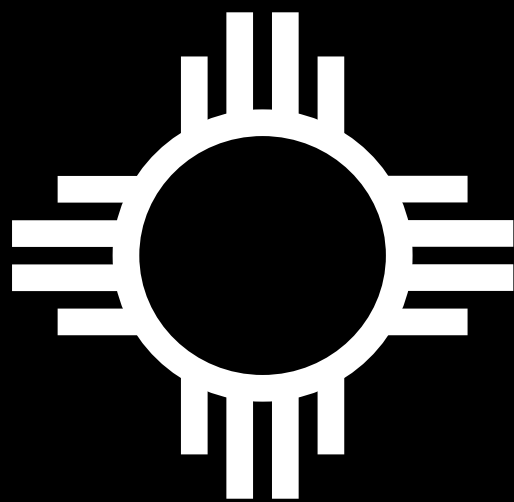


**NEW  
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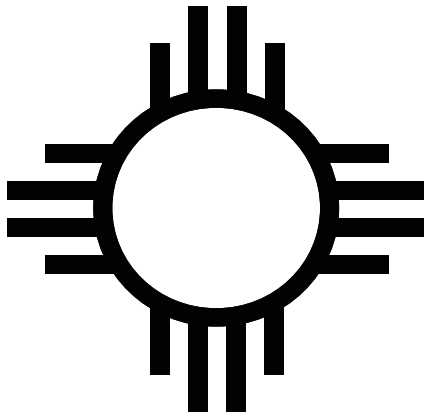


Volume XXIII  
Issue Number 1  
January 17, 2012



# **New Mexico Register**

**Volume XXIII, Issue Number 1  
January 17, 2012**



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  
2012

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# New Mexico Register

Volume XXIII, Number 1

January 17, 2012

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### Adopted Rules

#### Effective Date and Validity of Rule Filings

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

#### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Acupuncture and Oriental Medicine will hold a Rule Hearing on Friday, March 2, 2012. Following the Rule Hearing the New Mexico Board of Acupuncture and Oriental Medicine will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Acupuncture and Oriental Medicine 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, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.2.1 NMAC -General Provisions; 16.2.2 NMAC – Scope of Practice; 16.2.3 NMAC – Application for Licensure; 16.2.4 NMAC – Examinations; 16.2.5 NMAC – Temporary Licensing; 16.2.6 NMAC – Reciprocal Licensing; 16.2.7 NMAC – Educational Programs; 16.2.8 NMAC – License Renewal; 16.2.9 NMAC – Continuing Education; 16.2.10 NMAC – Fees; 16.2.11 NMAC – Licensee Business Offices and Administrative Requirements; 16.2.12 NMAC – Grounds for Denial; 16.2.13 NMAC – Complaint and Disciplinary Procedures; 16.2.14 NMAC – Externships; 16.2.15 NMAC – Inactive License; 16.2.16 NMAC – Auricular Detoxification; 16.2.17 NMAC – Licensure by Endorsement; 16.2.18 NMAC – Expanded Practice Educational Courses; 16.2.19 NMAC – Expanded Practice Certifications; 16.2.20 NMAC – Expanded Practice Formulary

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) 476-4630 after February 1, 2012. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later

than February 15, 2012. 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) 476-4630 at least two weeks prior to the meeting or as soon as possible.

### NEW MEXICO ANIMAL SHELTERING BOARD

#### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

The New Mexico Animal Sheltering Board will hold a Rule Hearing on Friday, February 17, 2012. Following the Rule Hearing the New Mexico Animal Sheltering Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Animal Sheltering Board Rule Hearing will begin at 11:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, 2nd Floor, Hearing Room #1, Santa Fe, NM 87505.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations: 16.24.1 NMAC: General Provisions, 16.24.2 NMAC: Licensure and Certification, 16.24.3 NMAC: Duties of Licensees and Certificate Holders.

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) 476-4827 after January 17, 2012. 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 February 1, 2012. 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) 476-4827 at least two weeks prior to the meeting or as soon as possible.

