes box is checked, please list information below. If no box is checked, no other information is required.)

	Contract Date	Contract Amt	Contract Firm	Services Provided
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____

NEW MEXICO STATE AUDITOR'S OFFICE  
 Audit Contract Proposal Evaluation Form  
 Part I

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Name of Agency \_\_\_\_\_ Phone # \_\_\_\_\_

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Agency Contact \_\_\_\_\_

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Audit Firm \_\_\_\_\_

**Requirement: Pursuant to Subsection B of 2.2.2.8 NMAC, please include a separate page or pages explaining the evaluation process the agency used to select the IPA and the agency's rationale for choosing the selected IPA.**

**Audit Services**

Please check appropriate box:

**Small Purchase**

(Audit services costing **no more than \$50,000 excluding gross receipts tax** should be considered small purchases.)  
**(Please list information, if more than three bids were obtained, please attach separate page)**

	Name of Audit Firm	Amount of proposal
1.	_____	_____
2.	_____	_____
3.	_____	_____

(If three bids were not obtained, please enter a detailed explanation below)  
 Explanation: \_\_\_\_\_

**Sealed Proposal**

(Audit services costing **over \$50,000 excluding gross receipts tax**, the agency shall seek competitive sealed proposals.)

**(Please list information, if more than three bids were obtained, please attach separate page)**

	Name of Audit Firm	Amount of proposal
1.	_____	_____
2.	_____	_____
3.	_____	_____

(If three bids were not obtained, please enter a detailed explanation below)  
 Explanation: \_\_\_\_\_

**Work Requirements & On-Site Audit Manager**

Please list the estimated start and end date for the IPA to complete the audit

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Please list the name of the on-site manager: \_\_\_\_\_

**(Note: The name of the On-Site- Manager must match the name listed in the Audit Contract. If there is a change, the Office of the State Auditor must be notified.)**

NEW MEXICO STATE AUDITOR'S OFFICE  
 Audit Contract Proposal Evaluation Form  
 Part II

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Name of Agency \_\_\_\_\_ Phone # \_\_\_\_\_

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Agency Contact \_\_\_\_\_

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Audit Firm \_\_\_\_\_

**BREAKDOWN**

	□	□	□		□	
	1 <sup>st</sup> Year	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year	3 <sup>rd</sup> Year
	Hours	Cost	Hours	Cost	Hours	Cost
	FYE ____	FYE ____	FYE ____	FYE ____	FYE ____	FYE ____
Financial Statement Audit	_____	_____	_____	_____	_____	_____
Federal Single Audit	_____	_____	_____	_____	_____	_____
Financial Statement Preparation	_____	_____	_____	_____	_____	_____
Other allowed nonaudit Services	_____	_____	_____	_____	_____	_____
Other (housing authorities, or other component units)	_____	_____	_____	_____	_____	_____
SUB TOTAL	_____	_____	_____	_____	_____	_____
Gross Receipts Tax		_____		_____		_____
TOTAL COMPENSATION		_____		_____		_____

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 B - Rp, 2.2.2 NMAC Appendix B, 2-27-09]

## GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

<u>GASB</u>	<u>TITLE</u>	<u>EFFECTIVE DATE</u>
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

## GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
16	Accounting for Compensated Absences	Financial statements for periods beginning after 06/15/93
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

## GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
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
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	This Statement establishes accounting and financial reporting standards for the nonexchange transactions of state and local governments that engage in nonexchange transactions. It applies to financial statements for periods beginning after June 15, 2000 (FY01).
34	Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments	This Statement establishes accounting and financial reporting standards for general purpose external financial reporting by state and local governments. Implementation was phased in from FY02 to FY04
35	Basic Financial Statement - and Management's Discussion and Analysis - For Public Colleges and Universities	The purpose of this Statement is to enhance the understandability and usefulness of the general purpose external financial reports issued by the public colleges and universities. Implementation was phased in like GASB 34 was .
36	Recipient Reporting for Certain Shared Non - exchange Revenues	This Statement supersedes paragraph 28 of Statement 33, regarding revenue recognition when a government shares its own derived tax revenues or imposed nonexchange revenues with other governments. Implementation was simultaneous with Statement 33.
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)	This Statement establishes standards to be used to report escheat property transactions in government - wide and fund financial statements. This Statement also amends various paragraphs of GASB 34. The Statement was to be implemented simultaneously with GASB 34.
38	Certain Financial Statement - Note Disclosures	This Statement establishes and modified disclosure requirements related to the summary of significant accounting policies, actions taken to address violations of significant finance -related legal and contractual provisions, debt and lease obligations, short-term debt, disaggregation of receivable and payable balances, and interfund balances and transfers. Implementation of the Statement coincided with the phase in implementation of GASB 34.

## GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
39	Determining Whether Certain Organizations Are Component Units	This Statement amends Statement 14 to provide additional guidance to determine whether certain organizations for which the primary government is not financially accountable should be reported as component units based on the nature and significance of their relationship with the primary government. Generally it requires reporting, as a component unit, an organization that raises and holds economic resources for the direct benefit of a governmental unit. The Statement was effective for financial statements for periods beginning after June 15, 2003 (FY04).
40	Deposit and Investment Risk Disclosures	The Statement addresses common deposit and investment risks related to credit risk, concentration of credit risk, interest rate risk, and foreign currency risk. As an element of interest rate risk, this Statement requires certain disclosures of investments that have fair values that are highly sensitive to changes in interest rates. It requires the deposit and investment policies related to the risks identified in the Statement to be disclosed. The custodial credit risk disclosures previously required by Statement 3 are modified by Statement 40. The Statement became effective for financial statements for periods beginning after June 15, 2004 (FY 05).
41	Budgetary Comparison Schedules - Perspective Differences	This amendment to Statement No. 34 clarifies the budgetary presentation requirements for governments with significant budgetary perspective differences that result in their not being able to present budgetary comparison information for their general fund and major special revenue funds. Those governments are required to present budgetary comparison schedules as required supplementary information (RSI) based on the fund, organization, or program structure that the government uses for its legally adopted budget. The provisions of this statement were to be implemented simultaneously with Statement 34.



## GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
42	Accounting and Financial Reporting for Impairment of Capital Assets and for Insurance Recoveries	This statement requires governments to report the effects of capital asset impairments in their financial statements when they occur rather than as a part of the ongoing depreciation expense for the capital asset or upon disposal of the capital asset. The Statement also requires all governments to account for insurance recoveries in the uniform manner set forth in the Statement. The provisions of this statement were effective for fiscal periods beginning after December 15, 2004 (FY06).
43	Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans	An OPEB "Plan" must implement the requirements of this Statement in FY07, FY08, or FY09, depending on when the largest participating government in the "Plan" had to implement GASB 34. The statement establishes uniform financial reporting standards for OPEB "Plans" and supersedes the interim guidance included in Statement No. 26. If the "Plan" is administered as a trust, or the equivalent of a trust, paragraph 16 through 40 apply. The Statement also applies to funds that are used to accumulate assets and pay benefits in a multiple-employer OPEB plan that are not administered as a trust or the equivalent. Paragraph 41 discusses the reporting requirements for those types of "plans." The Statement does not apply to assets that an employer "earmarks" for OPEB purposes within its governmental or proprietary funds by designation of fund balance(s) or net assets, or to assets that an employer transfers to and accumulates in a separate governmental or proprietary fund for that purpose.
44	Economic Condition Reporting: The Statistical Section	This Statement establishes and modifies the requirements related to the supplementary information presented in a statistical section. The more specific requirements of the Statement should be adapted by each type of government in order to meet the overarching objectives. The provisions of this Statement were effective for statistical sections prepared for periods beginning after June 15, 2005 (FY06).

## GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
45	Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions	Implementation is required in three phases: FY08; FY09; and FY10. A government's total annual revenues in the first fiscal year ending after June 15, 1999, determines which phase applies to it. "This Statement establishes standards for the measurement, recognition, and display of OPEB, expense/ expenditures and related liabilities (assets), note disclosures, and if applicable, required supplementary information (RSI) in the financial reports of state and local governmental employers."
46	Net Assets Restricted by Enabling Legislation	The requirements of this Statement are effective for periods beginning after June 15, 2005, (FY06), with earlier application encouraged. The statement clarifies the meaning of the phrase <i>legally enforceable</i> as it applies to restrictions imposed on net assets.
47	Accounting for Termination Benefits	The requirements of this Statement are effective for periods beginning after June 15, 2005 (FY06), except for termination benefits provided through an existing defined benefit OPEB plan, in which case the Statement should be implemented simultaneously with the requirements of Statement 45. The Statement determines (1) when a liability and expense should be recognized (a) on the accrual basis for voluntary and involuntary termination benefits and (b) on the modified accrual basis; and (2) how health care -related termination benefits should be measured.
48	Sales and Pledges of Receivables and Future Revenues and Intra -Entity Transfers of Assets and Future Revenues	The requirements of this statement are effective for financial statements for periods beginning after December 15, 2006 (FY08). This statement establishes criteria that governments will use to determine whether the proceeds received from the sale or pledge of receivables and future revenue should be reported as revenue or as a liability. The statement stipulates that governments should not revalue assets that are transferred between financial reporting entity components
49	Accounting and Financial Reporting for Pollution Remediation Obligations	The requirements of this statement are effective for financial statements for periods beginning after December 15, 2007 (FY09). "Once any of five specified obligating events occurs, a government is required to estimate the component of expected pollution remediation outlays and determine whether outlays for those components should be accrued as a liability or, if appropriate, capitalized when goods and services are acquired."

## GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
50	Pension Disclosures	This Statement is effective for periods beginning after June 15, 2007 (FY08). "This Statement is intended to improve the transparency and usefulness of financial reporting by pension plans and employers by amending Statements 25 and 27 to conform with the applicable note disclosure and RSI modifications adopted in the OPEB Statements, 43 and 45."
51	Accounting and Financial Reporting for Intangible Assets	This Statement is effective for periods beginning after June 15, 2009 (FY10), and earlier application is encouraged. The objective of this Statement is to establish accounting and financial reporting requirements for intangible assets and reduce inconsistencies in the areas of recognition, initial measurement, and amortization, thereby enhancing the comparability of the accounting and financial reporting of such assets among state and local governments."
52	Land and Other Real Estate Held as Investments by Endowments	"This Statement is effective for financial statements for periods beginning after June 15, 2008 (FY09). "This Statement establishes consistent standards for the reporting of land and other real estate held as investments by essentially similar entities." "This Statement does not apply to lands granted by the Federal government in connection with a state being admitted to the United States."
53	Accounting and Financial Reporting for Derivative Instruments	"The requirements of this Statement are effective for financial statements for periods beginning after June 15, 2009 (FY10). Earlier application is encouraged. This Statement addresses the recognition, measurement, and disclosure of information regarding derivative instruments entered into by state and local governments. Derivative instruments are often complex financial arrangements used by governments to manage specific risks or to make investments. By entering into these arrangements, governments receive and make payments based on market prices without actually entering into the related financial or commodity transactions. Derivative instruments associated with changing financial and commodity prices result in changing cash flows and fair values that can be used as effective risk management or investment tools. Derivative instruments, however, can also expose governments to significant risks and liabilities. Common types of derivative instruments used by governments include interest rate and commodity swaps, interest rate locks, options (caps, floors, and collars), swaptions, forward contracts, and futures contracts."

## 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

SAS No.	Title	AU Section
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 Derivatives Instruments, Hedging 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 No.</i>	<i>Title</i>	<i>AU 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
100	Interim Financial Information	722
101	Auditing for Fair Value Measurements and Disclosures	328
102	Defining Professional Requirements in Statements on Auditing Standards – The SAS language “must” or “is required” must be complied with. However, if the SAS language used is “should,” the auditor is required to comply if the presumed circumstances exist. But in rare instances the auditor may depart if he/she documents the justification and how alternative procedures sufficed.	This SAS was effective upon issuance.
103	Audit Documentation – This SAS supersedes SAS 96 regarding audit documentation requirements. Among other changes in audit documentation requirements, the audit report should not be dated before documentation review, financial statement preparation and management assertion regarding responsibility for the financial statements.	This SAS is effective for financial statement for periods ending on or after December 15, 2006 (FY07), with earlier application permitted

## AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

SAS

AU

No.	Title	Section
104	Amendment to Statement on Auditing Standards No. 1, Codification of Auditing Standards and Procedures (“Due Professional Care in the Performance of Work”) – This SAS expands the definition of the term reasonable assurance. “The auditor must plan and perform the audit to obtain sufficient appropriate audit evidence so that audit risk will be limited to a low level that is, in his or her professional judgment, appropriate for expressing an opinion on the financial statements. The high, but not absolute, level of assurance that is intended to be obtained by the auditor is expressed in the auditor’s report as obtaining reasonable assurance about whether the financial statements are free of material misstatement (whether caused by error or fraud.)”	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted.
105	Amendment to Statement on Auditing Standards No. 95, Generally Accepted Auditing Standards – This SAS expands the scope of the second standard of field work from “internal control” to “the entity and its environment, including its internal control” and extends its purpose from “planning the audit” to “assessing the risk of material misstatement of the financial statements whether due to error or fraud.” It amends the third standard of field work to replace references to specific audit procedures with “audit procedures” and replaces “evidential matter” with “audit evidence.” All three standards of field work are updated to begin with “The auditor must.”	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted.
106	Audit Evidence – This SAS: (1) defines audit evidence; (2) defines relevant assertions and discusses their use in assessing risks and designing appropriate further audit procedures; (3) discusses qualitative aspects that the auditor considers in determining the sufficiency and appropriateness of audit evidence; and (4) and describes various audit procedures and discusses the purposes for which they may be performed.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted.
107	Audit Risk and Materiality in Conducting an Audit – The auditor should perform substantive procedures for all relevant assertions related to material classes of transactions, account balances, and disclosures. The auditor should document: (1) the levels of materiality and tolerable misstatement including any changes, and the basis on which those levels were determined; (2) a summary of uncorrected misstatements, related to known and likely misstatements; (3) the auditor’s conclusion as to whether uncorrected misstatements, individually or in aggregate, do or do not cause the financial statements to be materially misstated, and the basis for the conclusion; and (4) all known and likely misstatements identified during the audit, that have been corrected by management. Uncorrected misstatements should be documented so that the auditor can: (1) separately consider the effects of known and likely misstatements, including uncorrected misstatements identified in prior periods; (2) consider the aggregate effect of misstatements on the financial statements; (3) consider the qualitative factors relevant to the consideration whether misstatements are material.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted.

## AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i>		<i>AU</i>
<i>No.</i>	<i>Title</i>	<i>Section</i>
108	Planning and Supervision – Planning and supervision continue throughout the audit. The auditor must plan the audit so that it is responsive to the assessment of the risk of material misstatement based on the auditor’s understanding of the entity and its environment, including its internal control. Planning is an interactive process throughout the audit. Firm personnel other than the auditor with final responsibility for the audit are referred to as assistants. “Auditor” refers to either the auditor with final responsibility for the audit or to assistants.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
109	Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement – This SAS explains the audit procedures that the auditor should perform to obtain the understanding of the entity and its environment, including its internal control (risk assessment procedures). It provides guidance regarding understanding specified aspects of the entity and its environment and internal control in order to identify and assess risks of material misstatement, and related further audit procedures. It provides guidance regarding assessing the risks of material misstatement. The auditor should: consider the classes of transactions, account balances, and disclosures; relate the identified risks to what could go wrong at the relevant assertion level; and consider the significance and likelihood of material misstatement for each identified risk. The SAS provides guidance in determining significant risks and requires auditor evaluation of the design of the entity’s controls to determine whether they are adequate and have been implemented. Related documentation guidance is also provided.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
110	Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained – This SAS provides the auditor with guidance: (1) in determining overall responses to address risks of material misstatement at the financial statement level; (2) in designing and performing further audit procedures that are responsive to the assessed risks of material misstatement at the relevant assertion level; and (3) in evaluating whether the risk assessments remain appropriate and to conclude whether sufficient appropriate audit evidence has been obtained; and (4) related documentation.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
111	Amendment to Statement of Auditing Standards No. 39, Audit Sampling – This SAS amends SAS No. 39 to: (1) move guidance from SAS No. 107 Appendix into the text of the statement; (2) to incorporate guidance from SAS No. 99 regarding fraud and SAS No. 110 regarding audit procedures in response to assessed risks and evaluating audit evidence; and (3) to enhance guidance relating to the auditor’s judgment about establishing tolerable misstatement for a specific audit procedure and on the application of sampling to tests of controls.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted



## AICPA STATEMENTS ON AUDITING STANDARDS

## Appendix D

<i>SAS No.</i>	<i>Title</i>	<i>AU Section</i>
112	Communicating Internal Control Related Matters Identified in an Audit - This SAS defines the terms “significant deficiency” and “material weakness.” It provides guidance on evaluating the severity of control deficiencies identified in an audit. SAS 112 requires the auditor to communicate, in writing, to management and those charged with governance, significant deficiencies and material weaknesses identified in an audit.	Effective for periods ending on or after December 15, 2006 (FY07), with earlier application permitted
113	Omnibus Statement on Auditing Standards – 2006 - This SAS clarifies terminology used to describe the professional requirements imposed on auditors in the 10 standards. This SAS adds to SAS No. 99: footnote 15 that links the auditor’s consideration of fraud to the auditor’s assessment of risk; and footnote 21 that links the auditor’s consideration of fraud and the auditor’s response to assessed risks.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
113	Omnibus Statement on Auditing Standards – 2006 – This SAS amends SAS Numbers 101, 59, 57, and 1 to change old references to “completion of fieldwork” to “the date of the auditor’s report” because SAS 103 changed the date of the audit report from the date of completion of fieldwork to “the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion on the financial statements.” SAS 113 also amends SAS 85 so that the date of management representations is “the date of the auditor’s report.”	Effective for periods ending on or after December 15, 2006 (FY07), with earlier application permitted
114	Auditor’s Communication With Those Charged With Governance – This SAS supersedes SAS No. 61, Communication With Audit Committees, as amended. It establishes standards and provides guidance on the auditor’s communication with those charged with governance in relation to an audit of financial statements.	Effective for periods beginning on or after December 15, 2006 (FY08).
115	Communicating Internal Control Related Matters Identified in an Audit – This SAS establishes standards and provides guidance on communicating matters related to an entity’s internal control over financial reporting identified in an audit of financial statements. It is applicable whenever an auditor expresses or disclaims an opinion on financial statements. In particular, this SAS defines the terms deficiency in internal control, significant deficiency, and material weakness; provides guidance on evaluating the severity of deficiencies in internal control identified in an audit of financial statements; and requires the auditor to communicate, in writing, to management and those charged with governance, significant deficiencies and material weaknesses identified in an audit.	Effective for audits of financial statements for periods ending on or after December 15, 2009 (FY10). Earlier implementation is permitted.

