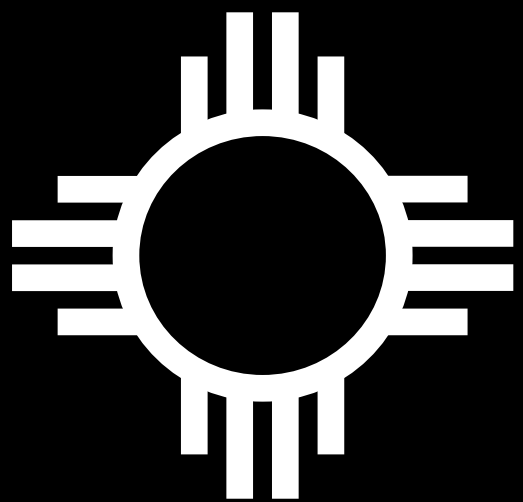


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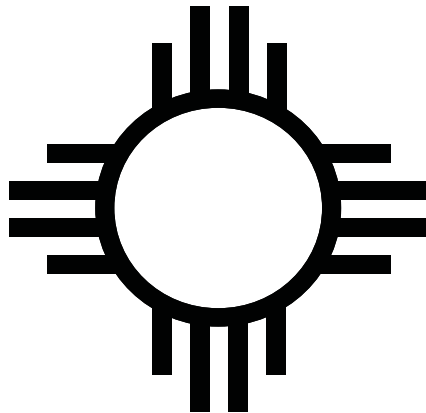


Volume XXIII  
Issue Number 13  
July 16, 2012



# **New Mexico Register**

**Volume XXIII, Issue Number 13**  
**July 16, 2012**



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

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# New Mexico Register

Volume XXIII, Number 13

July 16, 2012

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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.

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO BOARD OF PHARMACY

#### NEW MEXICO BOARD OF PHARMACY

#### REGULAR BOARD MEETING

#### NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **August 27<sup>th</sup> & 28<sup>th</sup>, 2012** at 9:00 a.m. in the **Ruidoso Convention Center, 111 Sierra Blanca Dr. Ruidoso, New Mexico** for the purpose of conducting a regular Board meeting.

Interested persons wishing to comment and or present proposed language regarding rule hearings must submit documentation via fax (505)222-9845, mail or email to William Harvey, [William.Harvey@state.nm.us](mailto:William.Harvey@state.nm.us) or Debra Wilhite, [debra.wilhite@state.nm.us](mailto:debra.wilhite@state.nm.us) no later than August 24, 2012, if in attendance please provide 15 copies for distribution to board members.

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9835 or fax (505) 222-9845, e-mail [debra.wilhite@state.nm.us](mailto:debra.wilhite@state.nm.us) to receive copies of the agenda and any proposed rule, or you may access the links on the agenda for printing via our website listed below. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting August 17, 2012 through the Board's website: [www.rld.state.nm.us.aspx](http://www.rld.state.nm.us.aspx)

The Board will address:

Rule Hearings:

#### 16.19.4 NMAC Pharmacist:

**Sections: 7 - Definitions, 14 - Active Status, 16 - Responsibilities, and 17 - Pharmacist Clinician**

#### 16.19.15 NMAC Dangerous Veterinary Drugs – Retail Distribution

Hearings, Board Orders and Surrenders:

Approval of Applications:

Other Board Matters:

Committee Reports:

Public Requests:

\*Executive Director's Report:  
Case presentations\*

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT

#### NEW MEXICO PUBLIC EDUCATION DEPARTMENT NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the

at the public hearing or submit written comments to Amy Baca, Executive Secretary Administrative Assistant, Special Education Bureau, Public Education Department, 120 South Federal Place, Room 206, Santa Fe, New Mexico 87501, via email at ([spedfeedback@state.nm.us](mailto:spedfeedback@state.nm.us)), or fax (505) 954-0001. Copies of the proposed amendments and the rationale for the changes may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Ms. Baca. . Written comments must be received no later than 5:00 P.M. on the date of the hearing. 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 are asked to contact Ms. Baca as soon as possible at (505) 827-1458. The Department requires at least ten (10) days advance notice to provide requested special accommodations.

### End of Notices and Proposed Rules Section

Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Thursday, August 16, 2012, from 1:00 P.M. to 2:00 P.M. The purpose of the public hearing will be to obtain input on the proposed amendments to 6.31.2 NMAC (Children with Disabilities/ Gifted Children).

Interested individuals may testify either

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## Adopted Rules

### NEW MEXICO DEPARTMENT OF GAME AND FISH

This amendment to 19.31.4 NMAC, Sections 9, 11, and 16, effective 7/16/2012.