Velma Rodriguez  
Board Administrator  
Animal Sheltering Board  
PO Box 25101, Santa Fe, New Mexico  
87505

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

#### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### PROTECTIVE SERVICES DIVISION

#### NOTICE OF PUBLIC HEARING

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing in Santa Fe on Tuesday, February 7, 2012 from 1:00 p.m. to 2:30 p.m. in the PERA Building, 1120 Paseo de Peralta, PSD conference room, # 227, to take comments regarding the proposed changes to the following policy:

- \* 8.8.2 NMAC “Protective Services General Policies”
- \* 8.10.2 NMAC “Protective Services Intake”
- \* 8.10.3 NMAC “Protective Services Investigation”
- \* 8.10.6 NMAC “In - Home Services”

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation. Written comments are provided the same weight as comments received during the public hearings.

The proposed changes to the policies above may be reviewed between 8:00 a.m.-5:00 p.m. at the PSD Director’s office, Room 254, in the PERA building in Santa Fe as of the date of publication of this notice. Copies of the policies may be purchased (for the cost of copying); contact Andrea Poole, Bureau Chief, CYFD-PSD, at 505-827-8474.

**NEW MEXICO BOARD  
OF PSYCHOLOGIST  
EXAMINERS**

**NEW MEXICO  
PYSCHOLOGIST EXAMINERS  
BOARD**

**PUBLIC RULE HEARING  
AND  
REGULAR BOARD MEETING  
NOTICE**

Notice is hereby given that the New Mexico Psychologist Examiners Board will convene a public rule hearing at 8:30 a.m. on Friday, February 24, 2012. The hearing will be held at the RLD Conference Room, 5200 Oakland, NE in Albuquerque, New Mexico.

The purpose of the rule hearing is to consider, for adoption, proposed amendments to the following Board Regulations in 16.23 NMAC:

- Part 1 General Provisions
- Part 5 Application Procedures and Requirements for Licensure as a Psychologist
- Part 6 Pre-Doctoral and Post-Doctoral Supervised Experience
- Part 8 License Expiration and Renewal
- Part 12 Educational Requirements and Conditions of Practice for Psychologist Associates
- Part 13 Fees

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at 2550 Cerrillos Road, Santa Fe, New Mexico 87505; or call (505) 476-4622 or access them in the "News" link on the Board's Website at [www.rld.state.nm.us/b&c/rcb](http://www.rld.state.nm.us/b&c/rcb). A draft of the proposed changes will be available thirty days prior to the hearing. All written comments mailed to the Board office or e-mailed to [mary.james2@state.nm.us](mailto:mary.james2@state.nm.us) or must be submitted no later than Friday, February 3, 2012, in order for the Board members to receive the comments in their packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need eight (8) copies of any comments or proposed changes for distribution to the Board and staff at the hearing.

A regular business meeting will follow the rule hearing during which action will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the

Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

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**End of Notices and Proposed  
Rules Section**

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## Adopted Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

**TITLE 21            AGRICULTURE AND  
RANCHING  
CHAPTER 16       AGRICULTURAL  
WEIGHTS AND MEASURES  
PART 7            NEW            MEXICO  
CHILE LABELING**

**21.16.7.1            ISSUING AGENCY:**  
New Mexico State University, New Mexico  
Department of Agriculture.  
[21.16.7.1 NMAC - N, 01/17/2012]

**21.16.7.2            SCOPE:** All vendors of  
New Mexico chile products.  
[21.16.7.2 NMAC - N, 01/17/2012]

**21.16.7.3            S T A T U T O R Y  
AUTHORITY:** Granted to the board of  
regents of New Mexico state university,  
under the New Mexico Chile Advertising  
Act, Chapter 25, Article 11, Sections 1  
through 5, New Mexico Statutes Annotated  
1978 Compilation.  
[21.16.7.3 NMAC - N, 01/17/2012]

**21.16.7.4            D U R A T I O N :**  
Permanent.  
[21.16.7.4 NMAC - N, 01/17/2012]

**21.16.7.5            EFFECTIVE DATE:**  
January 17, 2012, unless a later date is cited  
at the end of a section.  
[21.16.7.5 NMAC - N, 01/17/2012]

**21.16.7.6            OBJECTIVE:** This  
rule establishes the New Mexico chile  
advertising requirements for New Mexico  
chile and products offered for sale containing  
New Mexico chile.  
[21.16.7.6 NMAC - N, 01/17/2012]

**21.16.7.7            DEFINITIONS:**  
**A.** "Board" means the  
board of regents of New Mexico state  
university.  
**B.** "Department" means  
New Mexico department of agriculture.  
**C.** "Director" means the  
director of the New Mexico department of  
agriculture.  
**D.** "New Mexico chile"  
referred to in these rules is capsicum annum.  
Capsicum annum includes all chile varieties  
comprising that species grown in New  
Mexico.