STATE OF NEW MEXICO  
(NAME) COUNTY TREASURER'S  
PROPERTY TAX SCHEDULE  
FOR THE YEAR ENDED JUNE 30, 2009

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
<b>Grant County:</b>									
<b>General ad valorem</b>									
2000-2008	\$22,211,105	\$519,689	\$21,989,143	\$519,689	\$21,989,143	\$ 5,644	\$ 25,618	\$ -	\$ 226,344
2009	2,400,000	1,942,523	1,942,523	1,942,523	1,942,523	-	-	-	547,477
<b>Total General ad valorem</b>	<b>24,701,105</b>	<b>2,462,182</b>	<b>23,901,666</b>	<b>2,462,182</b>	<b>23,901,666</b>	<b>5,644</b>	<b>25,618</b>	<b>-</b>	<b>773,821</b>
<b>Non-valuation fees</b>									
2010-2008	\$ 58,580	-	\$ 58,025	-	\$ 58,025	\$ 195	\$ 555	-	-
2009	6,520	6,520	6,520	6,520	6,520	-	-	-	-
<b>Total Non-valuation fees</b>	<b>65,100</b>	<b>6,520</b>	<b>64,545</b>	<b>6,520</b>	<b>64,545</b>	<b>195</b>	<b>555</b>	<b>-</b>	<b>-</b>
<b>Copper production</b>									
2000-2008	\$14,382,000	-	\$14,382,000	-	\$14,382,000	-	-	-	-
2009	1,598,437	1,598,437	1,598,437	1,598,437	1,598,437	-	-	-	-
<b>Total Copper production</b>	<b>15,980,437</b>	<b>1,598,437</b>	<b>15,980,437</b>	<b>1,598,437</b>	<b>15,980,437</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Re-appraisal program</b>									
2010-2008	\$250,272	-	\$250,272	-	\$250,272	-	-	-	-
2009	278,080	278,080	278,080	278,080	278,080	-	-	-	-
<b>Total Re-appraisal program</b>	<b>278,080</b>	<b>278,080</b>	<b>278,080</b>	<b>278,080</b>	<b>278,080</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Hospital bond</b>									
2000-2008	\$ 963	-	\$ 963	-	\$ 963	-	-	-	-
2009	107	107	107	107	107	-	-	-	-
<b>Total Hospital bond</b>	<b>1,070</b>	<b>107</b>	<b>1,070</b>	<b>107</b>	<b>1,070</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total Grant County</b>	<b>41,025,792</b>	<b>4,095,054</b>	<b>40,225,798</b>	<b>4,095,054</b>	<b>40,225,798</b>	<b>5,839</b>	<b>26,173</b>	<b>-</b>	<b>773,821</b>
<b>Municipalities:</b>									
<b>City of Dayard</b>									
2010-2008	\$ 148,500	\$ 901	\$148,193	\$ 901	\$148,193	\$ 150	\$ 307	-	-
2009	16,500	16,000	16,500	16,000	16,500	-	-	-	-
<b>Total City of Dayard</b>	<b>165,000</b>	<b>16,901</b>	<b>164,693</b>	<b>16,901</b>	<b>164,693</b>	<b>150</b>	<b>307</b>	<b>-</b>	<b>-</b>
<b>Village of Huey</b>									
2000-2008	\$ 72,000	\$ 43	\$ 71,640	\$ 43	\$ 71,640	\$ 50	\$ 300	-	-
2009	8,000	8,000	8,000	8,000	8,000	-	-	-	-

Appendix E

STATE OF NEW MEXICO  
 (NAME) COUNTY TREASURER'S  
 PROPERTY TAX SCHEDULE  
 FOR THE YEAR ENDED JUNE 30, 2009

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 Village of Turley	80000	8043	79640	8043	79640	50	300	-	-
Village of Santa Clara 2000-2008	\$ 45000	\$ 708	\$ 44700	\$ 708	\$ 44700	\$ 30	\$ 300	-	-
2009	5000	5000	5000	5000	5000	-	-	-	-
Total Village of Santa Clara	50000	5708	49700	5708	49700	30	300	-	-
Town of Silver City 2010-2018	\$ 1,847,583	-	\$ 1,847,278	-	\$ 1,847,278	\$ 75	\$ 305	-	-
2019	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	\$43,373,602	\$4,330,993	\$42,572,306	\$4,330,993	\$42,572,306	\$6,144	\$27,445	\$ -	\$773,821

Presumed paid after ten years per Section 7-38-81(C), NMSA 1978

[2.2.2 NMAC Appendix E - Rp, Appendix E, 2-27-09]

Appendix F

Contract No. \_\_\_\_\_

STATE OF NEW MEXICO  
AUDIT CONTRACT ADDENDUM  
FOR SUBCONTRACTOR

Pursuant to Subsection G of 2.2.2.8 NMAC *Requirements for Contracting and Conducting Audits of Agencies* the Contractor hereby enters into an agreement with \_\_\_\_\_, hereinafter referred to as the Subcontractor, to subcontract a portion of the services to be performed under this audit contract.

The subcontractor shall perform the following portion(s) of the contracted audit services:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Responsibility for the audit will

- \_\_\_\_\_ Remain with the Contractor; or
- \_\_\_\_\_ Be shared between the Contractor and Subcontractor.

The audit report will be signed by

- \_\_\_\_\_ The Contractor; or
- \_\_\_\_\_ The Contractor and the Subcontractor.

The method used to pay the subcontractor will be

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

SUBCONTRACTOR

CONTRACTOR

\_\_\_\_\_  
(Name)  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
(Name)  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

AGENCY

STATE AUDITOR

\_\_\_\_\_  
(Name)  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
HECTOR H. BALDERAS  
DATE: \_\_\_\_\_

[2.2.2 NMAC, Appendix F - Rp, 2.2.2 NMAC, Appendix F, 2-27-09]

**NEW MEXICO HUMAN SERVICES DEPARTMENT  
INCOME SUPPORT DIVISION**

This is an amendment to 8.100.130 NMAC, Section 20, effective 02/27/2009.

**8.100.130.20 NON FINANCIAL VERIFICATION STANDARD - SCHOOL ATTENDANCE:**

**A.** [Verification of school attendance for all children age 6 and older is mandatory for the cash assistance program.] The statement of the parent, specified relative, or caretaker of school attendance for children under 18 years of age is acceptable to verify school attendance for the cash assistance program, unless questionable.

