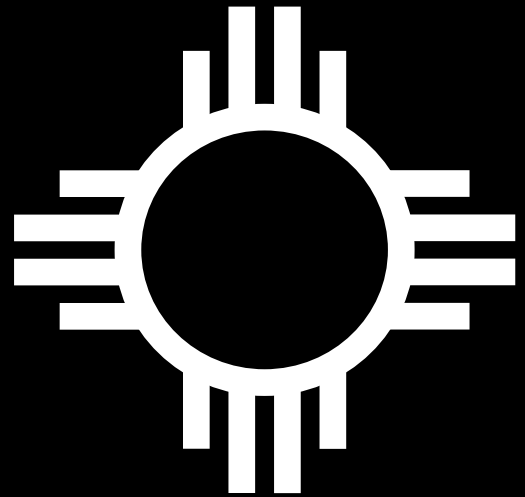


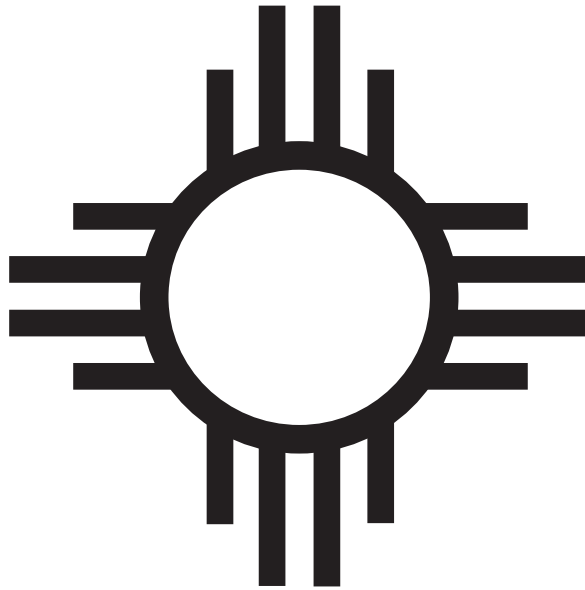
**NEW
MEXICO
REGISTER**



Volume XXVI
Issue Number 23
December 15, 2015

New Mexico Register

**Volume XXVI, Issue 23
December 15, 2015**



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2015

COPYRIGHT © 2015
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XXVI, Issue 23

December 15, 2015

Table of Contents

Notices of Rulemaking and Proposed Rules

Health, Department of	
Notice of Public Hearing.....	1032
Public Safety, Department of	
Notice of Public Hearing.....	1032
Secretary of State	
Notice of Proposed Rulemaking.....	1032
Taxation and Revenue Department	
Notice of Hearing and Proposed Rules.....	1033

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

Finance and Administration, Department of		
Finance, Board of		
2.61.9 NMAC	N	Determinations of the State Board of Finance.....1038
Public Education Department		
6.12.4 NMAC	R	Tobacco, Alcohol and Drug Free School District.....1041
6.12.4 NMAC	N	Tobacco, Alcohol and Drug Free School District.....1041

The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division
1205 Camino Carlos Rey, Santa Fe, NM 87507

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

Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

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

Notices of Rulemaking and Proposed Rules

DEPARTMENT OF HEALTH

Notice of Public Hearing

The New Mexico Department of Health will hold a public hearing regarding the proposed amendment of certain sections of the Medical Cannabis Program rules. The Department is proposing to amend rule Sections 7, 8, 9, 14, 15, 17, 19 and 26 of 7.34.4 NMAC ("Licensing Requirements for Producers, Couriers, Manufacturers and Laboratories"); Sections 7, 8 and 16 of 7.34.3 NMAC ("Registry Identification Cards"); and Section 7.34.2.7 NMAC (definitions within "Advisory Board Responsibilities and Duties"). The amendments proposed include, but are not limited to, the removal of non-profit producer confidentiality provisions; the expansion of approved courier distribution points to include approved laboratories; the modification of certain requirements specific to applications for patient enrollment; and changes to testing and labeling requirements.

The hearing will be held on Wednesday, January 6, 2016 at 9:00 a.m. in the Harold Runnels Building auditorium, located at 1190 St. Francis Drive in Santa Fe, New Mexico. The public hearing will be conducted to receive public comment regarding the proposed rule amendments.

A copy of the proposed rule amendments may be obtained from, and written comments may be submitted to:

Andrea Sundberg, Patient Services Manager
Medical Cannabis Program
New Mexico Department of Health
P.O. Box 26110
1190 St. Francis Dr., Suite S-3400
Santa Fe, NM 87502-6110
505-827-2451
E-mail: medical.cannabis@state.nm.us

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

DEPARTMENT OF PUBLIC SAFETY

Notice of Public Hearing

The New Mexico Department of Public Safety will hold a public hearing at the Law Enforcement Academy Auditorium, 4491 Cerrillos Road, Santa Fe, NM, on January 15, 2016 at 9:30 a.m.

The purpose of this public hearing is to receive public comment and input on the proposed repeal and replacement of Rule 18.19.8 NMAC that regulates, by special permit, movement on the highways of this state of vehicles, combinations of vehicles or loads that, individually or together, exceed size or weight limitations specified in Sections 66-7-401 through 66-7-416 NMSA 1978 of the Motor Vehicle Code.