**E.** "Vendor" means any  
person or business that is involved in the sale  
of chile or chile products.

**F.** "Verification form" is  
a guarantee by the submitter that chile sold

as New Mexico chile was grown in New  
Mexico.  
[21.16.7.7 NMAC - N, 01/17/2012]

**21.16.7.8            [RESERVED]**

**21.16.7.9            METHOD OF SALE  
REQUIREMENTS:**

**A.** A five percent by weight  
maximum tolerance of non-New Mexico  
chile is allowed. This tolerance is necessary  
because of the potential mixture of New  
Mexico grown and non-New Mexico grown  
lots on grading tables, harvesting equipment,  
processing equipment, conveying  
equipment, cooking pots, display tables, and  
the use of natural chile derived heat extract.

**B.** Blending of up to five  
percent by weight of non-New Mexico chile  
will be allowed to meet the sales orders for  
Scoville scale (heat level) and ASTA (color).  
[21.16.7.9 NMAC - N, 01/17/2012]

**21.16.7.10          R E C O R D  
REQUIREMENTS:**

**A.** Submission of  
verification form requirement for processed  
chile:

**(1)** Each chile vendor of  
products offered for sale containing New  
Mexico chile must fill out, sign, and submit  
a verification form to the department.  
Verification forms must be submitted within  
three months of institution of these rules  
for existing vendors and within one month  
for new vendors starting a business. The  
department will supply a verification form  
(available at the department and on the  
website) which includes:

**(a)** a guarantee by the submitter  
that record keeping requirements are being  
met for chile advertised as New Mexico  
chile;

**(b)** a guarantee by the submitter  
that chile sold as New Mexico chile was  
grown in New Mexico;

**(c)** a guarantee that the  
regulations are being followed by those  
selling chile as New Mexico chile.

**(2)** The department is  
empowered to audit the required purchasing  
and sales records of any vendor coming  
under the provisions of the New Mexico  
Chile Advertising Act, Chapter 25, Article  
11, Sections 1 through 5, NMSA 1978.  
These records shall be retained for a period  
of one year. A business receiving request  
for records shall permit the inspection  
immediately or as soon as is practicable  
under the circumstances not to exceed  
three business days. Failure to submit the  
records on request of the department or its  
authorized agents is a violation of the New  
Mexico Chile Advertising Act.

**B.** Submission of  
verification form requirement for fresh chile:

**(1)** Verification forms must  
be submitted with each load and followed  
through to the point of sale. The department  
will supply a verification form (available  
at the department and on the website) and  
includes:

**(a)** a guarantee by the submitter  
that record keeping requirements are being  
met for chile advertised as New Mexico  
chile;

**(b)** a guarantee by the submitter  
that chile sold as New Mexico chile was  
grown in New Mexico.

**(2)** Copy of the verification form  
must accompany each load of fresh New  
Mexico chile wherever it is sold.

**(3)** The department is  
empowered to audit the required purchasing  
and sales records of any vendor coming  
under the provisions of the New Mexico  
Chile Advertising Act, Chapter 25, Article  
11, Sections 1 through 5, NMSA, 1978  
Compilation. These records shall be retained  
for a period of one year. Failure to submit  
the records on request of the department or  
its authorized agents is a violation of the  
New Mexico Chile Advertising Act.

**C.** The department will  
maintain a public website that lists all  
chile product vendors that have submitted  
verification form(s).

[21.16.7.10 NMAC - N, 01/17/2012]

**21.16.7.11          E M E R G E N C Y  
WAIVER:** Any or all of the provisions  
of this rule may be temporarily waived by  
the director when he determines, at his  
discretion, that an emergency warrants such  
waiver.

[21.16.7.11 NMAC - N, 01/17/2012]

**HISTORY OF 21.16.7 NMAC:**  
[RESERVED]

### NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.4 NMAC,  
Section 11, effective January 17, 2012.

**19.31.4.11          DAILY BAG,  
POSSESSION LIMITS AND  
REQUIREMENTS OR CONDITIONS:**

**A. Trout**

**(1)** Waters with reduced bag  
limit: No person shall fish waters regulated  
for reduced limits while having in excess of  
that limit in possession.