#### 19.31.4.9 SEASON DATES:

**A. General seasons:** All trout and warm waters in New Mexico shall be open for the taking of game fish from April 1 through March 31 of the effective years, with the following exceptions:

(1) Special waters

(a) The following waters shall be open between 12 noon March 1 through 12 noon October 31: McAllister lake, upper and lower Charette lakes, Maxwell lakes 13 and 14, and Clayton lake.

(b) All waters in the Valle Vidal (Vermejo tract of the Carson national forest) shall be open from July 1 through December 31.

~~(c) Bonito lake shall be open from April 1 through November 30.~~

~~(d)~~ (c) Laguna del campo at Los Ojos trout hatchery shall be open from May 1 through October 31.

~~(e)~~ (d) Red River city ponds shall be open from March 1 through November 15.

~~(f)~~ (e) Black canyon creek in Grant county upstream from lower Black canyon campground and Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon shall be open from July 1 through October 31.

(2) Waters on national wildlife refuges shall be open for the taking of game fish in accordance with regulations of the U. S. fish and wildlife service; provided that season dates shall be from April 1 through March 31, on those national refuges for which the fish and wildlife service has not regulated season dates.

#### **B. Special Kokanee salmon seasons, dates, and location**

(1) The following waters shall be open October 1 through December 31 for the special kokanee salmon season: Abiquiu reservoir, Chama river from El Vado lake upstream to the west boundary of the Rio Chama wildlife and fishing area, Eagle Nest lake, El Vado lake, and Navajo lake including the Pine river.

(2) Heron lake shall be open for the special Kokanee salmon season from the second Friday in November through December 31.

(3) Heron lake, including the Willow creek tributary, and the Pine river shall be closed to Kokanee salmon fishing

between October 1 and the second Thursday of November.

[19.31.4.9 NMAC - Rp, 19.31.4.9 NMAC, 4-1-2010; A, 7-16-2012]

#### **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

potions 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); Conoco lake (Lea county); Dennis Chavez pond (Curry 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; A, 7-16-2012]

#### 19.31.4.16 CLOSED WATERS: A. Waters closed to fishing

(1) In Catron county: Big Dry creek from Golden link cabin upstream through its headwaters.

(2) In Catron county: Little creek from the "barrier" upstream through all tributaries.

(3) In Catron county: Spruce creek.

(4) In Catron and Sierra counties: Main Diamond creek above the point of confluence with east fork of Diamond creek and the south Diamond creek drainage.

(5) In Colfax county: a posted area lying within 300 feet of Eagle Nest dam, which is closed to entry.

(6) In Colfax county: a posted area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures.

(7) In Grant county: east fork of Mogollon creek upstream of Trail canyon including Woodrow canyon.

(8) In Grant county: McKnight creek.

(9) In Grant county: Sheep corral creek.

(10) In Lincoln county: Pinelodge creek and posted areas of Alto reservoir and Bonito lake near the outlets.

(11) In Catron county: White creek from waterfall near White creek cabin upstream to headwaters.

(12) In Catron county: West fork of the Gila river and all tributaries above waterfalls between FS Trail No. 151 crossing of the West fork of the Gila river near White creek cabin and FS Trail No. 151 crossing of the West fork of the Gila river near Lilley canyon.

**B. Taking fish from hatchery waters:** No person shall take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs state fish hatchery, and Laguna del campo at Los Ojos state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

**C. Taking fish from or through the ice:** Fish may be taken from or through the ice except on the following waters: Santa Cruz lake, Monastery lake, Bonito lake, and Springer lake. [19.31.4.16 NMAC - Rp, 19.31.4.16 NMAC, 4-1-2010; A, 7-16-2012]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.10 NMAC, Sections 14 and 17, effective 7/16/2012.

### 19.31.10.14 FISHING:

**A. Angling:** Game fish may be taken by angling in all waters that are open for fishing.

**B. Trotlines:**

(1) It is unlawful for any person to set more than one trotline at a time. It is unlawful to tie or join together trotlines belonging to two or more persons.

(2) It is unlawful for trotlines to have more than 25 angling hooks.

(3) A person fishing with a trotline shall personally visit and inspect the trotline at least once every 24 hours. Failure to check a trotline every 24 hours is a violation of this paragraph.

(4) It is unlawful for anyone to tamper with another's trotline.

(5) A person fishing with a trotline shall attach to it an identification tag that is visible above the water line. The identification tag shall bear the fisherman's name, address, fishing license number, and the date the trotline was set. An unlicensed fisherman under 12 years of age shall also list his date of birth.