**B.** Verification of school attendance for all minor unmarried parents and dependent children over 18 years of age is mandatory for the cash assistance program. Documents that can be used to verify school attendance include:

- (1) written statement from school official;
  - (2) current report card;
  - (3) additional items as listed on ISD 135, "proof checklist"; or
  - (4) if the preceding documentary evidence is not readily available, other acceptable methods of verification are set forth in 8.100.130.9 NMAC.
- [8.100.130.20 - Rp, 8.100.130.13 NMAC, 08/01/2008; A, 02/27/2009]

**NEW MEXICO HUMAN SERVICES DEPARTMENT  
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.420 NMAC, Section 9, effective 02/27/2009.

**8.102.420.9 SCHOOL ATTENDANCE:**

**[A. Requirement:**

**(1) Children:**

~~(a) A dependent child of school age must be a full-time student at a certified educational facility or participating and fully complying with a home schooling program approved by the New Mexico PED. School age is any dependent child who turns six years of age prior to September first and is under 18 years of age.~~

~~(b) A participant who is age 18 years of age may be included in the NMW benefit group if the individual is enrolled in high school, or the high school equivalent level of vocational or technical training. Such an individual may be eligible to be included in the NMW benefit group until the end of the month in which the individual graduates or until the end of the month in which the individual turns 19 years of age,~~

~~whichever occurs first.~~

~~(c) A student who is age 18 years of age and under age 22 years of age may be included in the NMW benefit group as long as the student is enrolled in high school and is receiving special education services regulated by the PED. There must be a current valid individual education plan (IEP) for the student to verify the special education services.~~

~~(d) A dependent child age 17 years of age or younger who has graduated from high school or has obtained a GED shall be deemed to be a full-time student and to be fulfilling attendance requirements.~~

~~(e) The parent or specified relative of a dependent child who is participating in a home schooling program must provide a certification from the public school system that a home schooling curriculum has been approved for the dependent child. The certification must be submitted at the beginning of each school year or when a home schooling program begins.~~

~~(2) Minor parent: To be eligible for inclusion in the NMW benefit group, a minor unmarried parent, who does not have a child under the age of 12 weeks, must attend school full-time to obtain a high school diploma, or must participate in a GED program full-time or participate in approved alternate schooling unless the minor unmarried parent has already graduated from high school or obtained a GED.~~

~~(3) Full-time attendance: A child is considered a full-time student and meeting full-time attendance requirements is based on the standards of the educational facility or program in which the child is enrolled.~~

~~(4) Vacations and other interruptions: A child enrolled in and attending classes is considered in attendance during:~~

~~(a) regularly scheduled vacations and breaks, including summer vacation, provided:~~

~~(i) the child has not been removed for non-attendance; and~~

~~(ii) that the child resumes attendance when classes start again;~~

~~(b) periods of personal illness or convalescence;~~

~~(c) family emergencies, for a period not to exceed 30 days;~~

~~(d) participation in or attendance at cultural and religious activities as long as the child has parental consent.~~

**B. Determining whether the requirement is met:**

~~(1) The school attendance requirement is not applicable during the initial application process. For purposes of the school attendance requirement, an initial application is defined as a new application for assistance, when:~~

~~(a) an applicant has been never known to ISD;~~

~~(b) an application to add a new member to the benefit group never known to ISD; or~~

~~(c) an application for an individual or case which has been closed for six months or more.~~

~~(2) A child has failed to comply with school attendance requirements, and the child's needs shall be removed from the benefit group's standard of need, if the child:~~

~~(a) is not enrolled in school; or~~

~~(b) has accumulated three unexcused absences in a grading period, but not on the same day; or~~

~~(c) has dropped out of school during the current grading period; or~~

~~(d) has completed a school attendance plan and has one or more unexcused absences during the time period covered by the plan.~~

~~(3) School attendance verification: The caseworker shall verify school attendance for school days occurring-~~

~~(a) after the NMW initial application has been approved;~~

~~(b) at each certification; or~~

~~(c) when the caseworker becomes aware that the child may not be in compliance with school attendance requirements.~~

~~(4) Responsibility to report: Within 14 days of the date it becomes known, the parent, specified relative, or caretaker must report to ISD if a child is not enrolled in school, has accumulated three unexcused absences during the current grading period, or has dropped out of school. Failure to report that a child has not met school attendance requirements shall not result in a non-reporting sanction for the parent, or the specified relative or caretaker if included in the benefit group.~~

~~(5) Failure to comply with school attendance requirements:~~

~~(a) Conciliation: Prior to removing the child's needs from the benefit group's standard of need, the parent, specified relative or caretaker shall have a 10 working-day conciliation period to address school non-attendance. The conciliation period is a 10 working-day period affording an opportunity for the parent, child, and the school to develop a plan to ensure regular attendance by the child and comply with NMW requirements.~~

~~(b) Conciliation process:~~

~~(i) Within 10 days of determining that a child has not met school attendance requirements, the caseworker shall take action to initiate a conciliation period by issuing a notice of action.~~

~~(ii) The benefit group shall have 10 working days from the date of issuance of the notice to provide a school~~

attendance plan indicating the school's confirmation of satisfactory arrangements:

(iii) If a benefit group fails to provide a school attendance plan, a notice of adverse action shall be sent on the next working day.

(iv) If the school confirms that satisfactory arrangements have been made to ensure regular attendance by the child, the child shall remain eligible.

**(e) Benefit reduction:**

(i) The child shall be removed from the benefit group effective the month following the month the notice of adverse action expires.

(ii) If there is one or more unexcused absence following successful submission of a school attendance plan (the school's confirmation of satisfactory arrangements), the caseworker shall remove the child from the benefit group the month following the month the adverse action notice expires.

(d) **Case closure:** If the child is the only child included in the benefit group, the cash assistance case shall be closed.

(6) **Regaining eligibility:** Once a child has been removed from the benefit group due to failure to comply with school attendance requirements, the child cannot be considered a member of the benefit group until the child has attended school with no unexcused absences for a period of 30 calendar days. The child shall regain eligibility effective the month following the month the 30-day attendance requirement is verified.

(a) A child may regain eligibility by attending summer school or its equivalent.

(b) A child may not regain eligibility by moving from one benefit group to another.]

**A. Requirement:** A child of school age, as defined by PED, must attend school and have satisfactory attendance to meet the personal responsibility requirements of the parent, specified relative, or caretaker.

**B. Student status:**

(1) A dependent child of school age must be a full-time student at a certified educational facility or participating and fully complying with a home-schooling program approved by the New Mexico PED. School age means any dependent child who turns six years of age prior to September first and is under 18 years of age.

