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## Administrative Rulemaking Requirements

### Proposed Rulemaking Abstract

1. **Agency:** State Records Administrator
2. **Rule Citation:** 1.24.10 NMAC, 1.24.15 NMAC
3. **Rulemaking Action:** Amend
4. **Register Issue and Date of NPRM:** Volume 28, Issue 9; May 16, 2017
5. **Effective Date:** July 1, 2017
6. **Specific Legal Authority:** Section 14-4-3 NMSA 1978, Section 14-4-7.5 NMSA 1978
7. **Purpose of Rule:** Amendment of rules to conform with provisions of the State Rules Act as amended by Laws 2017, Chapter 137
8. **Rulemaking Information:** Matt Ortiz, 505-476-7941
9. **Comment Period:** Submit written comments to [rmd.cpr@state.nm.us](mailto:rmd.cpr@state.nm.us) through 5:00 p.m., June 13, 2017. Written comments submitted at hearing with two copies for the hearing officer.
10. **Rule Hearing:** Monday, June 19, 2017, 10:00 a.m. at State Records Administrator, 1205 Camino Carlos Rey, Santa Fe, NM 85707

## Rule Summary

The proposed rules update the required processes and formats for Notices of Proposed Rulemakings and adopted rules for submission to the State Records Administrator for publication in the *New Mexico Register* and codification in the New Mexico Administrative Code, consistent with changes in Laws 2017, Chapter 137.

## Analysis

**Laws 2017, Chapter 137 (House Bill 58).** Laws 2017, Chapter 137 (House Bill 58) expanded existing requirements and added new provisions regarding administrative rulemaking in the State Rules Act, moving the state closer to the procedures used by many other jurisdictions (see **Attachment 1**). These expanded and new requirements aim to increase transparency in the rulemaking process, and potentially increase public participation. In response to Laws 2017, Chapter 137, the State Records Administrator has proposed rules to conform with the new requirements.

The amendments to the State Rules Act include new definitions, expanded procedures for the formatting and filing of rules by the state records administrator,

The provisions of Chapter 137 will become effective July 1, 2017, however, because of the submission and publication schedule of the *New Mexico Register* and the 30-day period required between publication of notice and the rule hearing, any rules proposed in June will not become effective until on or after July 1, 2017, and thus must meet the new requirements of House Bill 58.

explicit time limits for the adoption of rules, and new sections addressing: the format and contents of notices of proposed rulemaking; public comment and participation; agency records; concise explanatory statements; emergency rules; conflicts between statute and rule; and default procedural rules for public hearings to be adopted by the Attorney General (AG).

***Definitions, Formatting and Filing Requirements.*** The notable new definitions in the State Rules Act are “proposed rule” and “provide to the public.” A “proposed rule” is a rule provided to the public by an agency for review and comment prior to adoption, for which there is specific legal authority, meaning all proposed rules should include a citation to the specific legal authority authorizing the rule. “Provide to public” significantly expands notice requirements in administrative rulemaking; it now requires publication of rulemaking information on the agency website, the sunshine portal, and in agency field offices. Rulemaking matters must be sent by electronic mail to persons who have requested such notice, and to persons who have participated in the rulemaking. Written notice must also be sent to those who provide a postal address, and must be provided to Legislative Council for distribution to appropriate committees. It should be noted that for regulations promulgated by the Public Education Department, these new notice requirements are in addition to notice requirements in Sections 9-24-8 and 22-2-2 NMSA 1978, which require publication in a newspaper of general circulation at least 30 days prior to the hearing date, and that the secretary solicit input from local school boards and school districts in the formulation and implementation of department rules.

New formatting and filing requirements require a concise explanatory statement to accompany any adopted rule sent to the records administrator. Further, the records administrator may make minor nonsubstantive corrections, so long as notice of the correction is provided by the agency to the public in the same manner the agency gave notice of the original rulemaking.

If an agency fails to take final action on a proposed rule within two years of publishing the Notice of Proposed Rulemaking, the rulemaking is automatically terminated unless the agency extends a rulemaking for another period of two years. The agency may do so by filing a statement of good cause for the extension in the rulemaking record, so long as additional public participation and opportunity for comment is included prior to final adoption of the rule. An agency may voluntarily terminate a rulemaking by publishing a notice of termination in the *New Mexico Register*.

***Notices of Proposed Rulemaking.*** Previously, the only statutory reference to proposed rules was a reference noting that proposed rules may be published in the *New Mexico Register*, in whole or in part, at the discretion of the agency proposing the rule. Some requirements for what must be included in NPRMs are already contained in the New Mexico Administrative Code, at Section 1.24.15.9 NMAC 1978, and include: the name of the issuing agency; time and place of the rule hearing; where copies of the proposed rule may be found; and how to submit oral and written comments to the issuing agency. These same elements have been added to the State Rules Act by Laws 2017, Chapter 137. New requirements in the State Rules Act include publication at least 30 days prior to a rule hearing in the *New Mexico*

*Register*. These requirements mirror specific requirements found in Subsection D of Section 9-24-8 NMSA 1978 that are directed at the Secretary of Education.