(6) It is unlawful to set or use a trotline in trout waters, with the following exceptions: Abiquiu lake, Chama river downstream from the northern boundary of the Monastery of Christ in the desert, Gila river downstream from its junction with its east fork, Navajo lake and the Rio Grande downstream from its junction with the Chama river.

(7) Any conservation officer or

other officer authorized to enforce the game laws may seize and confiscate any trotlines not set in accordance with this subsection.

**C. Illegal device or substance:** It is unlawful to use any device or substance capable of catching, stupefying, or killing fish except as permitted by regulation.

**D. Bait:** It is unlawful to use protected fish, live bullfrogs, or live bullfrog tadpoles as bait in any waters containing protected species. EXCEPTION: the genus *Lepomis* taken by legal means of angling may be used as live bait in the water from which they were taken only in the following waters: Abiquiu reservoir, Cochiti lake, Elephant Butte reservoir, Caballo reservoir, Stubblefield lake, Maxwell lakes, Clayton lake, Conchas lake, Ute lake, Santa Rosa lake, Lake Sumner, Brantley reservoir, and Navajo reservoir. *Lepomis* may be used as cut bait; roe, viscera, and eyes of legally taken game fish may be used as bait; and bullfrogs and bullfrog tadpoles may be used as cut bait. Live bullfrogs may not be in possession while fishing.

**E. Use of bait fish:**

(1) It is unlawful to use gar (*Lepisosteus* spp.) and goldfish (*Carassius auratus*) for bait fish in all waters.

(2) It is unlawful to use live common carp (*Cyprinus carpio*), river carpsucker (*Carpoides carpio*), and smallmouth buffalo (*Ictiobus bubalus*) in all waters. However, these species may be used as cut bait in any water where bait may be used.

(3) It is unlawful to use bait fish in all trout waters except fathead minnows and red shiners may be used in the following trout waters: Abiquiu, Clayton lake, Jackson lake, lake 13 (Maxwell refuge), Navajo lake, Caballo lake, the Rio Grande downstream of the Taos junction bridge (excluding the special trout water described in 19.31.4.11 NMAC), Power dam lake, and the Animas river.

(4) It is unlawful to use any bait fish in Bitter lake national wildlife refuge and Bottomless lakes state park.

(5) Bait fish may be used in all other waters with the following restrictions:

(a) In the Gila river and San Francisco river drainages only fathead minnows may be used.

(b) In the Pecos river drainage only fathead minnows and red shiners may be used.

(c) In the Rio Grande drainage only fathead minnows, red shiners, and shad may be used except in Elephant Butte and Caballo where golden shiners are also allowed.

(d) In the Canadian river drainage only fathead minnows, red shiners, and shad may be used.

(e) In the San Juan river drainage

only fathead minnows and red shiners may be used.

**(f) In Eagle Nest and Heron lakes only dead or cut bait fish may be used. No live bait fish may be in possession.**

**F. Release of bait fish:** It is unlawful to release any bait fish into any water containing game fish.

**G. Eradication of fish:** In waters where fish are being eradicated or where water shortage warrants reduction of fish numbers, the director may permit licensed fishermen and unlicensed persons under 12 years of age to take and possess game fish in numbers exceeding current bag and possession limits. In granting such permission, the director may specify bag and possession limits and manner and method of taking for such waters.

**H. Bait fish for personal use:** Licensed fishermen and unlicensed persons under 12 years of age may take minnows and nongame fish for personal use only. They may use angling, nets, traps, and seines. All protected species of fish taken in seines, nets, and traps shall be immediately returned to the water.

**I. Illegal taking of bait fish:** It is unlawful for licensed minnow dealers to take bait fish for sale from waters not specified on their licenses. They may take these fish only by use of traps, seines, or cast nets, as specified on their licenses. All protected species of fish taken in such traps, seines, or nets shall be immediately returned to the water from which they were taken.

**J. Methods for taking bait fish:** Bait fish may be taken in waters containing game fish by angling, spears, and arrows.

**K. Permits for taking bait fish:** The director may issue permits for the use of nets, seines, traps, or cast nets in taking bait fish in waters containing protected species of fish. The permit shall specify methods of taking, places for taking, and duration of the permit. The permittee shall report monthly the species, numbers and poundage of nongame fish taken during the preceding month.

**L. Limit on angling hooks:** It is unlawful to angle with more than two (2) barbless lures or flies with single point angling hooks on a single line when fishing the special trout water on the San Juan river designated in Subsection A of 19.31.4.11 NMAC.

**M. [Reserved]**

**N. Number of fishing poles:** It is unlawful to angle with more than one pole without having a current two rod validation or stamp affixed on the current license. It is unlawful under any circumstance to angle with more than two poles.