(2) A participant who is 18 years of age may be included in the NMW benefit group if the individual is enrolled in high school, or the high school equivalent level of vocational or technical training. Such an individual may be eligible to be included in the NMW benefit group until the end of the month in which the individual graduates or until the end of the month in which the indi-

vidual turns 19 years of age, whichever occurs first.

(3) A student who is between 18 and 21 years of age may be included in the NMW benefit group as long as the student is enrolled in high school and is receiving special education services regulated by the PED. There must be a current valid individual education plan (IEP) for the student to verify the special education services.

(4) A dependent child age 17 years of age or younger who has graduated from high school or has obtained a GED shall be deemed to be a full-time student and to fulfill attendance requirements.

(5) A minor unmarried parent who does not have a child under the age of 12 weeks, must attend school full time to obtain a high school diploma or must participate in a GED program full-time or participate in approved alternate schooling unless the minor unmarried parent has already graduated from high school or obtained a GED.

**C. School attendance:**

(1) **Full time attendance:** A child is considered a full-time student based on the below criteria:

(a) School attendance is defined by the standards of the educational facility or program in which the child is enrolled including regularly scheduled vacations and breaks provided the child:

(i) has not been removed for non attendance; and

(ii) resumes attendance when classes start again;

(b) is currently enrolled in a home schooling programming approved by the New Mexico PED.

**(2) Verification:**

(a) Verification of school attendance must be provided at time application and certification for any:

(i) minor unmarried parent; and

(ii) dependent child 18 years of age and over.

(b) The statement of the parent or caretaker is acceptable verification of school attendance for all other dependent children, unless otherwise questionable.

**D. Unsatisfactory attendance:**

(1) A child shall be considered not meeting the school attendance requirement when the child:

(a) is not enrolled in school;

(b) has accumulated three unexcused absences in a grading period, but not on the same day;

(c) has dropped out of school during the current grading period; or

(d) has one or more unexcused absences during the time period covered by a current school attendance plan.

**(2) Reporting requirement:**

Within 14 days of the date it becomes known, the parent, specified relative, or caretaker must report to ISD if a child is not enrolled in school, has accumulated three unexcused absences during the current grading period, or has dropped out of school. Failure to report that a child has not met school attendance requirements shall not result in a non-reporting sanction for the parent, or the specified relative or caretaker if included in the benefit group.

(3) **Failure to meet:** In the absence of good cause for failure to meet the school attendance requirements the conciliation process shall be initiated.

(a) **Conciliation process:** Prior to removing the child's needs from the benefit group's standard of need, the parent, specified relative or caretaker shall have a 10 working day conciliation period to address school non-attendance. The conciliation period is a 10 working day period affording an opportunity for the parent, child, and the school to develop a plan to ensure regular attendance by the child and comply with NMW requirements.

(i) Within 10 days of receipt of verification that a child has not met school attendance requirements, the caseworker shall take action to initiate a conciliation period by issuing a notice of action.

(ii) The benefit group shall have 10 working days from the date of issuance of the notice to provide a school attendance plan indicating the school's confirmation of satisfactory arrangements.

(iii) If a benefit group fails to provide a school attendance plan, a notice of adverse action shall be sent within five working days.

(iv) If the school confirms that satisfactory arrangements have been made to ensure regular attendance by the child, the child shall remain eligible.

**(b) Benefit reduction:**

(i) The child shall be removed from the benefit group effective the month following the month the notice of adverse action expires.

(ii) If there is one or more unexcused absence following successful submission of a school attendance plan (the school's confirmation of satisfactory arrangements), the caseworker shall remove the child from the benefit group effective the month following the month the notice of adverse action expires.

(c) **Case closure:** If the child is the only child included in the benefit group, the cash assistance case shall be subject to closure in the month following the notice of adverse action.

(4) **Good cause:** A child with unsatisfactory school attendance or enrollment shall be warranted good cause based on the following circumstances:

- (a) periods of personal illness or convalescence;
- (b) family emergencies, for a period not to exceed 30 days;
- (c) participation in or attendance at cultural and religious activities as long as the child has parental consent; or
- (d) a minor parent has a child under 12 weeks of age.

**E. Regaining eligibility:**

Once a child has been removed from the benefit group due to failure to comply with school attendance requirements, the child can not be considered a member of any benefit group. Changes in school attendance must be reported by the parent/caretaker. Eligibility may be regained when:

- (1) the child has attended school with no unexcused absences for the 30 days;
  - (2) circumstances of good cause apply as listed in Paragraph (4) of Subsection D; or
  - (3) during the summer months if the child is promoted, attending summer school or graduating.
- [8.102.420.9 NMAC - Rp 8.102.420.9 NMAC, 07/01/2001, A, 05/15/2003; A, 11/15/2007; A, 02/27/2009]

**NEW MEXICO HUMAN SERVICES DEPARTMENT  
INCOME SUPPORT DIVISION**

This is an amendment to 8.106.430 NMAC, Section 9, effective 02/27/2009.

**8.106.430.9 SCHOOL ATTENDANCE**

~~**A. Requirement for unrelated dependent children:** The school attendance requirement applies to unrelated dependent children included in the benefit group.~~

~~(1) A dependent child age six through age seventeen must be a full-time student at a certified educational facility or participating and fully complying with a home schooling program approved by the public education department.~~

~~(2) An individual who is age eighteen may be included in the GA benefit group if the individual is enrolled in and attending high school, a GED program or the high school equivalent level of vocational or technical training. Such an individual may be eligible to be included in the GA benefit group until the end of the month in which the individual graduates or until the end of the month in which the individual turns nineteen, whichever occurs first.~~

~~(3) A student who is age 18 and under age 22 may be included in the GA benefit group as long as the student is enrolled in high school and is receiving special education services regulated by the~~

~~public education department. There must be a current and valid individual education plan (IEP) for the student to verify the special education services.~~

~~(4) A dependent child age seven-teen or younger, who has graduated from high school or has obtained a GED, shall be deemed to be a full-time student and to be fulfilling attendance requirements until the month before the individual turns eighteen.~~

~~(5) The caretaker of an unrelated dependent child who is participating in a home schooling program must provide a certification from the public school system that a home schooling curriculum has been approved for the dependent child. The certification must be submitted at the beginning of each school year or when a home schooling program begins.~~

~~**(6) Minor unmarried pregnant woman:** To be eligible for inclusion in the GA benefit group, an minor unmarried pregnant woman must attend school full-time to obtain a high school diploma, participate in a GED program full-time, or must participate in an approved alternative schooling program unless the minor unmarried pregnant woman has already graduated from high school or obtained a GED.~~