House Bill 58 added several elements to be included in the NPRM. First, it must include a summary of the full text of the proposed rule, with a short explanation of the rule's purpose. As noted above, a citation to statutory authority authorizing or requiring the rule should be included, as well as an additional citation to any technical information that served as a basis for the proposed rule, and how that information may be obtained. Finally, the NPRM must also contain a link to the full text of the proposed rule. If the agency changes the date of the hearing or submission deadlines, additional notice must be published detailing the changes.

***Public Participation in the Rulemaking Process.*** New statutory requirements for public participation mirror existing practice. A minimum 30-day comment period from the filing of a proposed rule is mandated, and comments may be submitted in electronic or written format, or orally at the rule hearing itself. Agencies are required to consider all comments on a proposed rule.

***Agency Records of Rulemakings and Concise Explanatory Statements.*** The State Rules Act as amended by Laws 2017, Chapter 137, now requires an agency to keep a comprehensive record of materials related to any proposed rulemaking, which, together with any materials incorporated by reference in the rule, must be available for public inspection in the agency's central office and on the state sunshine portal. This record must contain a copy of all publications related to the rule, including hearing transcripts, audio recordings, and summarizing memoranda. All technical information the agency relied on in formulating the rule must be included, as must a copy of all comments made during the public comment period and at the public hearing, and the full text of the proposed and final versions of the rule. Finally, a copy of the concise explanatory statement required to be included with a rule's adoption should also be maintained in the rulemaking record. This statement should include the date of adoption of the rule, a reference to statutory or other authority authorizing the rule, and any findings required for adoption by other provisions of law.

***Emergency Rules.*** Previously, the State Rules Act permitted emergency rules to go into effect immediately upon filing with the records center, but limited their effect to 30 days, unless published in the *New Mexico Register*. New requirements are more stringent, with the law mandating the normal rulemaking process be used in all cases, except when an agency finds the time to promulgate a rule according to normal procedures would cause imminent peril to the public or unanticipated loss of funding to an agency program, or place the agency in violation of federal law.

If an agency finds there is cause for an emergency rulemaking, it now must provide the public with a detailed justification for that finding before issuing an emergency rule, and include a statement that the rule is temporary, at which point it may issue an emergency rule without a hearing, or with whatever abbreviated notice the agency finds practical. Emergency rules may be immediately effective upon filing with the state records administrator, or at a later specified date. Emergency rules

are only effective for 180 days; unless a regular rulemaking is conducted during that time, they expire, and cannot be re-adopted as emergency rules.

***Attorney General Procedural Rules and Conflicts with Statute.*** The AG is directed to promulgate default rules for the administration of public rule hearings. Agencies may adopt such rules for themselves, but they must include at least the level of procedural safeguards and opportunity for participation found in the AG’s rules. Finally, new provisions reinforce the hierarchy of law by explicitly stating that conflicts between statute and rule are resolved in favor of statute, and noting that no term defined in applicable statute should be defined in corresponding rule.

**State Records Administrator Proposed Rules.** The rulemaking proposes amendments conforming to the requirements of Laws 2017, Chapter 137, which extensively amended administrative procedures in the State Rules Act. The two amended sections, 1.24.10 and 1.24.15 NMAC 1978, deal with procedures related to the filing and adoption of rules, and the filing of Notices of Proposed Rulemaking and public participation (see **Attachment 2, Proposed Rules, 1.24.10 NMAC & 1.24.15 NMAC**).

***1.24.10 NMAC, New Mexico Administrative Code.*** Proposed changes to Section 1.24.10.3 NMAC “Statutory Authority” reflect the State Rules Act’s new requirement that a concise explanatory statement be included with an adopted rule, noting that rules without the concise explanatory statement will not be accepted by the records center.

Section 1.24.10.11 NMAC, “What Constitutes a Rule,” has been stricken entirely, as “rule” is a defined term in the State Rules Act, which now explicitly discourages any term defined in statute from also being defined in rule, with any conflicts that do occur being resolved in favor of the statute.

The proposed rule also includes new elements to be included with the New Mexico Administrative Code transmittal form, required to be submitted with a final rulemaking. These include the specific statutory authority authorizing the rule, findings required by law for the adoption of a rule, the rule’s adoption date, and the rule’s effective date. Other material to be submitted for publication with a rule includes any technical information relied upon in the formulation of the rule, and any comments or other material received by an agency during the rule hearing.