**O. Exceeding daily bag limit:** It is unlawful to exceed the daily bag

limit or possession limit of any protected fish species, as specified in Title 19, Chapter 31, Part 4.

**P. Snagging game fish:**

It is unlawful to snag game fish except during the special kokanee salmon season as specified in Title 19, Chapter 31, Part 4.

**Q. Chumming:**

It is unlawful to "CHUM" except in the following waters: All waters designated as warm waters; Gila river downstream from its junction with its east fork; Rio Grande downstream from its junction with the Chama river, excluding the special trout water below Elephant Butte dam described in Subsection A of 19.31.4.11 NMAC.

**R. Special trout waters:**

Only barbless lures or flies may be used in the special trout waters designated in Subsection A of 19.31.4.11 NMAC, except in the special trout water on the Rio Grande below Elephant Butte dam in which soft plastic lures may also be used, and in the following waters any legal angling gear and legal bait for trout waters may be used: Conservancy Park lake/Tingley beach the Kids' pond and Central pond, the Vermejo river system within Vermejo Park ranch boundaries, Gilita and Willow creeks, and those waters designated in Subparagraph (e) of Paragraph (4) of Subsection A of 19.31.4.11 NMAC.

**S. Attracting or concentrating fish:**

(1) **Artificial lights:** Use of artificial lights is permitted for attracting game fish.

(2) **Disturbing the bottom:** It is unlawful in all special trout waters defined in Subsection A of 19.31.4.11 NMAC, to disturb or dislodge aquatic plant growth, sediment, or rocks for the purpose of attracting or concentrating fish. It shall also be unlawful to angle in the immediate vicinity where such disturbance has occurred.

**T. Spears, gigs, and arrows:**

(1) Spears, gigs, and arrows with barbs that are discharged beneath the water may be used only in lakes and reservoirs open to fishing.

(2) In addition, during the season established by Subsection B of 19.31.4.9 NMAC, kokanee salmon may be taken by the use of spears, gigs, and arrows with barbs that are discharged above or below the water and not driven by explosives, gas, air, or crossbow, except in the Pine river where spears, gigs, and arrows are prohibited.

**U. Exemption of two rod validation requirement:** A two rod validation or stamp is not required in warm waters as defined in Subsection C of 19.31.4.8 NMAC until April 1, 2004.

[19.31.10.14 NMAC - Rp, 19.31.10.18 NMAC, 4-1-2007; A, 6-30-2008; A, 4-1-2010; A, 7-16-2012]

**19.31.10.17 REGULATIONS PERTAINING TO BOATS, OTHER FLOATING DEVICES, AND MOTORS:**

**A. Charette, Clayton, and McAllister lakes:** On the following lakes controlled by the department of game and fish, boats and other floating devices with or without electric or gas motors shall be permitted only during the season and hours when fishing is permitted. Boats or floating devices on these lakes shall not be operated at greater than normal trolling speed: Charette, Clayton, and McAllister lakes

**B. On Springer lake,** boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed when water storage is less than 1,000 acre feet.

**C. On Ramah lake,** boats and floating devices shall not be operated at greater than normal trolling speed.

**D. On the following lakes** controlled by the department of game and fish, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted: **Bear canyon, Bill Evans, Green Meadow, Fenton, Hopewell, Jackson, lake Roberts, Maddox, Morphy, Quemado, Snow, Wall, Conoco lake, and waters located on the Ladd S. Gordon wildlife area.**

**E. On the following lakes** controlled by the department of game and fish, only boats and other floating devices using no motors shall be permitted: **Bernardo waterfowl management area, La Joya waterfowl management area, McGaffey, San Gregorio, Shuree ponds.**

**F. On the following lakes** controlled by the department of game and fish, no boats or other floating devices shall be permitted: **Bonito, [~~Burns canyon at Parkview state fish hatchery and~~] Laguna del Campo lake at Los Ojos state fish hatchery, Monastery lake, Power dam, and Red River hatchery pond.**

**G. Department of game and fish personnel or persons authorized by the director of the department of game and fish may use gasoline powered outboard motors on all lakes mentioned in this chapter while performing official duties.**

[19.31.10.17 NMAC - Rp, 19.31.10.21 NMAC, 4-1-2007; A, 7-16-2012]

**NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

This is an amendment to 2.80.600 NMAC, Section 20, effective July 16, 2012.