Changes to the existing rule include: allowing movement on Sundays; requiring a special permit before entry into New Mexico; allowing for preliminary approval of a special permit; increasing to five days the period of time a single-trip special permit is valid; providing for proper placement of flags for oversize vehicles; removing authority to self-issue special permits for oversized manufactured homes; adding restrictions during heavy traffic periods; providing that a multiple-trip special permit be issued for a specific area consisting of four contiguous counties and three interstates; providing for a statewide multiple-trip special permit for tractor semitrailer combinations; imposing a fee for multiple-trip special permits for specialized haul vehicles; allowing assessment of a fee for certain engineering analyses; requiring that surveys, maps, restricted structures and other conditions or restrictions applicable to a special permit be carried in the permitted vehicle; allowing required documents to be carried in electronic form; requiring flagmen to wear an orange or red hard hat or bump cap; clarifying how to obtain a special permit in case of emergency; providing for route surveys; adding definitions and clarifying provisions of the existing rule.

Interested persons may comment at the public hearing or submit written statements to the department c/o Major Gabriel Pacheco, 4491 Cerrillos Road, P.O. Box 1628, Santa Fe, NM 87504, or by electronic mail to gabriel.pacheco@state.nm.us.

state.nm.us. All written statements must be received no later than January 15, 2016 at the public hearing. Early submission of written statements is encouraged.

Copies of the proposed rule may be obtained prior to the hearing by contacting Major Gabriel Pacheco by telephone at (505) 476-2455 during normal business hours or by email at gabriel.pacheco@state.nm.us. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Major Gabriel Pacheco. The Department of Public Safety requires at least ten calendar days advance notice to provide special accommodations.

SECRETARY OF STATE

Notice of Proposed Rulemaking

The NM Secretary of State's Office ("Office") hereby gives notice that the Office will conduct a public hearing at the State Capitol Room 311, 491 Old Santa Fe Trail, Santa Fe, New Mexico 87501, on Tuesday, December 29, 2015, from 9:00 am to 11:00 am. The purpose of the hearing is to obtain public input on the following rules:

- 1) A repeal and replacement of the rule prescribing the order of offices on the ballot, 1.10.11 NMAC.
- 2) An amendment to the rule for voter records system, 1.10.35 NMAC.

Interested individuals may provide comments at the public hearing and/or submit written comments to Kari Fresquez, Interim Election Director via email at sos.rules@state.nm.us, fax (505)827-8081, or mail at Attn: Kari Fresquez – proposed rule, Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501.

Written comments must be received no later than 5:00 pm on the date prior to the hearing. However, the submission of written comments as soon as possible is encouraged. Copies of the proposed rules are available on the Office's website at www.sos.state.nm.us or obtained from Ms. Fresquez by calling (505) 827-3600.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend

or participate in the public hearing are asked to contact Ms. Fresquez as soon as possible to provide requested special accommodations.

TAXATION AND REVENUE DEPARTMENT

Notice of Hearing and Proposed Rules

The New Mexico Taxation and Revenue Department proposes to adopt the following rules:

Taxation and Revenue Department Act

3.28.2.1 NMAC NMSA 1978	Section 9-11-14 (<i>Issuing Agency</i>)
3.28.2.2 NMAC NMSA 1978	Section 9-11-14 (<i>Scope</i>)
3.28.2.3 NMAC NMSA 1978	Section 9-11-14 (<i>Statutory authority</i>)
3.28.2.4 NMAC NMSA 1978	Section 9-11-14 (<i>Duration</i>)
3.28.2.5 NMAC NMSA 1978	Section 9-11-14 (<i>Effective Date</i>)
3.28.2.6 NMAC NMSA 1978	Section 9-11-14 (<i>Objective</i>)
3.28.2.7 NMAC NMSA 1978	Section 9-11-14 (<i>Definitions</i>)
3.28.2.8 NMAC NMSA 1978	Section 9-11-14 (<i>Standard of Conduct</i>)

The proposals were placed on file in the Office of the Secretary on December 1, 2015. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about February 12, 2016.

A public hearing will be held on the proposals on Wednesday, January 20, 2016, at 9:30 a.m. in the Secretary's Conference Room on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department,

Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before January 20, 2016.

TITLE 3: TAXATION CHAPTER 28: TAX FRAUD ENFORCEMENT PART 2: STANDARD OF CONDUCT FOR COMMISSIONED PERSONNEL AND TFID EMPLOYEES ACTIVELY PURSUING COMMISSION

3.28.2.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.28.2.1 NMAC - N, xx/xx/xx]

3.28.2.2 SCOPE: This part applies to all certified law enforcement officers commissioned as tax fraud enforcement officers by the New Mexico Taxation and Revenue Department's Tax Fraud Investigations Division and employees of the Taxation and Revenue Department's Tax Fraud Investigations Division who are actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978.
[3.28.2.2 NMAC - N, xx/xx/xx]

3.28.2.3 STATUTORY AUTHORITY: Section 9-11-14 NMSA 1978.
[3.28.2.3 NMAC - N, xx/xx/xx]

3.28.2.4 DURATION: Permanent.
[3.28.2.4 NMAC - N, xx/xx/xx]

3.28.2.5 EFFECTIVE DATE: xx/xx/xx, unless a later date is cited at the end of a section.
[3.28.2.5 NMAC - N, xx/xx/xx]

3.28.2.6 OBJECTIVE: The objective of this part is to provide standards of conduct for commissioned tax fraud enforcement officers of the New Mexico Taxation and Revenue Department's Tax Fraud Investigations Division (TFID), as authorized by the provisions of Section 9-11-14 NMSA 1978 of the Taxation and Revenue Department Act and for non-commissioned employees of the TFID who are actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978.
[3.28.2.6 NMAC - N, xx/xx/xx]

3.28.2.7 DEFINITIONS: As used in Section 9-11-14 NMSA 1978 and in this part:

A. "academy" means a law enforcement academy that offers accredited courses and curricula for law enforcement officer certification;

B. "certified firearms instructor" is an individual who is certified by the New Mexico department of public safety to instruct and test individuals on the use of firearms;

C. "certified law enforcement officer" is an individual who has received a certification from the New Mexico law enforcement academy board;

