

OFFICE OF THE STATE AUDITOR (OSA)
PROPERTY DISPOSITION NOTIFICATION PROCEDURES

These are the OSA Property Disposition Notification review procedures and related guidance for agencies.

Review Section 13-6-1 through 13-6-5 NMSA 1978, and the following information to become familiar with how agencies must notify the State Auditor about the proposed disposition of property, and what methods of disposition are permitted under New Mexico law.

- Note that pursuant to Section 13-6-4, NMSA 1978, municipalities are not required to notify the State Auditor when they dispose of property.
- Note that Section 33-2-5 NMSA 1978 is the specific statute that applies to Department of Corrections' (DOC's) property dispositions. The requirement to submit a notification to the OSA regarding such dispositions is the only portion of Section 13-6-1 NMSA 1978 that applies to DOC.
- The Office of the State Auditor's interpretation of Subsection A of Section 13-6-1, NMSA 1978, has been that if an agency is going to dispose of tangible personal property **on the capital asset list** ("public inventory" per Subsection A of Section 13-6-1, NMSA 1978) then the agency should notify the State Auditor regarding the proposed disposition as required by Section 13-6-1 NMSA 1978. If the item(s) to be disposed of are not on the agency's capital asset list (because they did not meet the capitalization threshold at the time they were purchased) then the agency should simply follow the agency's policies and procedures with regard to disposing of those items.
- Sometimes local governments decide they want to donate used equipment to governments in Mexico. The Office has a letter from the AG stating that the statutes do not allow agencies to donate property to entities outside the State of New Mexico.
- Section 2.2.2.10(T) NMAC (the Audit Rule 2015) requires that agencies and local governments disposing of any digital equipment with storage capabilities should take care to properly erase stored data prior to the intended disposition. Agencies subject to the notification requirement of Section 13-6-1(B) NMSA 1978, must certify in writing the proper erasure or destruction of the hard drive and submit the written certification along with the notification of the proposed disposition of property, to the State Auditor at least 30 days prior to taking action to dispose of the asset.

Property disposition notification letters should be sent to: Tim Keller, State Auditor, Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, NM 87507. The letter should be submitted to the OSA **at least 30 days prior to the intended disposition action and include the following information:**

- (1) Signatures of the committee members approving the disposition prior to the disposition action (or a copy of the board minutes showing that the governing board approved the disposition);
- (2) The method by which the agency intends to dispose of the property (the method must be an allowable method per the applicable statute);
- (3) A written certification by the agency that the hard drives of all digital equipment with storage capabilities have been erased (or destroyed) or will be erased or destroyed; and
- (4) A list of the items to be disposed of.

If the agency's notification letter includes the four items listed above (that apply to the specific disposition) and the items meet the related requirements, then the OSA files the notification letter, and the agency receives no response from the OSA. But if the agency's notification letter is missing any of the four required elements listed above, or indicates that the agency did not comply with the notification requirement, then the OSA will write a deficiency letter to the agency requesting an addendum to the original notification letter, providing the OSA with the additional required information, or informing the agency regarding the noncompliance.

Sometimes agency notification letters that the OSA receives indicate that the agency is waiting for an “approval from the state auditor” regarding their intended property disposition. The Office is not authorized or required by the statute to give approval of an agency’s proposed property disposition. The Office simply reviews the property disposition notifications for completeness and compliance with the applicable statutes.

If the OSA notes during the review of a property disposition letter, evidence of any of the following instances of noncompliance, the OSA will send a copy of the agency’s deficiency letter to the agency’s external auditor.

- (1) The agency disposed of the property prior to the approval of the agency’s disposition oversight committee.
- (2) The agency disposed of the property prior to submitting the disposition notification letter to the OSA (except for lost items and trade-ins).
- (3) The agency did not submit the property disposition notification letter to the OSA at least 30 days prior to the planned disposition.
- (4) The agency disposed of property by a method that is not permitted by the statutes (Sections 13-6-1 or 13-6-2 NMSA 1978).

These procedures are meant for information purposes only, and should not be construed as legal advice. If an agency has questions about whether specific intended property dispositions are in compliance with the statutes, the agency should consult the agency’s legal counsel.