**2.80.600.20 SERVICE CREDIT**

**A.** In order to claim service credit for service rendered prior to August 1, 1947 or for a period prior to the employer becoming an affiliated public employer, a member shall:

(1) file a claim for the period of employment showing specific beginning and ending dates of employment;

(2) provide certification of employment to the association for the period or periods claimed as prior service;

(3) file an affidavit, to be certified and signed by two other persons who know of the employment, together with any additional documentary evidence available which may be required by the board if no records are available for the period of prior service claimed;

(4) provide payroll records, personnel action forms showing hire date(s), term of employment, full-time or part-time, job classification, salary amounts and dates of personnel actions, job description, if any;

(5) contribution history from the federal social security administration for the claimed period of employment, if applicable.

**B. Forfeited service credit** may be reinstated by repayment of withdrawn member contributions, together with interest from the date of withdrawal to the date of repayment at the rate or rates set by the board, under the following conditions:

(1) Service credit may be reinstated in one-year increments, beginning with the most recently forfeited service credit. A one-year increment is 12 consecutive but not necessarily continuous months of service credit. For the purpose of eligibility to retire only, less than one year of service credit may be purchased. After reinstatement of all 12-month "years" as defined herein, any remaining service credit that totals less than 12 months may be reinstated by payment in one lump sum as provided herein.

(2) All forfeited service credit may also be reinstated by repayment of the total amount of all member contributions withdrawn from each period of service together with interest from the date of withdrawal to the date of repayment at the rate set by the board.

(3) A former member who is employed by an employer covered under the Educational Retirement Act must provide evidence of current contributing membership in the educational retirement association; such evidence shall be either certification by the employer, in the form prescribed by the association, or certification by the educational retirement association (ERA).

(4) Payment for reinstated service credit must be received by the association prior to the member's effective date of retirement.

(5) Interest received to reinstate forfeited service credit under this subsection

shall not be refunded to the member. The purchase cost received to reinstate forfeited service credit which is determined to be unnecessary to provide the maximum pension applicable to the member and which is purchased in reliance on information provided by PERA shall be refunded to the member.

C. "Actual credited service" for purposes of NMSA 1978, Section 10-11-27 and Section 10-11-115.2 means only that service credit earned during periods of employment with the New Mexico state police in the positions of patrolman, sergeant, lieutenant, captain or aircraft division pilot, with the corrections department or its successor agency after July 1, 2004 in the positions of adult correctional officer or adult correctional officer specialist, or as a municipal detention officer member. No permissive service credit which is purchased by state police members, adult correctional officer members, or municipal detention officer members shall be increased by 20% as provided in NMSA 1978, Section 10-11-27 or Section 10-11-115.2. With respect to service credit acquired for periods of military service, only that service credit which is acquired for intervening military service during a period of employment as a state police member, an adult correctional officer member after July 1, 2004 or as a municipal detention officer member shall be increased by 20%.

D. Military service credit is free in some cases and may be purchased in other cases as provided by statute.

(1) Where a member wishes to claim service credit pursuant to NMSA 1978, Section 10-11-6 the association shall, upon the member's request, furnish that member a form of affidavit for completion and certification of such service. The affidavit shall be accompanied by documentary evidence of the member's entry and discharge from service in a uniformed service of the United States.

(2) The affiliated public employer by whom the member was employed immediately prior to entering a uniformed service of the United States shall certify in writing the date the member stopped rendering personal service to the employer. This requirement may be waived if PERA records contain sufficient documentation to support the date the member stopped rendering personal service.

(3) The affiliated public employer by whom the member was employed immediately after discharge from a uniformed service of the United States shall certify in writing to the association the date the member started rendering personal service to the employer. This requirement may be waived if PERA records contain sufficient documentation of the date of return to employment. Members who are not

reemployed by an affiliated public employer within ninety days following termination of the period of intervening service but who nevertheless claim reemployment rights under federal law shall provide to the association written certification from the affiliated public employer that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

(4) The affidavit, employer certifications, and documentary evidence of uniformed service shall be presented to the association for approval.

(5) Service credit for periods of intervening service in the uniformed services following voluntary enlistment, reenlistment or appointment shall be awarded only upon compliance by the member and the affiliated public employer with the provisions of NMSA 1978, Section 10-11-6, as amended, and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, including but not limited to the payment to the association of contributions required from the member and the employer.

(6) PERA members who are also members of the military service reserve components who are activated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency may receive free service credit subject to the conditions of this section. The member must provide a form DD 214 or other documentation as required by PERA to support an award of free service credit.