D. "code of conduct" means the department's code of conduct for all employees;

E. "commissioned personnel" means any commissioned tax fraud enforcement officer with the TFID;

F. "days" means, unless otherwise stated, that days will be considered to be working days, or days which are regularly scheduled to be worked. For suspension purposes, a holiday is considered to be a working day;

G. "department" means the New Mexico taxation and revenue department;

H. "employee" means certified and commissioned tax fraud enforcement officers within the TFID who are vested by law with a duty to maintain public order or make arrests for crimes, as limited herein to crimes associated with violations of the Tax Administration Act, and non-commissioned TFID employees while they are actively pursuing commission;

I. "firearm" means one of the following:

(1) revolver or semi-automatic handgun, issued or personal; must be a glock .40 caliber or other caliber which is approved and authorized by the appropriate chain of command within TFID;

(2) shotgun, issue only, 12 gauge, which is approved and authorized by the appropriate chain of command within the TFID; or

(3) special team weapon identified, approved and authorized by the appropriate chain of command within the TFID;

J. "New Mexico law enforcement academy board" means the board created by Section 29-7-3 NMSA 1978;

K. "non-commissioned employee" means TFID employees actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978;

L. "order" means a

lawful authoritative command, either verbal or written;

M. "policy" means a mandatory guide designated to meet a situation and circumstance;

N. "procedures" means a written method which delineates the implementation of a policy;

O. "qualification" means the process established by the department of public safety for a certified firearms instructor to test a candidate's firearm skills;

P. "secretary" means the cabinet secretary of the New Mexico taxation and revenue department;

Q. "suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed thirty calendar days;

R. "tax fraud enforcement officer" means a certified law enforcement officer who has been commissioned by the secretary to investigate fraud and other crimes that may affect the collection of taxes due to the state;

S. "termination" means the act of permanently terminating the service of a commissioned tax fraud enforcement officer; a discharge or removal from position of hire, for cause, pursuant to provisions of the Personnel Act (Chapter 10, Article 9 NMSA 1978), as applicable to all employees of the department pursuant to Section 9-11-10 NMSA 1978; and

T. "TFID" means the tax fraud investigations division of the New Mexico taxation and revenue department. [3.28.2.7 NMAC - N, xx/xx/xx]

3.28.2.8 STANDARD OF CONDUCT: All employees are expected to adhere to the provisions of this rule and are subject to such disciplinary action for violation of any of these rules as deemed appropriate by their supervisors or the secretary of the department.

A. Employees shall obey all:

(1) laws of the United States, or any state and local jurisdiction in which the employees are present; and

(2) department and TFID code of conduct, rules and regulations, policies, procedures, directives and lawful orders issued by supervisors.

B. Employees shall satisfactorily perform their duties and assume the responsibilities of their positions. Unsatisfactory performance may be demonstrated by violating any one

of the following provisions:

(1) a lack of knowledge of the application of laws required to be enforced;

(2) an unwillingness or inability to perform assigned tasks; or

(3) the failure to conform to work standards established to the employees' rank, grade or position as set forth in the job specifications.

C. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department. Conduct unbecoming an employee shall include that which brings the department into disrepute or reflects discredit upon the employee as a member of the department, or that which impairs the operation or efficiency of the department or employee. Employees are subject to all rules, policies, and the code of conduct of the department, and, in addition:

(1) employees shall carry out all proper, lawful orders given them by supervisors in the line of duty without hesitation or criticism. Employees will take up matters affecting themselves, their position and departmental business with their immediate supervisor, or through their chain of command or through other TFID designated and proper channels;

(2) employees shall promptly obey any lawful orders of any supervisor. This will include orders relayed from a supervisor by an employee of the same rank or a subordinate employee;

(3) employees who are given an otherwise lawful and proper order which is in conflict with a previous order, rule, regulation or directive shall respectfully inform the supervisor issuing the conflicting order. If the supervisor issuing the order does not alter or retract the conflicting order, the new order shall stand. Under these circumstances, the responsibility for the conflict shall be upon the supervisor. Employees shall obey the conflicting order and shall not be held responsible for disobedience of the order, rule, regulation or directive previously issued;

(4) employees shall not obey any order which they know or should know would require them to commit any illegal act. If in doubt as to the legality of an order, employees shall request the issuing supervisor to either clarify the order or to confer with higher authority;

(5) all

employees shall be courteous to the public, supervisors and all other employees, as well as any person the employee has contact with during the performance of his/her duties and responsibilities. Employees shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, employees shall not use coarse, violent, profane, or insolent language or gestures, and shall not express any prejudice concerning race, religion, politics, national origin, sex, lifestyle, or similar characteristics. When any person requests assistance or advice, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon; and

(6) employees shall maintain a level of good moral character in their personal and business affairs, which is in keeping with the highest standards of the law enforcement profession. Employees shall not participate in any incident which impairs their ability to perform their duties or impedes the operation of the department or causes the department to be brought into disrepute. An employee's direct supervisor shall determine if an employee is fit for duty.

D. Employees will properly care for and maintain all state equipment issued to or used by the employee.

E. An employee will not represent themselves as speaking on behalf of the department in any court proceeding, civil or criminal, for purpose of being a character witness.

F. All employees shall follow all applicable rules and protocols established by the department as regards to confidentiality of taxpayer and motor vehicle division information.

G. Commissioned tax fraud enforcement officers shall carry their badges and commissions on their person at all times, while on duty or while carrying a loaded concealed firearm off duty as provided by the department's policy and procedures. Commissioned tax fraud enforcement officers shall furnish their name to any person requesting that information when they are on duty or while representing themselves in an official capacity, except when the withholding of such information is necessary for the performance of law enforcement officer or department duties.