~~**B. Full-time attendance:**~~

~~(1) Whether a child is considered a full-time student and meeting full-time attendance requirements is based on the standards of the educational facility or program in which the child is enrolled.~~

~~(2) Vacations and other interruptions: A child enrolled in and attending classes is considered in attendance during:~~

- (a) regularly scheduled vacations and breaks, including summer vacation, provided that:

- (i) the child has not been removed for non-attendance; and
- (ii) the child resumes attendance when classes start again;

~~(b) periods of personal illness or convalescence;~~

~~(c) family emergencies, for a period not to exceed 30 days;~~

~~(d) participation in, or attendance at, cultural and religious activities as long as the child has consent of the caretaker.~~

~~**C. Determining whether the school attendance requirement is met:**~~

~~(1) The school attendance requirement is not applicable during the initial application process. For purposes of the school attendance requirement, an initial application is defined as a new application for assistance when:~~

- (a) an applicant has never been known to ISD;
- (b) an application to add a new member to the benefit group who has never been known to ISD; or

~~(c) an application is for an individual or case that has been closed for six months or more.~~

~~(2) If a child has failed to comply with school attendance requirements, the child's needs shall be removed from the benefit group's standard of need if the child:~~

- (a) is not enrolled in school;
- (b) has accumulated three unexcused absences in a grading period, but not on the same day;
- (c) has dropped out of school during the current grading period; or
- (d) has completed a school attendance plan and has one or more unexcused absences during the time period covered by the plan.

~~(3) **School attendance verification:** The caseworker shall verify school attendance for school days occurring after the initial GA application has been approved. Verification of school attendance is mandatory at each certification, or when the caseworker becomes aware that the child may not be in compliance with school attendance requirements.~~

~~**D. Caretaker's reporting responsibility:**~~

~~Within fourteen days of the date it becomes known to the caretaker, the caretaker must report to ISD if a child is not enrolled in school, has accumulated three unexcused absences during the current grading period, or has dropped out of school. Failure to report that a child has not met school attendance requirements shall result in conciliation and removal of the child's needs from the benefit group's standard of need, if appropriate. The GA payment shall not be reduced because of the failure of a caretaker, who is not included in the GA benefit group, to report that a dependent child failed to attend school.~~

~~**E. Failure to comply with school attendance requirements:**~~

~~(1) **Conciliation:** Prior to removing the child's needs from the benefit group's standard of need, the caretaker shall be allowed a compliance period to address school non-attendance.~~

~~(a) The compliance period is ten working days, beginning with the date of issuance of the notice to provide a school attendance plan affording an opportunity for the caretaker, the child, and the school to develop a plan to ensure regular attendance by the child.~~

~~(b) If the school confirms that satisfactory arrangements have been made to ensure regular attendance by the child, the child shall remain eligible.~~

~~(c) A verified GED or home schooling program may serve to show that a satisfactory school attendance plan has been established.~~

~~(d) **School attendance plan:** The school attendance plan must be signed by~~

~~both the caretaker and an appropriate employee of the school, such as a counselor or principal. The school attendance plan shall contain specific requirements that the student must meet to comply with GA school attendance requirements.~~

~~**(2) Conciliation process:**~~

~~(a) Within 10 days of determining that a child has not met school attendance requirements, the caseworker shall take action to initiate a compliance period.~~

~~(b) A compliance period is initiated by the caseworker by issuing a notice of action to the benefit group.~~

~~(c) If the benefit group fails to provide a school attendance plan, a notice of adverse action shall be sent no earlier than the next working day after the expiration of the compliance period.~~

~~**(3) Benefit reduction:**~~

~~(a) The child shall be removed from the benefit group effective the month following the month in which the notice of adverse action expires.~~

~~(b) If there is one (or more) unexcused absence following successful submission of a school attendance plan, ISD shall remove the child's needs from the standard of need for the benefit group, effective the month following the month in which the adverse action notice expires.~~

~~(c) Case closure: If the child is the only child included in the benefit group, the cash assistance case shall be closed.~~

~~**F. Regaining eligibility:**~~

~~Once a child has been removed from the benefit group due to failure to comply with school attendance requirements, the child cannot be considered a member of the benefit group until the child has attended school with no unexcused absences for a period of 30 calendar days.~~

~~(1) A child shall regain eligibility effective the month following the month in which the 30-day attendance requirement is met.~~

~~(2) A child may regain eligibility by attending summer school or its equivalent.~~

~~(3) A child may not regain eligibility by moving from one benefit group to another.]~~

~~**A. Requirement:** A child of school age, as defined by PED, must attend school and have satisfactory attendance to meet the personal responsibility requirements of the parent, specified relative, or caretaker.~~

~~**B. Student status:**~~

~~(1) A dependent child of school age must be a full-time student at a certified educational facility or participating and fully complying with a home-schooling program approved by the New Mexico PED. School age means any dependent child who turns six years of age prior to September first and is under 18 years of age.~~

~~(2) A participant who is 18 years of age may be included in the NMW benefit group if the individual is enrolled in high school, or the high school equivalent level of vocational or technical training. Such an individual may be eligible to be included in the NMW benefit group until the end of the month in which the individual graduates or until the end of the month in which the individual turns 19 years of age, whichever occurs first.~~

~~(3) A student who is between 18 and 21 years of age may be included in the NMW benefit group as long as the student is enrolled in high school and is receiving special education services regulated by the PED. There must be a current valid individual education plan (IEP) for the student to verify the special education services.~~

~~(4) A dependent child age 17 years of age or younger who has graduated from high school or has obtained a GED shall be deemed to be a full-time student and to fulfill attendance requirements.~~

~~(5) A minor unmarried parent who does not have a child under the age of 12 weeks, must attend school full time to obtain a high school diploma or must participate in a GED program full-time or participate in approved alternate schooling unless the minor unmarried parent has already graduated from high school or obtained a GED.~~

~~**C. School attendance:**~~

~~(1) Full time attendance: A child is considered a full-time student based on the below criteria:~~

~~(a) School attendance is defined by the standards of the educational facility or program in which the child is enrolled including regularly scheduled vacations and breaks provided the child:~~

~~(i) has not been removed for non attendance; and~~

~~(ii) resumes attendance when classes start again;~~

~~(b) is currently enrolled in a home schooling programming approved by the New Mexico PED.~~

~~**(2) Verification:**~~

~~(a) Verification of school attendance must be provided at time application and certification for any:~~

