

What are State Rules?
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In the Commission of Public Records (CPR), there is a small division called the Administrative Law Division (ALD). One of the major responsibilities of the Administrative Law Division is to file and publish state rules.

What then, are state rules: they are a special category of law written by authorized state agencies to support, clarify, or define specific laws enacted by the legislature, which are called statutes. State rules can include such things as building codes, air quality standards, tax codes, welfare system regulations, and public health regulations. Rules are subordinate to statutes and must work within the parameters established by the legislature. If a discrepancy or conflict occurs between a rule and a statute, the statute prevails. Statutes trump rules.

An important aspect of state rules is that they affect people outside the agency that writes them. Internal agency policies and procedures need not be established by rule, but if they impact anyone outside the agency, they must be established in rule. There are exceptions such as contracts and requests for proposals; although they clearly affect those outside the agencies that make them, are not rule material.

Usually, statutes written by the legislature are general in nature. They establish something, set bounds of authority, and provide funding, when required. For example, by statute the legislature created the publication called the *New Mexico Register*. In the statute (Section 14-4-7.1 NMSA 1978), the legislature established what could be contained in the publication, how frequently it would be produced, who would be responsible for ensuring its timely publication, and so forth. The statute covers the large issues relating to the *New Mexico Register* but does not provide specific details on how it is to be produced and made available to the public. The statute provides that, "the state records administrator shall adopt and promulgate rules necessary for the implementation and administration of this section." (Subsection E of Section 14-4-7.1 NMSA 1978). The legislature authorized the State Records Administrator as the agency director to make rules on the specifics of the *New Mexico Register* production. With that authority, the State Records Administrator adopted rules entitled: New Mexico Administrative Code (1.24.10 NMAC) and New Mexico Register (1.24.15 NMAC) that address specific policies, procedures and requirements associated with the style, format, filing, adoption, publication and organization of notices of rulemaking and rules. The rules describe how material is to be submitted for publication and also sets fees for publication charges.

As I mentioned state rules are to support, define, and clarify statute. They must operate within limits established by the legislature and cannot attempt to expand an agency's authority. To ensure rules are within an agency's authority and are appropriate to be made, each rule must go through the promulgation process by which members of the public are given proper notice of the proposed rule. House Bill 58, which was passed in the 2017 legislative session revised the rule making process in New Mexico with the goal of providing uniformity in rule making across all agencies and increasing public participation in the rule making process. Among the key

measures HB 58 provided for include: strict noticing provisions relating to the proposed notice of rulemaking; providing notices and proposed rules to the public by, among other things, posting all related material to the Sunshine Portal and providing to legislative council for distribution to appropriate interim and standing legislative committees services; a thirty-day public comment period on proposed rules; and requirements for an open rule meeting that emphasizes public comment on any proposed rules.

Once a rule is finalized by an agency, the rulemaking authority must approve it and sign it. The rulemaking authority is the person in an agency who has the authority from the legislature to make rules. The rule is then filed with the Administrative Law Division, which ensures the rule complies with the style and format requirements (such as proper font, point size, margin width, etc.) established by 1.24.10 NMAC. If the rule complies with the requirements, it is date and time stamped and brought into the state's permanent rule collection. Before a rule can be effective, it must be published in the *New Mexico Register*. After its publication and effective date, a rule is considered state law unless it is successfully challenged in court. If a rule must be made effective quickly and cannot wait for the promulgation process to take place, statute authorizes that agencies can make emergency rules. Emergency rules can be effective immediately on filing with the Administrative Law Division but only last for 180 days unless they conduct a regular rulemaking process.

To assist the public in finding current state rules, the legislature mandated (Section 14-4-7.2 NMSA 1978) the creation of the New Mexico Administrative Code (NMAC). The NMAC is a compilation of the current rules organized by subject. Each rule is assigned a unique number so that it can be found easily. The rules follow specific formatting requirements including similar internal organization so that uniform citation methods can be used. In January of 2002, the CPR completed the compilation of the NMAC and placed it online. It can be found at: <https://www.srca.nm.gov/nmac-home/>. There is a search engine on the webpage to assist in finding a rule if the specific rule number is not known. In addition to the NMAC website, the CPR placed the *New Mexico Register* online. It can be found at: <https://www.srca.nm.gov/nmac-home/new-mexico-register/>. The NMAC and *New Mexico Register* websites are free of charge.