H. Employees shall

submit all necessary reports and official documents on time and in accordance with established documents and in accordance with established departmental or TFID procedures. Reports and documents submitted by employees shall be truthful and complete, and no employees shall knowingly enter or cause to be entered any inaccurate, false, or improper information. All departmental law enforcement reports, records and evidence are privileged and confidential and may be released only upon written authority of the secretary, and by verbal authority if written authority cannot reasonably be obtained except as required by court order.

I. All employees are expected to meet their financial obligations in a timely manner and live within their financial means. This does not preclude any employee from properly proceeding in bankruptcy.

J. The purpose of this subsection is to provide direction and guidance regarding supplemental employment.

(1) Supplemental employment includes any tasks performed for which the employee is compensated in any way.

(2) Employees who wish to obtain supplemental employment shall secure written permission from their direct supervisor.

(3) In addition to department policies regarding supplemental employment, TFID may impose specific additional conditions on TFID employees.

(4) This subsection applies to all TFID employees including those on any type of leave or suspension.

K. All employees will be physically and mentally fit for duty. The secretary or the employee's direct supervisor may order a physical or psychological examination to assure compliance with this rule, and may mandate counseling or coursework to assist an employee to meet appropriate standards.

L. Employees will not accept anything, including, but not limited to loans, offered to them which is intended to influence the employee in the performance of their duties and responsibilities or for tasks performed as part of their duties.

M. The purpose of this subsection is to provide direction and guidance to all employees regarding political activity.

(1) While off

duty and not representing the department, employees shall be permitted to:

(a) express opinion(s) as individuals on political issues and candidates;

(b) attend political conventions, rallies, fund raising functions and similar political gatherings in an unofficial capacity;

(c) actively engage in any non-partisan political function, partisan meaning an adherent to a party, faction, cause or person; actively engaging in activities of private, fraternal or social organizations which do not conflict with the mission of the department and associated responsibilities is permissible;

(d) sign political petitions as individuals;

(e) make financial contributions to political organizations;

(f) perform non-partisan duties as prescribed by state or local laws;

(g) hold membership in a political party and participate in its functions to the extent consistent with the law and consistent with this regulation; and

(h) otherwise participate fully in public affairs, except as provided by law, to the extent that such endeavors do not impair the neutral and efficient performance of official duties, or create real or apparent conflicts of interest.

(2) Employees are prohibited at all times from:

(a) using their official capacity to influence, interfere with, or affect the results of an election;

(b) assuming active roles in management, organization or financial activities of partisan political clubs, campaigns or parties;

(c) serving as officers of partisan political parties and clubs;

(d) becoming candidates for, seeking election to, or running for, or campaigning for, a partisan elective public or political office;

(e) soliciting votes in support of, or in opposition to, any partisan candidates;

(f) serving as delegates to a political party convention;

(g) endorsing or opposing a partisan candidate for public office in a political

advertisement, broadcast or campaign literature;

(h) initiating or circulating a partisan nominating petition;

(i) organizing, selling tickets to, or actively participating in a fund-raising function for a partisan political party or candidate;

(j) addressing political gatherings in support of, or in opposition to, a partisan candidate; and

(k) otherwise engaging in prohibited partisan activities on the federal, state, county or municipal level.

N. In their capacity as department employees, employees will not seek self-publicity through the news media or any other media by furnishing information obtained or generated from their work for the department for the primary purpose of personal publicity.

O. Employees will not use their position or permit use of their position for personal or financial gain whether directly or indirectly for themselves or any other individual or group.

P. All commissioned tax fraud enforcement officers shall use the utmost care and caution in handling firearms at all times. The following regulate the authorized use of a firearm. An employee shall use their department issued firearm:

(1) as authorized by department use of force and carrying of firearms policies or any other department policy and procedure, drawing or displaying the firearm only for a legal use or for inspection (including cleaning, oiling and storing);

(2) for practice, preferably on an approved range under the auspices of an approved range master; however, should an approved range master not be available, the employee may, at his or her discretion, still utilize the approved range for target practice;

(3) to kill a critically wounded or dangerous animal, when other disposition is impractical; or

(4) to give an alarm or call for assistance for an important purpose when no other means can be used.

Q. In every instance in which a commissioned tax fraud enforcement officers discharges a firearm while on duty, with the exception of target practice, the employee will, without delay, make a written report as required by TFID protocols. The secretary will

be apprised of all incidents of discharged firearms other than target practice. Any unauthorized discharge of a firearm could result in disciplinary action up to and including termination. Any unauthorized use or discharge of a firearm could result in disciplinary action up to and including termination.

R. Non-commissioned TFID employees who are actively pursuing commission are authorized to use department firearms only:

(1) with a certified firearms instructor for qualification; and

(2) when attending an academy and shall use department firearms only during academy directed exercises, classes and events.

S. Duty issued firearms and other department issued weapons shall not be used off-duty except for duty related matters.

T. Employees will maintain a neat appearance in groom and dress, as required for all department employees by department policy. Other practical requirements may be made so that the employee can properly use duty issued firearms and other department equipment. All additional requirements will be made by employee's supervisors and discussed with the employee prior to implementation.

U. Any and all disciplinary action shall be taken in accordance with the regulations of the state personnel board, department policies and code of conduct and this subsection.