E. A member who claims service credit for one or more periods of employment for which an employer failed to remit the required contributions to the association may receive service credit only after receipt by the association of payment by the employer of the delinquent contributions plus applicable interest and penalties, if any, along with the following documentation:

(1) payroll records for the claimed periods of employment, indicating the salary for the claimed employment dates;

(2) personnel action forms showing hire date(s), term of employment, job classification, salary amounts and dates of personnel actions;

(3) job description;

(4) contribution history from the federal social security administration for the claimed period of employment, if applicable;

(5) explanation from the employer as to why contributions were not withheld or paid to the association;

(6) any other information requested by the association; if original records have been lost or destroyed, affidavits in a form acceptable to the association may be submitted for the purpose of substantiating the employment; the association may accept

such affidavits in lieu of original records if it deems them sufficient to establish the required employment information.

F. At any time prior to retirement, a member may purchase service credit at its full actuarial present value as determined by the association, under the following conditions:

(1) Service credit may be purchased in one-month increments.

(2) The amount of service credit purchased under this Subsection F shall not exceed one year.

(3) Service credit purchased cannot be used for the purpose of calculating final average salary or eligibility for pension factor of a coverage plan for pension calculation and retirement purposes.

(4) ~~[For members employed in part-time positions, for purposes of calculating the full actuarial present value purchase cost of service credit under this Subsection F, the member's hourly salary shall be annualized as if the member was employed full-time.]~~ For purposes of calculating the full actuarial present value purchase cost of service credit under Subsection F of this section, the member's final average salary at the time of purchase and the member's applicable coverage plan shall be used.

~~[(5)] For members who are not currently contributing employees of an affiliated public employer, the full actuarial present value purchase cost of service credit under this Subsection F shall be calculated using the member's last reported hourly salary under the member's last applicable coverage plan.]~~

~~[(6)]~~ (5) Payment for service credit under this subsection must be received within sixty (60) days of the date the member is informed in writing of the purchase price of the service credit.

~~[(7)]~~ (6) The purchase cost received to purchase service credit under this subsection shall not be refunded to the member.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.600.20 NMAC - Rn & A, 2 NMAC 80.600.20, 8-15-01; A, 12-28-01; A, 9-30-03; A, 8-31-04; A, 6-30-05; A, 12-15-09; A, 7-16-12]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an emergency amendment to 2.80.2100 NMAC, Section 8, effective July 1, 2012.

### 2.80.2100.8 GENERAL PROVISIONS

A. No partial refund of a member's contributions is permitted.

B. A member shall not

receive a refund of contributions if the member terminates employment with one affiliated public employer and is thereafter employed by the same or another affiliated public employer within thirty (30) days of termination. The application for a refund of member contributions, if desired, must be filed prior to any subsequent employment. If the application for refund is not filed within this period of time, no refund shall be permitted until termination of all affiliated public employment.

C. Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the letters of administration or order of appointment of personal representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) If the member has been divorced, the member shall provide PERA with complete endorsed copies of all court documents necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required. The requirement for providing a copy of a final decree may be waived, in PERA's discretion, when PERA can establish through online court records that a divorce decree was entered on a specific date and no further documentation is deemed necessary to administer benefits. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered under NMSA 1978, Section 10-11-136, the member's former spouse may request, on a form prescribed by the association, that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code, as specified under Subsection L of 2.80.2100.8 NMAC.

(4) The member's last affiliated public employer must certify to the termination of employment of the member before a refund may be made.

(5) No refund shall be permitted unless a membership application is on file with PERA.

(6) After tax employee contributions that are not includible in gross income may be directly refunded to the member.

D. Interest on member contributions shall be posted annually effective June 30 of each year at the rate of ~~[5-25%]~~2.0%.

E. ~~[refund of member contributions includes interest on those contributions as provided in this rule. Effective July 1, 2004, a]~~ A refund of member contributions includes interest on those contributions calculated through the last working day of the month prior to the date of refund.

F. A refund of member contributions shall not include the purchase cost received to buy permissive service credit pursuant to Section 10-11-7(H) NMSA 1978.

G. If a court order issued pursuant to Section 10-11-136 NMSA 1978 or Section 10-11-136.1 NMSA 1978 restraining, withholding, or dividing a refund of member contributions is received by PERA after a request for refund of contributions has been received but has not been paid, PERA will comply with the order.

H. Pursuant to Section 10-11-135, NMSA 1978, PERA retirement accounts are not subject to legal process under other state laws, except for division of a community interest in such accounts as provided in Section 10-11-136 NMSA 1978 or in enforcement of child support obligations as provided in Section 10-11-136.1 NMSA 1978. In the following instances, however, federal laws pre-empt the provisions of the Public Employees Retirement Act and PERA will honor the federal action if the account is in pay status, i.e. if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the federal action is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

(1) IRS notices of levy for unpaid taxes.