**(2)** Brown, rainbow, cutthroat,  
Gila, lake, Brook trout and Kokanee salmon:

(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession, unless otherwise specified in special trout waters, Paragraph (4) of Subsection A of 19.31.4.11 NMAC.

(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in Subparagraph (a) of Paragraph (2) of Subsection A of 19.31.4.11 NMAC (above).

(c) The daily bag limit for lake trout shall be 2 trout and no more than 4 lake trout shall be in possession.

(3) Special Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season (October 1 through the second Thursday of November).

(4) Special trout waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(a) On those sections of the following waters the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; in Colfax county: the Shuree lakes on the Valle Vidal; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state hwy. 518 upstream approximately 1 mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately 1 mile posted portion of the Pecos river beginning approximately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 0.2 miles below the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream. In Catron county: Iron creek in the Gila wilderness upstream of the constructed waterfall barrier located in T12SR17WSec16NE. Every person angling for fish on this portion of Iron creek must be in possession of a Gila trout permit,

issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

(b) On those sections of the following waters every person must comply with any special requirements listed and no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately 3.75 miles to the east side of section 16; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to McKinney Pond; In Sandoval county: a posted portion of the San Antonio river from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20); In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Sandoval county, Capulin creek from its confluence with the Rio Grande to the headwaters, In Taos county: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy Ghost creek upstream to its headwaters; In Mora county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal except Leandro creek (Vermejo tract - Carson national forest); In Grant and Catron counties; Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon. Every person angling for fish on these portions of Mogollon creek must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

(c) In Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession.

(d) At Conservancy park/Tingley beach in Albuquerque: the southernmost

pond shall be catch-and-release only and the remaining two ponds shall have daily bag limits of 4 trout with no more than 4 trout in possession.

(e) On those sections of the following waters the daily bag limit shall be 3 trout and no more than 3 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters may be used. In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge; In Taos county: goose lake; In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande; In Taos county: the designated fishing pond at Red River state fish hatchery; In Taos county: the Red River city ponds; In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu; In Rio Arriba county: Laguna del campo at Los Ojos trout hatchery; In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake; In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.

(f) On those sections of the following waters no cutthroat trout may be kept or held in possession and the bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited: In Sandoval county: the Rio Cebolla from McKinney pond to the headwaters; In Taos county: upper Cabresto creek and its tributaries from Cabresto canyon upstream to the headwaters; In Colfax county: the Vermejo river and its tributaries from the Vermejo Park ranch boundary to the headwaters; and in Colfax county: public portions of Leandro creek.

(g) On those sections of the following waters the daily bag limit shall be 2 Gila trout and no more than 2 Gila trout in possession, and the bag limit and possession limit for brown trout is unlimited. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters must be used. In Catron county: waters upstream from the confluence of Gilita creek and Snow creek including Gilita, Willow and Little Turkey creeks.

(h) On those sections of the following waters no Gila trout may be kept or held in possession and the bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited: in Grant county, Black canyon from the forest road 150 (North Star Mesa road) crossing

to the headwaters. Every person angling for fish on these portions of Black canyon must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

**B. Warm-water fishes:**

The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

- (1) striped bass 2 fish;
- (2) largemouth, smallmouth, and spotted bass 5 fish;
- (3) walleye 5 fish;
- (4) crappie 20 fish;
- (5) white bass and white bass x striped bass hybrid 25 fish;
- (6) northern pike 10 fish;
- (7) catfish (all species, except bullheads) 15 fish;
- (8) yellow perch 30 fish;
- (9) all other warm-water game species 20 fish.

**C. The following exception shall apply:**

(1) At Conservancy park/Tingley beach in Albuquerque; lake Van (Chaves county); Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; Estancia Park lake (Torrance county); Corona lake (Lincoln county); Grants city pond (Cibola county); and Jal lake (Lea county): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) Statewide, the limit for tiger muskie (*Esox lucius x E. masquinongy*) shall be one fish over forty (40) inches in length and the possession limit shall be equal to the daily bag limit.

(4) In Eddy county, the Pecos river beginning at the north boundary of Brantley wildlife management area to Brantley reservoir dam including Brantley reservoir, all fish caught must immediately be released, except during official fishing tournaments during which fish may be held in a live well until they are weighed and measured, on site, and then immediately released back into the lake.