(1) Administrative leave with pay shall not have any effect on a commissioned tax fraud enforcement officer's retention of their department commission;

(2) During all periods of suspension, an employee will be relieved of their commission card and any other TFID identity card; any TFID badge(s); their department issued firearm and firearm holster; and their department issued equipment, including but not limited to department purchased or otherwise owned body armor; insignia garments; investigative accessories; vehicles and computers. During all periods of or discipline based administrative leave taken in accordance with the regulations of the state personnel board, an employee shall not access or attempt to access department e-mail; data bases; or computers; and

(3) If disciplinary action includes termination, a commissioned tax fraud enforcement

officer's commission shall be revoked at the time the termination is made pursuant to department policies. In addition to any requirements imposed by department policies, the commissioned tax fraud enforcement officer's commission shall be immediately returned to the department. All terminated employees shall return to the department any TFID identity card; any TFID badge(s); any department issued firearm and firearm holster; and department issued equipment, including but not limited to department purchased or otherwise owned body armor; insignia garments; investigative accessories; vehicles and computers.

V. Any commissioned tax fraud enforcement officer who is relieved of their law enforcement certification will be relieved of their TFID commission.

[3.28.2.8 NMAC - N, xx/xx/xx]

HISTORY OF 3.28.2 NMAC:
[RESERVED]

End of Notices of Rulemaking and Proposed Rules

This Page Intentionally Left Blank

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 in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

DEPARTMENT OF FINANCE AND ADMINISTRATION

BOARD OF FINANCE

TITLE 2 PUBLIC FINANCE CHAPTER 61 STATE INDEBTEDNESS AND SECURITIES PART 9 DETERMINATIONS OF THE STATE BOARD OF FINANCE

2.61.9.1 ISSUING AGENCY:
State Board of Finance (SBOF), 181
Bataan Memorial Building, Santa Fe, New
Mexico.
[2.61.9.1 NMAC - N, 12/15/2015]

2.61.9.2 SCOPE:
A. Counties requesting
a determination from the state board of
finance that a proposed county industrial
revenue bond project will not directly or
substantially compete with an existing
business or enterprise located within the
boundaries of the county or within five
miles of the proposed project.
B. Commissions,
departments, institutions, bureaus or
agencies thereof and political subdivisions
of the state requesting a determination
from the board of greater public need
when public property is taken.
[2.61.9.2 NMAC - N, 12/15/2015]

**2.61.9.3 STATUTORY
AUTHORITY:**
A. Section 4-59-
15 NMSA 1978 provides that if any
representative of an existing business or
enterprise located within the boundaries
of the county or within five miles of the
proposed county industrial revenue bond
project alleges, in a written complaint
filed with the county governing body
within 15 days of the meeting at which
an ordinance or resolution authorizing
the issuance of county industrial revenue
bonds is adopted, that the proposed
project would directly and substantially
compete with such an existing business or
enterprise located within the boundaries
of the county or within five miles of the

proposed project, the bonds in connection
with that project shall not be issued
until the board has determined that the
proposed project will not directly or
substantially compete with an existing
business or enterprise located within
the boundaries of the county or within
five miles of the proposed project.
The board shall conduct a hearing and
make a determination within 90 days
of receiving a request for determination
from the county. An existing business
or enterprise for which county industrial
revenues bonds were previously issued
by the county shall not be entitled to file
a complaint pursuant to Section 4-59-15
NMSA 1978.

B. As with other matters
before the board, records submitted to
the board pursuant to Section 4-59-15
NMSA 1978 and this rule are subject to
inspection pursuant to the Inspection of
Public Records Act, Sections 14-2-1 to
-12 NMSA 1978, as amended, unless
exempted from inspection pursuant to
Subsection A of Section 14-2-1 NMSA
1978.

C. There is no provision
in law placing the board or its procedures
under the Administrative Procedures Act,
Sections 12-8-1 to -25 NMSA 1978, as
amended (see Section 12-8-23 NMSA
1978). As such, determinations by the
board made pursuant to Sections 4-59-15
NMSA 1978 and 42-2-3 NMSA 1978 are
not adjudicatory proceedings as described
in Section 12-8-2 NMSA 1978 and may
be conducted through administrative
hearings, as described therein. See *State
ex rel. King v. Lyons*, 2011-NMSC-004,
26, 149 N.M. 330.

D. Section 42-2-3 NMSA
1978 provides that the state may acquire,
either temporarily or permanently, public
or privately owned lands, real property
or any interests therein, including water
rights or any easements deemed necessary
or desirable for present or future public
road, street or highway purposes by
gift, agreement, purchase, exchange,
condemnation or otherwise. Such lands
or interests in real property may be
acquired in fee simple. The state may
use the special alternative procedure to
acquire lands or any interest therein for

any public purpose for which the power
of eminent domain may be properly
exercised. And for purposes of Section
42-2-3 NMSA 1978, when state-owned
property must be taken, the board shall
first determine the greater public need,
unless the state defendant in whom title
is vested concedes that the purposes for
which the property is sought to be taken is
the greater public need.
[2.61.9.3 NMAC - N, 12/15/2015]

2.61.9.4 DURATION:
Permanent.
[2.61.9.4 NMAC - N, 12/15/2015]

2.61.9.5 EFFECTIVE DATE:
December 15, 2015, unless a later date is
cited at the end of a section.
[2.61.9.5 NMAC - N, 12/15/2015]

2.61.9.6 OBJECTIVE:
A. The board finds
that increased economic competition,
wages, and demand for labor are positive
outcomes of economic development
incentives, including industrial revenue
bonds. Therefore, the board will exercise
its authority to determine whether direct
or substantial competition exists in a
manner that allows healthy competition
to occur in the interest of economic
development, but that avoids material
negative impact to an existing business
that files a complaint pursuant to Section
4-59-15 NMSA 1978.

B. This rule establishes
criteria that will be considered and
administrative hearing procedures that
will be followed to ensure compliance
with the mandates of Section 4-59-15
NMSA 1978 and Section 42-2-3 NMSA
1978.
[2.61.9.6 NMAC - N, 12/15/2015]

2.61.9.7 DEFINITIONS:
A. "Administrative
hearing" means a public hearing for which
notice and an opportunity to be heard are
provided prior to the board's consideration
and issuance of the determinations
contemplated by this rule. Administrative
hearings under this rule do not require
that the parties thereto be afforded all
the elements of a traditional judicial

proceeding.

