



NEW MEXICO

Commission of Public Records

at the State Records Center and Archives

Your Access to Public Information

ADMIN. AGENCY RULEMAKING -- STATE RULES ACT, § 14-4-1 ET SEQ.

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STATE RECORDS ADMINISTRATOR

Introduction/Summary

The State Records Administrator (SRA), appointed by the Commission of Public Records (CPR) an independent central service agency, is statutorily charged with administering rulemaking under the State Rules Act, Section 14-4-1 et seq., NMSA 1978.

All administrative rules promulgated are filed with the agency. The SRA is charged with publishing all notices of rulemaking and promulgated rules in the New Mexico Register and posting all effective rules on the New Mexico Administrative Code (NMAC) website.

The New Mexico Register is a semi-monthly publication where notices of intended rule making, newly promulgated rules, amendments, and repeals of existing rules are officially published. Notices of proposed rulemaking must be published in the New Mexico Register before an executive agency can proceed with the rule-making process, and a rule is neither valid nor enforceable until it is filed with the CPR and published in the New Mexico Register. Generally, the full text of rules or their amendments are published.

After publication in the New Mexico Register, rules are compiled into the NMAC, which is a compilation of current, active rules promulgated by agencies of the executive branch and some portions of the judiciary. The NMAC, available only in electronic format, provides a topically organized view of rules, enabling the user to read related rules in context. The structure and format for the NMAC reflects the structure and format prescribed by the SRA for rules filed under the State Rules Act. The structure ensures that all relevant information for any given rule is available with the rule and that the rule can be included in an easily searchable electronic format.

In 2017, substantive and substantial amendments were made to State Rules Act (HB 058). In following slides, amended language to State Rules Act sections are highlighted with bolded text.

Why care about the State Rules Act?

14-4-3. FORMAT OF RULES; FILING; DISTRIBUTION.

A. Each agency promulgating any rule shall place the rule in the format and style required by rule of the state records administrator and shall deliver the rule to the state records administrator or the administrator's designee, **accompanied by the concise explanatory statement** required by the State Rules Act. The state records administrator or the administrator's designee shall note thereon the date and hour of filing.

14-4-5. TIME LIMIT ON ADOPTION OF A PROPOSED RULE-- FILING AND COMPLIANCE REQUIRED FOR VALIDITY.

A. Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico register as provided by the State Rules Act.

14-4-7.1. NEW MEXICO REGISTER.

B. The New Mexico register shall be the official publication for all notices of rule makings and filings of adopted rules, including emergency rules, by agencies.

(1) The register shall include the full text of any adopted rules, including emergency rules. Proposed rules may be published in full or in part at the discretion of the issuing agency.

(2) Upon request of an issuing agency, the state records administrator may determine that publication in the register of the full text of an adopted rule would be unduly cumbersome, expensive or otherwise inexpedient, and may publish instead a synopsis of the adopted rule and a statement that a copy of the rule is available from the issuing agency.

Section 14-4-2 : Definitions

- A. "agency" means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government;
- B. "person" includes individuals, associations, partnerships, companies, business trusts, political subdivisions and corporations;
- C. "proceeding" means a formal agency process or procedure that is commenced or conducted pursuant to the State Rules Act;
- G. "rulemaking" means the process for adoption of a new rule or the amendment, readoption or repeal of an existing rule.

Section 14-4-2 : Definitions

- F. **"rule" means any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule, nor shall it constitute specific adoption thereof by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or any hospital; rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from any educational institution;**

What is a Rule?

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A rule is

- ▣ Any rule, regulation, or standard
- ▣ Including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof,
- ▣ issued or promulgated by any agency

That purports to

- Affects one or more agencies besides the issuing agency or
- Affects persons (not members or employees of the issuing agency), including persons served by the agency

What is a NOT a Rule?