(5) In Colfax county, Eagle Nest lake there is no bag or possession limit for northern pike. All northern pike caught at Eagle Nest lake must be kept in possession.

No northern pike shall be intentionally returned to Eagle Nest lake.

[19.31.4.11 NMAC - Rp, 19.31.4.11 NMAC, 4-1-2010; A, 1-17-2012]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.4 NMAC, Section 18 effective 1/17/2012.

### 3.1.4.18 ELECTRONIC FILING:

A. This regulation is adopted pursuant to the secretary's authority in Section 9-11-6.4 NMSA 1978.

B. For returns due after August 1, 2010, the returns and reports for the following taxes must be filed electronically using approved electronic media on or before the due date of the return or report:

(1) taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded twenty thousand dollars (\$20,000); and

(2) weight distance tax if the taxpayer must pay taxes for two or more trucks.

C. For returns due after January 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded ten thousand dollars (\$10,000) must be filed electronically on or before the due date of the return.

D. For returns due after July 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the [taxpayer is required to file monthly under Section 7-1-15 NMSA 1978] taxpayer's average monthly tax liability for this group

of taxes during the preceding calendar year equaled or exceeded one thousand dollars (\$1,000), must be filed electronically on or before the due date of the return.

E. Confirmation of electronic filing of a return must accompany payment of taxes by taxpayer. If taxpayer does not have confirmation of electronic filing when the taxpayer submits payment to the department, taxpayer must ensure that taxpayer's tax identification number is on the payment. Payments without confirmation or tax identification number may not be properly applied to the taxpayer's account and interest and penalty may be assessed.

F. Once a taxpayer is required to file returns electronically pursuant to this regulation, the taxpayer may not file future returns by mail or any method other than electronically.

G. For the purposes of this section, "average monthly tax payment" means the total amount of taxes paid with respect to a group of taxes under Paragraph (1) of Subsection B, Subsection C or Subsection D of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group.

H. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least 30 days before the taxpayer's electronic return is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the tax or tax return to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

I. A taxpayer may be granted a waiver to the requirement of electronic filing for a single tax return. The request for a waiver must be in writing and received by the department on or before the date that the tax return is due and must include the tax or tax return to which the waiver if granted will apply, a clear statement of the reasons for the waiver, and the signature of the taxpayer. A waiver may be granted for the following reasons:

- (1) if the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return and file it electronically;
- (2) if the conduct of the

taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to electronically file; or

(3) if the taxpayer's accountant or other agent or employee who routinely electronically files for taxpayer has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to electronically file the return or to procure the services of a person to electronically file the return before the due date.

J. If a taxpayer is granted an exception or waiver, the taxpayer must file a paper return in a timely fashion unless an extension pursuant to 3.1.4.12 NMAC has been granted. If a paper return is not timely filed, interest will be due even if an extension is granted.

[3.1.4.18 NMAC - N, 6/30/10; A, 1/17/12]

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**End of Adopted Rules Section**

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## Other Material Related to Administrative Law

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### NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

#### New Mexico Board of Examiners for Architects

PO Box 509  
Santa Fe, NM  
505-982-2869

#### Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, February 3, 2012. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

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### NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

#### NOTICE OF PUBLICATION

The Human Services Department has filed and submitted the New Mexico State plan for administration of the Temporary Assistance for Needy Families (TANF) with the Federal Department of Health and Human Services, Administration for Children and Families (ACF).

The New Mexico TANF State plan covers the period of January 1, 2012 to December 31, 2014. The 45-day comment period began October 17, 2011 and ended at 5:00 P.M. on November 30, 2011. All comments received during the comment period were considered for the New Mexico TANF State plan.

The New Mexico TANF State plan is available on the Human Services Department website at: <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals requesting a copy of the plan should contact the Income

Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, New Mexico, 87505-2348, or by call 505-827-7250.

If you are a person with a disability and you require this information in an alternative format, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

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**End of Other Related Material  
Section**

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## Submittal Deadlines and Publication Dates 2012

Volume XXIII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 15
Issue Number 4	February 16	February 29
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

The *New Mexico Register* is the official publication for all notices of rule making, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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

For further information, call 505-476-7907.