B. “Board” means the state board of finance.

C. “Ex parte communications” means any oral, written or electronic communications between one party (or its attorney) and any board member(s) that occur out of the presence of, or without the consent of an opposing party (or its attorney). Communications included in this definition, in addition to direct communications, include indirect communications as where a party requests or suggests to a non-party to contact a board member on any matter related to a pending determination. Ex parte communications also occur when individuals sympathetic to one party make oral, written or electronic communications to any board member out of the presence of, or without the consent of the opposing party (or his/her attorney) on any matter related to a pending determination.

D. “State” or “state defendant” includes, with respect to determinations of the greater public need described at 2.61.9.9 NMAC, any commission, department, institution, bureau or agency thereof as well as all political subdivisions of the state. [2.61.9.7 NMAC - N, 12/15/2015]

2.61.9.8 PROCEDURE FOR BOARD DETERMINATION OF DIRECT OR SUBSTANTIAL COMPETITION PURSUANT TO THE COUNTY INDUSTRIAL REVENUE BOND ACT:

A. A county with which a complaint has been filed pursuant to Section 4-59-15 NMSA 1978 shall submit the following to the board to request the board to make a determination:

(1) a cover letter stating the action requested from the board;

(2) a copy of the complaint filed with the county;

(3) a map depicting the location of the existing business or enterprise and the proposed project that allows verification that the existing business or enterprise is located within the boundaries of the county or within five miles of the proposed project;

(4) a certification by an authorized county official verifying that county industrial revenue bonds have not previously been issued by that county for the existing business or enterprise that filed the complaint, and noting whether the existing business or enterprise has ever in the past been denied the issuance of industrial revenue bonds;

(5) a copy of the final industrial revenue bond application submitted to the county by the new business; and

(6) a copy of any resolution or ordinance adopted by the county related to the proposed industrial revenue bonds.

B. Within seven days of receipt of a request that the board make a determination pursuant to Section 4-59-15 NMSA 1978, the board’s staff will cause notice to be published in a newspaper of general circulation in the state and in a newspaper published in the county in which the complaint has been filed or in a neighboring county if no publishing newspaper exists in said county. The form of notice will be as follows, subject to any revision that may be necessary in the discretion of the board’s staff to ensure accuracy, coherency or to comply with instructions from the board:

“NOTICE OF PUBLIC HEARING:
The State Board of Finance (SBOF) is accepting public comments from all interested persons related to a request by (county) for a determination pursuant to Section 4-59-15 NMSA 1978. This statute provides that if a written complaint is filed with a county governing body within 15 days of the meeting at which an ordinance or resolution authorizing the issuance of county industrial revenue bonds is adopted, alleging that the proposed project would directly or substantially compete with an existing business or enterprise located within the county or within five miles of the proposed project, the bonds shall not be issued until the SBOF has determined that the proposed project will not directly or substantially compete with the existing business or enterprise. The SBOF shall conduct an administrative hearing and make a determination within 90 days of receiving a request for determination from the county. The request for determination was received by the SBOF from (county) on (date). Interested persons are invited to submit public comments that will assist the SBOF in making its determination by demonstrating that the proposed project to benefit (new business) either does or does not directly or substantially compete with existing business or enterprise (existing business or enterprise). Criteria that the SBOF may consider in making its determination are established in its rule governing this matter at Subsection F of 2.61.9.8 NMAC, and include information about business inputs and the impact on input costs, competition

for sales and the impact on sales prices, information about the local labor market and workforce training costs, specific business models employed by the two businesses, whether the businesses are part of a cluster economy, information on regional transportation, transmission, pipeline or other infrastructure constraints, information on the geographical distribution of sales for the existing business or enterprise and the new business, and any other information that an interested person believes will assist the SBOF in making its determination. (Insert description of any other information the board solicits in relation to a particular request for determination.) Public comments must be submitted in writing to Director, 181 Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501, and shall not be submitted directly to SBOF members. Initial public comments should be submitted by (first public comment deadline). Initial public comments received by (first public comment deadline) will be published on the SBOF website, (website address). In response to public comments published on the SBOF website, additional public comments may be submitted by (second public comment deadline). Copies of the request for determination and the written complaint are available in room 181, Bataan Memorial Building, Santa Fe, NM 87501 and on the SBOF website. It is anticipated that the SBOF will schedule a public administrative hearing on this issue, which is expected to take place (meeting date) subject to notice requirements established in the SBOF’s Open Meetings Resolution, SBOF Policy (policy number), to hear presentations from (county), (existing business or enterprise), and (new business). Following this administrative hearing, the SBOF may deliberate and make a determination pursuant to Section 4-59-15 NMSA 1978 or may take action at a later date. The SBOF in its discretion may require persons participating in administrative hearings related to this issue to do so under oath. The SBOF may employ experts to assist it in making its determination. Interested persons are instructed to refrain from communicating directly with board members concerning matters related to the request for determination. All commentary, either written or oral, shall be submitted to the board via the process for submitting written public comment described in this notice of public comment period, or through comment or testimony received at the administrative hearing.”

C. At its next regular meeting or at a special meeting called for this purpose following receipt of a complaint, the board chairperson will appoint a member of the board as hearing officer to preside over administrative hearings related to the request for determination. The hearing officer will be delegated the authority to consider and dispose of non-dispositive motions, respond to procedural questions that arise between the board's meetings, to take all measures necessary for maintenance of order and for the efficient, fair and impartial consideration of issues arising before and during administrative hearings including but not limited to keeping the administrative hearing on schedule, taking or admitting written public comment, and making such orders as may be necessary to preserve decorum and protect the orderly administrative hearing process.