(2) Orders by a U.S. bankruptcy court.

(3) Orders of garnishment for fines or restitution by a federal court in a criminal case.

I. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by PERA. If the refund beneficiary is other than a natural person, the member shall provide

documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

J. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any member would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

K. The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

L. For distributions made on or after January 1, 1993, notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the PERA, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) A non-spouse beneficiary may only rollover the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited individual retirement account or annuity.

(2) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred, and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

[10-15-97; 11-15-97; 12-15-99; 2.80.2100.8 NMAC - Rn & A, 2 NMAC 80.2100.8, 12-28-00; A, 12-28-01; A, 9-30-03; A, 6-30-05; A, 12-15-09; A/E, 7-01-12]

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

This is an amendment to 1.15.2 NMAC, GRRDS, General Administrative Records, amending Sections 7, 9 and adding Section 308 effective 7/23/2012.

**1.15.2.7 DEFINITIONS:**

~~A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978):~~

~~B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978):~~

~~C. "Archives" means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico. The term also refers to the organizational unit of the SRCA storing these records:~~

~~D. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction):~~

~~E. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission:~~

~~F. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files:~~

~~G. "Public record" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or~~

~~appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978):~~

~~H. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee:~~

~~I. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition:~~

~~J. "Records retention and disposition schedule" means rules adopted by the commission pursuant to Section 14-3-4 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition:~~

~~K. "Retention" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes:]~~

~~A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).~~

~~B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).~~

~~C. "Archives" means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico. The term also refers to the organizational unit of the SRCA storing these records.~~

~~D. "Audit" means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.~~

~~E. "Commission" means the state commission of public records (Section 14-3-2 NMSA 1978).~~

~~F. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).~~

~~G. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted~~

~~by the commission.~~

~~H. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files.~~

~~I. "Pending litigation" means a proceeding in a court of law whose activity is in progress but not yet completed.~~

~~J. "Public record" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).~~

~~K. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee.~~

~~L. "Record destruction" means the process of totally obliterating information on records by any method to make the information unreadable or unusable under any circumstances.~~

~~M. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.~~

~~N. "Records retention and disposition schedule" means rules adopted by the commission pursuant to Section 14-3-4 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.~~

~~O. "Retention" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.~~

~~[8/8/96; 5/19/97; 1.15.2.7 NMAC - Rn, 1 NMAC 3.2.90.7, 10/01/2000; A, 1/6/2002; A, 1/5/2004; A, 12/19/2011; A, 7/23/2012]~~

**1.15.2.9**

**INSTRUCTIONS:**

A. Records retention and disposition schedules identify the types of records maintained by state agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are several types of records retention and disposition schedules [created by the SRCA] promulgated by the commission for state agencies. General schedules list records common to all agencies and executive schedules list records specific to an agency. Each record series will be represented in the format listed below.

(1) **Program** - describes the function of the records

(2) **Maintenance system** - describes how an agency files (organizes) records

(3) **Description** - describes the purpose and content of a record

(4) **Retention** - defines the length of time records must be kept before they are eligible for destruction or archival preservation.

B. For records of a general administrative nature, refer to the GRRDS, General Administrative, 1.15.2 NMAC.

C. For records of a financial nature, refer to the GRRDS, General Financial, 1.15.4 NMAC.

D. For records of a personnel nature, refer to the GRRDS, General Personnel, 1.15.6 NMAC.

E. For records of a medical nature, refer to the GRRDS, General Medical, 1.15.8 NMAC.

F. Retention periods shall be extended until six months after all current or pending litigation; current claims, audit exceptions or court orders involving a record have been resolved or concluded.

G. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are included in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

H. Confidentiality is denoted for files likely to contain confidential materials or information; however files without a confidentiality note may contain confidential or privileged information. Failure to include a confidentiality note in the description of a record series does not waive confidentiality. Refer questions concerning the confidentiality of a file to legal counsel for the agency.

I. Access to confidential documents, information or files shall be only by authorization of the agency records custodian (Section 14-2-8 NMSA 1978), or by the office of the attorney general or by court order, unless otherwise provided by law. Release of confidential documents

to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

J. Records may be photographed, microfilmed, digitized or converted to computer output microfilm provided a microphotography plan has been approved by the state records administrator (Section 14-3-17 NMSA 1978). Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction as evidence in all courts or administrative agencies (Section 14-1-6 NMSA 1978).

K. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

L. Email is a transmission medium for content that may or may not be a public record. Email messages that contain information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in records retention and disposition schedules. Email messages are required to be categorized, filed and retained on the basis of content (1.13.4 NMAC, Records Management Requirements for Electronic Messaging). The content of email messages may vary considerably; therefore, each email shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act. Non-records or transitory emails that do not provide evidence of official agency policies or business transactions may be deleted.

[1.15.2.9 NMAC - Rn, 1 NMAC 3.2.90.8 & A, 1/6/2002; A, 1/5/2004; A, 12/19/2011; A, 7/23/2012]

**1.15.2.308 ELECTRONIC INFORMATION SECURITY AUDIT FILES:**

**A. Program:** information technology

**B. Maintenance system:** chronological by date

**C. Description:** records documenting security audits conducted on electronic information systems. Files may include risk assessment report, business process analysis, final security audit report and determinations, correspondence, etc.

**D. Retention:** five years from date of final security audit report

**E. Confidentiality:** Portions of this record may contain confidential information pursuant, but not

limited to 44 U.S.C. 3544 (information security).  
[1.15.2.308 NMAC - N, 7/23/2012]

**NEW MEXICO COMMISSION OF PUBLIC RECORDS**

June 21, 2012

Jackie Garcia, Agency Analysis Bureau Chief  
NM Commission of Public Records  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87507

Ms. Garcia:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rules:

- \* 1.18.420 NMAC ERRDS, Regulation and Licensing Department,
- \* 1.18.521 NMAC ERRDS, Energy Minerals and Natural Resources,
- \* 1.18.667 NMAC ERRDS, Department of Environment.

A review of the rules shows that their impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

John Hyrum Martinez  
State Records Administrator

JHM/jg



**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

**SYNOPSIS**

**1.18.420 NMAC ERRDS, Regulation and Licensing Department**

**1. Subject matter:** 1.18.420 NMAC, Executive Records Retention and Disposition Schedule for the Regulation and Licensing Department. This is an amendment to 1.18.420 NMAC, ERRDS, Regulation and Licensing Department amending Sections 3, 7, 9, 321, 322, 351, 352 and 911, repealing sections 293, 323-329, 340-350, 353, 367-374, and 913-920 and adding Sections 330-334 and 912. The records retention and disposition schedule is a timetable for the management of specific records series of the Regulation and Licensing Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Regulation and Licensing Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Regulation and Licensing Department. Persons and entities normally subject to the rules and regulations of the Regulation and Licensing Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Regulation and Licensing Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Regulation and Licensing Department. Any person or entity outside the covered geographical area that conducts business with or through the Regulation and Licensing Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes

Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** July 23, 2012.

**Certification**

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.420 NMAC ERRDS, Regulation and Licensing Department.

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Tania Maestas Date  
Assistant Attorney General

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

**SYNOPSIS**

**1.18.521 NMAC ERRDS, Energy, Minerals and Natural Resources Department**

**1. Subject matter:** 1.18.521 NMAC, Executive Records Retention and Disposition Schedule for Energy, Minerals and Natural Resources Department. This is an amendment to 1.18.521 NMAC, ERRDS, Energy, Minerals and Natural Resources Department amending Sections 3, 6, 7, 8, 9 and 52. The records retention and disposition schedule is a timetable for the management of specific records series of the Energy, Minerals and Natural Resources Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Energy, Minerals and Natural Resources

Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Energy, Minerals and Natural Resources Department. Persons and entities normally subject to the rules and regulations of the Energy, Minerals and Natural Resources Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Energy, Minerals and Natural Resources Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Energy, Minerals and Natural Resources Department. Any person or entity outside the covered geographical area that conducts business with or through the Energy, Minerals and Natural Resources Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** July 23, 2012.

**Certification**

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.521 NMAC ERRDS, Energy, Minerals and Natural Resources Department.

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Tania Maestas Date  
Assistant Attorney General

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

**SYNOPSIS**

**1.18.667 NMAC ERRDS, Department of Environment**

**1. Subject matter:** 1.18.667 NMAC, Executive Records Retention and Disposition Schedule for the Department of Environment. This is an amendment to 1.18.667 NMAC, ERRDS, Department of Environment amending Sections 3, 6, 7, 8, 9 and 274, also adding Section 275. The records retention and disposition schedule is a timetable for the management of specific records series of the Department of Environment. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Department of Environment.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Department of Environment. Persons and entities normally subject to the rules and regulations of the Department of Environment may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Department of Environment.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Environment. Any person or entity outside the covered geographical area that conducts business with or through the Department of Environment may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** July 23, 2012.

**Certification**

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.667 NMAC ERRDS, Department of Environment.

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Tania Maestas Date  
Assistant Attorney General

**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, August 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. Personnel and/or 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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**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.