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- ❑ **An Order, Decision or other document**
 - issued or promulgated by any agency
 - in connection with disposition of any case or agency decision
 - upon a particular matter
 - as applied to a specific set of facts
- ❑ Rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or any hospital;
- ❑ Rules made relating to the management of any particular educational institution, whether elementary or otherwise; or
- ❑ Rules made relating to admissions, discipline, supervision, expulsion or graduation of students from any educational institution.

Section 14-4-2 : Definitions

- D. "proposed rule" means a rule that is provided to the public by an agency for review and public comment prior to its adoption, amendment or repeal, and for which there is specific legal authority authorizing the proposed rule;

- E. "provide to the public" means for an agency to distribute rulemaking information by: (1) posting it on the agency website, if any; (2) posting it on the sunshine portal; (3) making it available in the agency's district, field and regional offices, if any; (4) sending it by electronic mail to persons who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and who have provided an electronic mail address to the agency; (5) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency; (6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and (7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

- (emphasis added for presentation)

Section 14-4-5 : Time limits

TIME LIMIT ON ADOPTION OF A PROPOSED RULE-- FILING AND COMPLIANCE REQUIRED FOR VALIDITY.

- **A.** Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico register as provided by the State Rules Act.
- **B.** An agency shall not adopt a rule until the public comment period has ended. If the agency fails to take action on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the agency takes action to extend the period. The agency may extend the period of time for adopting the proposed rule for an additional period of two years by filing a statement of good cause for the extension in the rulemaking record, but it shall provide for additional public participation, comments and rule hearings prior to adopting the rule.
- **C.** An agency may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If a rulemaking is terminated pursuant to this section, the agency shall provide notice to the public.
- **D.** Within fifteen days after adoption of a rule, an agency shall file the adopted rule with the state records administrator or the administrator's designee and shall provide to the public the adopted rule. The state records administrator or the administrator's designee shall publish rules as soon as practicable after filing, but in no case later than ninety days after the date of adoption of the proposed rule. Unless a later date is otherwise provided by law or in the rule, the effective date of a rule shall be the date of publication in the New Mexico register.
- **E.** A proposed rule shall not take effect unless it is adopted and filed within the time limits set by this section.

Section 14-4-5.2 Notice of Rulemaking

A. Not later than thirty days before a public rule hearing, the agency proposing the rule shall provide to the public and publish in the New Mexico register a notice of proposed rulemaking.

The notice shall include: (1) a summary of the full text of the proposed rule; (2) a short explanation of the purpose of the proposed rule; (3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule; (4) information on how a copy of the full text of the proposed rule may be obtained; (5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due; (6) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and (7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

Section 14-4-5.3, Public Participation, Comments & Rule Hearings

- A. The notice of proposed rulemaking shall specify a public comment period of at least thirty days after publication in the New Mexico register during which a person may submit information and comment on the proposed rule. The information or comment may be submitted in an electronic or written format or at a public rule hearing pursuant to Subsection B of this section. The agency shall consider all information and comment on a proposed rule that is submitted within the comment period.**
- B. At the public rule hearing, members of the public shall be given a reasonable opportunity to submit data, views or arguments orally or in writing. Each agency shall determine, in accordance with governing statutory and case law, the manner in which parties to the proceeding and members of the public will be able to participate in public hearings. All public hearings shall be conducted in a fair and equitable manner. Except as otherwise provided by law, an agency representative or hearing officer shall preside over a public rule hearing.**
- C. The public rule hearing shall be open to the public and be recorded.**

State Rules Act: rulemaking rules

Notices and rules:

1.24.10 NMAC – New Mexico Administrative Code

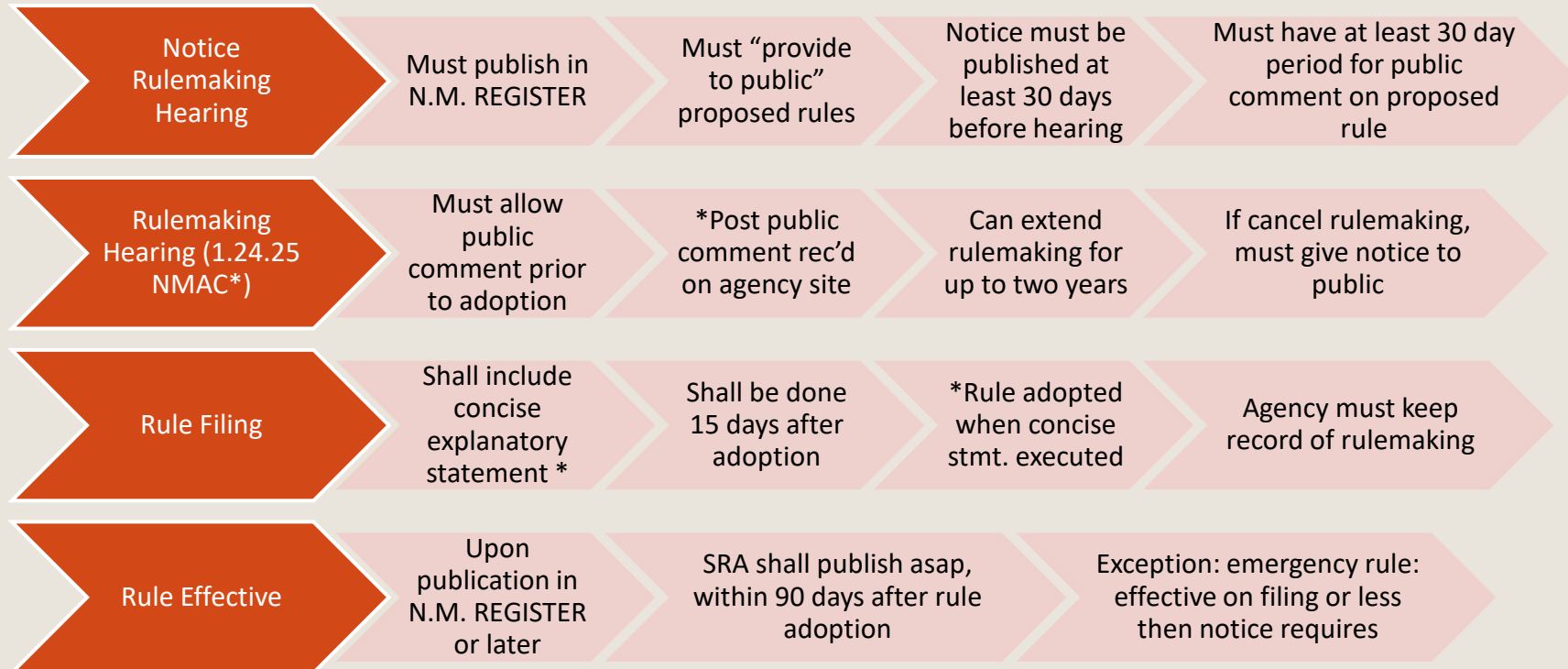
1.24.15 NMAC – New Mexico Register

Rulemaking process:

1.24.25 NMAC - Default Procedural Rule for Rulemaking

Rulemaking chart

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www.srca.nm.gov/

Forms: <http://www.srca.nm.gov/forms>

Register: <http://www.srca.nm.gov/new-mexico-register/>

NMAC home: <http://www.srca.nm.gov/nmac-home/>

NMAC titles: <http://www.srca.nm.gov/nmac-home/nmac-titles/>

Oversight of Agency Rulemaking

After 2017, N.M. follows approx. a handful of states that allow for a limited, information only legislative review of rules. See, paragraph 7 of Subsection E of Section 14-4-2 NMSA 1978.

Another two dozen states allow for more direct legislative review of agency rules: either by having requirement in middle of the process or by having a ‘final’ approval step after rulemaking is complete. These states have a combination of independent review, legislative, and/or executive oversight (i.e., governor or attorney general review/approval).

The remaining states have executive agency review only.

Questions?

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