D. At a regular or special meeting following the conclusion of the second public comment deadline established in the notice of public comment period, the board will hear presentations from the county, the existing business or enterprise, and the new business. By a preponderance of the evidence, the existing business or enterprise shall have the burden of proving that the proposed project will directly and substantially compete with the existing business. Following these presentations, the board may ask questions of all persons appearing before it to elicit information it deems necessary to make its determination. The board may then deliberate, make a determination at that time, or make a determination at a later date.

E. The board will make its determination at a regular or special meeting within 90 days of receiving the request for determination. Upon announcing its determination, the hearing officer will direct the board's staff and counsel to draft a written determination containing findings of fact and citations to the administrative hearing record. The written determination will be approved by the board at the next regular or special meeting, which may occur more than 90 days after the board's receipt of the written complaint from the county.

F. In making its determination, the board may consider the following information contained in the administrative hearing record as a result of written public comment and verbal testimony, as well as any other criteria the board deems relevant in its sole discretion:

(1) competition

for business inputs such as raw materials, manufacturing technology, capital and labor, including whether any increased competition for business inputs is likely to be met by increased supply for business inputs without generating a substantial increase in the costs of business inputs for the existing business or enterprise;

(2) competition for sales, including whether any increased competition for sales will likely be absorbed in the market without a substantial reduction of prices received by the existing business or enterprise;

(3) information about the local labor market, including the county unemployment rate, the size of the existing workforce relative to the employment levels of the existing business or enterprise and the new business, training costs of the workforce at the existing business or enterprise and the new business, and any factors that may suggest whether or not labor is likely to relocate to the area if labor demand increases as a result of the new business;

(4) specific business models employed by the two businesses and commentary on whether the two businesses are likely to compete directly or substantially either in a geographic sense or in providing goods or services in the same specific market segments;

(5) whether the new business and existing business are part of a cluster economy, in which a group of interconnected firms benefit from co-location;

(6) information on regional transportation, transmission, pipeline, or other infrastructure constraints; and

(7) information on the geographical distribution of sales for the existing business or enterprise and the new business.

[2.61.9.8 NMAC - N, 12/15/2015]

2.61.9.9 PROCEDURE FOR BOARD DETERMINATION OF GREATER PUBLIC NEED RELATED TO SPECIAL ALTERNATIVE CONDEMNATION PROCEDURE:

When state-owned property must be taken and the state defendant in whom title is vested does not concede that the purpose for which the property is sought is the greater public need, the state entity that seeks to take the property may submit the following to the board to request the board to make a determination:

A. A submission from the state entity seeking to take the property

that includes:

(1) a cover letter stating the action requested from the board;

(2) a description of its public need for the property, including copies of any master planning documents that require the property to be taken;

(3) a description of the selection process it used to identify the property and describing its efforts to identify other property that would be suitable to meet the public need;

(4) a description of efforts it has made with the state defendant to attempt to resolve the dispute prior to seeking a determination from the board;

(5) documentation to allow verification of the legal description of the property; and

(6) a resolution of the state entity's governing body requesting the board's determination, or a letter from the head of the state entity if such state entity has no governing body.

B. A submission from the state defendant, through the state entity seeking to take the property that includes the following items:

(1) a resolution of the state defendant's governing body stating that it does not concede that the purpose for which the property is sought is the greater public need, or a letter from the head of the state defendant if such state defendant has no governing body;

(2) a description of its public need for the property, including copies of any master planning documents that require the property to be retained; and

(3) a description of its use and maintenance of the property during the past five years.

C. A state defendant that fails to submit these requirements through the state entity seeking to take the property within a reasonable timeframe, in the board's sole discretion, may be found to be nonresponsive and, as a result, the board may make its determination of greater public need in favor of the state entity seeking to take the property.

D. At a regular or special meeting called for this purpose, the board will hear presentations from the state entity seeking to take the property and the state defendant. Following these presentations, the board may ask questions of all persons appearing before it to elicit information it deems necessary to make its determination. The board may then

deliberate, make a determination at that time, or make a determination at a later date.

E. The board will announce its determination at a regular or special meeting. Upon announcing its determination, the board will direct the board's staff and counsel to draft a written determination containing findings of fact and citations to the hearing record. The written determination will be approved by the board at a subsequent regular or special meeting.

F. In making its determination, the board may consider the following information contained in the hearing record as a result of written public comment and verbal testimony, as well as any other criteria the board deems relevant in its sole discretion:

(1) the competing public needs for the property demonstrated by the state entity seeking to take the property and by the state defendant, with primary consideration given to public needs it finds are substantially related to public peace, health, safety, welfare, and secondary consideration given to public needs it finds are substantially related to economic development, recreation, speculative, and undefined use;

(2) whether the state entity seeking to take the property made reasonable efforts to identify other properties that would be suitable to meet the public need; and

(3) whether the state defendant has actively used or maintained the property for any purpose during the past five years.
[2.61.9.9 NMAC - N, 12/15/2015]

2.61.9.10 EX PARTE COMMUNICATIONS PROHIBITED:

No party or its attorney shall engage in ex parte communications regarding a pending determination with any hearing officer appointed to preside over an administrative hearing. Likewise, a hearing officer shall not engage in ex parte communications on any matter to which that hearing officer has been appointed with any party or its attorney. However, there may be occasions when brief ex parte communications are warranted, for example, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A summary of what was communicated shall be promptly disclosed to the individual who did not participate in the ex parte communication. Board members and staff shall not engage in any

ex parte communications on any matter or for any reason related to a pending determination with any party, attorney or interested person.