~~(i) minor unmarried parent; and~~

~~(ii) dependent child 18 years of age and over.~~

~~(b) The statement of the parent or caretaker is acceptable verification of school attendance for all other dependent children, unless otherwise questionable.~~

~~**D. Unsatisfactory attendance:**~~

~~(1) A child shall be considered not meeting the school attendance requirement when the child:~~

~~(a) is not enrolled in school;~~

~~(b) has accumulated three unexcused absences in a grading period, but not on the same day;~~

~~(c) has dropped out of school during the current grading period; or~~

~~(d) has one or more unexcused absences during the time period covered by a current school attendance plan.~~

~~**(2) Reporting requirement:**~~

~~Within 14 days of the date it becomes known, the parent, specified relative, or caretaker must report to ISD if a child is not enrolled in school, has accumulated three unexcused absences during the current grading period, or has dropped out of school. Failure to report that a child has not met school attendance requirements shall not result in a non-reporting sanction for the parent, or the specified relative or caretaker if included in the benefit group.~~

~~(3) Failure to meet: In the absence of good cause for failure to meet the school attendance requirements the conciliation process shall be initiated.~~

~~(a) Conciliation process: Prior to removing the child's needs from the benefit group's standard of need, the parent, specified relative or caretaker shall have a 10 working day conciliation period to address school non-attendance. The conciliation period is a 10 working day period affording an opportunity for the parent, child, and the school to develop a plan to ensure regular attendance by the child and comply with NMW requirements.~~

~~(i) Within 10 days of receipt of verification that a child has not met school attendance requirements, the caseworker shall take action to initiate a conciliation period by issuing a notice of action.~~

~~(ii) The benefit group shall have 10 working days from the date of issuance of the notice to provide a school attendance plan indicating the school's confirmation of satisfactory arrangements.~~

~~(iii) If a benefit group fails to provide a school attendance plan, a notice of adverse action shall be sent within five working days.~~

~~(iv) If the school confirms that satisfactory arrangements have been made to ensure regular attendance by the child, the child shall remain eligible.~~

~~**(b) Benefit reduction:**~~

~~(i) The child shall be removed from the benefit group effective the month following the month the notice of adverse action expires.~~

~~(ii) If there is one or more unexcused absence following successful submission of a school attendance plan (the school's confirmation of satisfactory arrangements), the caseworker shall remove the child from the benefit group effective the month following the month the notice of adverse action expires.~~



**(c) Case closure:** If the child is the only child included in the benefit group, the cash assistance case shall be subject to closure in the month following the notice of adverse action.

**(4) Good cause:** A child with unsatisfactory school attendance or enrollment shall be warranted good cause based on the following circumstances:

**(a)** periods of personal illness or convalescence;

**(b)** family emergencies, for a period not to exceed 30 days;

**(c)** participation in or attendance at cultural and religious activities as long as the child has parental consent; or

**(d)** a minor parent has a child under 12 weeks of age.

**E. Regaining eligibility:** Once a child has been removed from the benefit group due to failure to comply with school attendance requirements, the child can not be considered a member of any benefit group. Changes in school attendance must be reported by the parent/caretaker. Eligibility may be regained when:

**(1)** the child has attended school with no unexcused absences for the 30 days;

**(2)** circumstances of good cause apply as listed in Paragraph (4) of Subsection D; or

**(3)** during the summer months if the child is promoted, attending summer school or graduating.

[8.106.430.9 NMAC - N, 07/01/2004; A, 02/27/2009]

### NEW MEXICO PHYSICAL THERAPY BOARD

This adds a new section to 16.20.3 NMAC, Section 13, effective 03/06/09.

#### 16.20.3.13 I N A C T I V E LICENSE:

**A.** A license in good standing may be transferred to inactive status upon written request to the board. Such request shall be made prior to the expiration of the license.

**B.** Until the inactive license has been reactivated, the licensee may not practice physical therapy in New Mexico unless employed by the federal government.

**C.** An annual inactive fee must be submitted to the board as set forth in 16.20.5.8 NMAC.

**D.** A licensee may reactivate the license upon submission of the following:

**(1)** the renewal form for the year in which the licensee wishes to reactivate.

**(2)** payment of the annual renewal fee for the year in which the licensee wishes to reactivate.

**(3)** proof of continuing education units for each year of inactive status.

**(4)** additional proof of competency as requested and prescribed by the board will be required after five (5) years of an inactive license.

**(5)** passage of the jurisprudence examination.

**(6)** completion of a verification of employment form for licensees that have practiced outside New Mexico while on inactive status.

[16.20.3.13 NMAC - N, 03/06/09]

### NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Section 9, Subsection C of 15.2.6 NMAC to include androgenic-anabolic steroids to the list of prohibited medications and to establish the levels and the penalties for violations of the such. Effective 03/01/2009.

#### 15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

##### ... C. MEDICATION RESTRICTIONS:

... **(4)** The official urine test sample may contain one of the following drug substances, their metabolites or analogs, in any amount that does not exceed the specified levels.

##### ... **(j) Androgenic-Anabolic Steroids.**

**(i)** No AAS shall be permitted in test sample collected from racing horses except for residues of the major metabolite of **stanozolol**, **nandrolone**, and the naturally occurring substances **boldenone** and testosterone at concentrations less than the indicated thresholds.

**(ii)** Concentrations of these AAS shall not exceed the following urine threshold concentrations for total (*i.e.*, free drug or metabolite and drug or metabolite liberated from its conjugates): a) 16B-hydroxystanozolol (metabolite of stanozolol (Winstrol) - 1 ng/ml in urine for all horses regardless of sex; b) boldenone (Equipose ® is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine; no boldenone shall be permitted in geldings or female horses; c) nandrolone (Durabolin ® is the phenylpropionate ester and Deca-Durabolin ® is the decanoate ester) (in geldings - 1 ng/ml in urine, in fillies and mares - 1 ng/ml in urine); d) testosterone (in geldings - 20 ng/ml in urine, in fillies and mares - 55 ng/ml in urine).

**(iii)** Any other anabolic

steroids are prohibited in racing horses.

**(iv)** The presence of more than one of the four AAS identified in Item (ii) of this subparagraph at concentrations greater than the individual thresholds indicated above shall not be permitted.

**(v)** Post-race urine samples collected from intact males must be identified to the laboratory.

**(vi)** Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administered AAS, the horse is eligible to be removed from the list.

### End of Adopted Rules Section

## SUBMITTAL DEADLINES AND PUBLICATION DATES

### 2009

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

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