[2.61.9.10 NMAC - N, 12/15/2015]

HISTORY OF 2.61.9 NMAC: [RESERVED]

PUBLIC EDUCATION DEPARTMENT

The Public Education Department, following its 10/30/2015 public hearing, approved the repeal of its rule 6.12.4 NMAC, Tobacco, Alcohol and Drug Free School Districts (filed 5/16/01) and replace it with 6.12.4 NMAC, Tobacco, Alcohol and Drug Free Schools, effective 12/15/15.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY PART 4 TOBACCO, ALCOHOL AND DRUG FREE SCHOOLS

6.12.4.1 ISSUING AGENCY:

Public Education Department.
[6.12.4.1 NMAC - Rp, 6.12.4.1 NMAC, 12/15/2015]

6.12.4.2 SCOPE: This rule applies to school districts, local school boards and to state-chartered charter schools and governing bodies.

[6.12.4.2 NMAC - Rp, 6.12.4.2 NMAC, 12/15/2015]

6.12.4.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of public education and the public education department under the authority of Sections 9-24-8, 22-2-1, 22-2-2 and 22-5-4.4 NMSA 1978.

[6.12.4.3 NMAC - Rp, 6.12.4.3 NMAC, 12/15/2015]

6.12.4.4 DURATION:

Permanent.
[6.12.4.4 NMAC - Rp, 6.12.4.4 NMAC, 12/15/2015]

6.12.4.5 EFFECTIVE DATE:

December 15, 2015, unless a later date is

cited at the end of a section.

[6.12.4.5 NMAC - Rp, 6.12.4.5 NMAC, 12/15/2015]

6.12.4.6 OBJECTIVE: The objective of this rule is to prohibit the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs in school buildings, on school premises and by students at school-sponsored activities away from school grounds.

[6.12.4.6 NMAC - Rp, 6.12.4.6 NMAC, 12/15/2015]

6.12.4.7 DEFINITIONS:

A. "Alcoholic beverage" means any beverage containing more than one-half percent alcohol by volume, and includes all distilled or rectified spirits, potable alcohol or any similar alcoholic beverages, including all fermented or blended beverages and dilutions or mixtures of one or more of these alcoholic beverages.

B. "E-cigarette":
(1) means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substances the use or inhalation of which simulates smoking; and

(2) includes any such device, or any part of it, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor; but
(3) does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.

C. "Illicit drugs" means prescription and over-the-counter medications used for non-medical purposes, or not used as medically prescribed by lawfully authorized practitioners or as directed by the manufacturer's literature, and include all supplemental dietary or nutrition ergogenic aids, stimulants, nootropics, adaptogens, painkillers, sedatives and anxiolytics, blood boosters and other performance-enhancing drugs.

D. "Mood-altering substances" means substances that change, or are capable of changing, a person's emotional state, and include all stimulants, opioids, intoxicative inhalants and hallucinogens.

E. "Nicotine liquid container" means a bottle or other

container of any substance containing nicotine where the substance is sold, marketed or intended for use in an e-cigarette.

F. “School personnel” includes all administrators, principals, teachers, counselors, social workers, speech therapists, psychologists, nurses, librarians and other support staff who is employed by a school, or who perform services for the school on a contractual basis.

G. “Tobacco product” means any product made or derived from tobacco that is intended for human consumption, including any component, part or accessory of a tobacco product. This includes, among other products, cigarettes, cigars, pipe tobacco, roll-your-own tobacco, dissolvable tobacco, and smokeless tobacco. Smokeless tobacco means any snuff or chewing tobacco. [6.12.4.7 NMAC - Rp, 6.12.4.7 NMAC, 12/15/2015]

6.12.4.8 REQUIREMENTS:

Each local school board or governing body shall establish a tobacco, alcohol and drug free school policy:

A. The policy shall provide specific rules of conduct prohibiting the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs in school buildings, on school premises and by students at school-sponsored activities away from school grounds.

B. Each school district and state-chartered charter school shall detail the prohibited acts and activities under the policy, and shall establish adequate provisions for its enforcement, including the enumeration of possible sanctions or disciplinary action, consistent with applicable statutory and case law.

C. The policy shall provide that no school employee who in good faith reports any known or suspected use, possession or distribution of alcoholic beverages, mood-altering substances or illicit drugs shall be held liable for any civil damages as a result of such report or efforts to enforce the policy.

D. Each school district and state-chartered charter school shall develop and implement a procedure for effectively communicating the policy to students, their parents and families, school personnel, visitors on school premises, and to local residents, groups, businesses and organizations served by the school.

E. Each school district

and state-chartered charter school shall post conspicuous notices on all school premises prohibiting the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs, in school buildings, on school premises and by students at school-sponsored activities away from school grounds.

[6.12.4.8 NMAC - Rp, 6.12.4.8 NMAC, 12/15/2015]

6.12.4.9 EXCEPTION:

Sections 6 and 8 of this rule shall not include the lawful possession or use by a minor of a tobacco-cessation product approved by the United States food and drug administration.

[6.12.4.9 NMAC -N, 12/15/2015]

HISTORY OF 6.12.4 NMAC:

PRE-NMAC HISTORY: The material in this regulation is derived from that previously filed with the State Records Center and Archives under: State Board of Education Regulation No. 94-2, Regulation on Tobacco Free School Districts, filed July 19, 1994.

History of Repealed Material:

6.12.4 NMAC, Tobacco, Alcohol and Drug Free School Districts, filed 5/16/2001 - Repealed effective 12/15/2015.

End of Adopted Rules

New Mexico Register
Submittal Deadlines and Publication Dates
Volume XXVI, Issue 24, 2015 and
Volume XXVII, Issues 1-24, 2016

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, 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 505-476-7942