Finally, the rule now indicates that any filings that fail to meet minimum statutory requirements for time periods for Notices of Proposed Rulemakings, public participation, and public comments will be rejected by the records center and returned to the filing agency.

***1.24.15 NMAC, New Mexico Register.*** The rulemaking proposes to require emergency rules to now be published in the *New Mexico Register*. Proposed amendments also include new requirements for notices, including notices of proposed rulemakings. The rule adds those requirements enumerated in Laws 2017, Chapter 137, including: a summary or the full text of the rule; a brief explanation of the rule’s purpose; a citation to specific legal authority for the rule; a citation to any technical information serving as a basis for the rule and how the information may

be obtained; and a link to the full text of the proposed rule, if not included in the notice. Finally, the rulemaking proposes to prohibit the State Records Administrator from accepting any notices of proposed rulemaking for publication that do not meet the statutory minimum 30-day time limits for public rule hearings, public participation, and public comment.



1 AN ACT  
2 RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,  
3 ADOPTING, AMENDING OR REPEALING RULES; AMENDING AND ENACTING  
4 SECTIONS OF THE STATE RULES ACT.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 SECTION 1. Section 14-4-2 NMSA 1978 (being Laws 1967,  
8 Chapter 275, Section 2, as amended) is amended to read:

9 "14-4-2. DEFINITIONS.--As used in the State Rules Act:

10 A. "agency" means any agency, board, commission,  
11 department, institution or officer of the state government  
12 except the judicial and legislative branches of the state  
13 government;

14 B. "person" includes individuals, associations,  
15 partnerships, companies, business trusts, political  
16 subdivisions and corporations;

17 C. "proceeding" means a formal agency process or  
18 procedure that is commenced or conducted pursuant to the  
19 State Rules Act;

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

25 E. "provide to the public" means for an agency to

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1 distribute rulemaking information by:

2 (1) posting it on the agency website, if  
3 any;

4 (2) posting it on the sunshine portal;

5 (3) making it available in the agency's  
6 district, field and regional offices, if any;

7 (4) sending it by electronic mail to persons  
8 who have made a written request for notice from the agency of  
9 announcements addressing the subject of the rulemaking  
10 proceeding and who have provided an electronic mail address  
11 to the agency;

12 (5) sending it by electronic mail to persons  
13 who have participated in the rulemaking and who have provided  
14 an electronic mail address to the agency;

15 (6) sending written notice that includes, at  
16 a minimum, an internet and street address where the  
17 information may be found to persons who provide a postal  
18 address; and

19 (7) providing it to the New Mexico  
20 legislative council for distribution to appropriate interim  
21 and standing legislative committees;

22 F. "rule" means any rule, regulation, or standard,  
23 including those that explicitly or implicitly implement or  
24 interpret a federal or state legal mandate or other  
25 applicable law and amendments thereto or repeals and renewals

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1 thereof, issued or promulgated by any agency and purporting  
2 to affect one or more agencies besides the agency issuing the  
3 rule or to affect persons not members or employees of the  
4 issuing agency, including affecting persons served by the  
5 agency. An order or decision or other document issued or  
6 promulgated in connection with the disposition of any case or  
7 agency decision upon a particular matter as applied to a  
8 specific set of facts shall not be deemed such a rule, nor  
9 shall it constitute specific adoption thereof by the agency.

10 "Rule" does not include rules relating to the management,  
11 confinement, discipline or release of inmates of any penal or  
12 charitable institution, the New Mexico boys' school, the  
13 girls' welfare home or any hospital; rules made relating to  
14 the management of any particular educational institution,  
15 whether elementary or otherwise; or rules made relating to  
16 admissions, discipline, supervision, expulsion or graduation  
17 of students from any educational institution; and

18 G. "rulemaking" means the process for adoption of  
19 a new rule or the amendment, readoption or repeal of an  
20 existing rule."

21 SECTION 2. Section 14-4-3 NMSA 1978 (being Laws 1967,  
22 Chapter 275, Section 3, as amended) is amended to read:

23 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--

24 A. Each agency promulgating any rule shall place  
25 the rule in the format and style required by rule of the

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1 state records administrator and shall deliver the rule to the  
2 state records administrator or the administrator's designee,  
3 accompanied by the concise explanatory statement required by  
4 the State Rules Act. The state records administrator or the  
5 administrator's designee shall note thereon the date and hour  
6 of filing.

7 B. The state records administrator or the  
8 administrator's designee shall maintain a copy of the rule as  
9 a permanent record open to public inspection during office  
10 hours, on the website of the records center, published in a  
11 timely manner in the New Mexico register and compiled into  
12 the New Mexico Administrative Code.

13 C. At the time of filing, an agency may submit to  
14 the state records administrator or the administrator's  
15 designee a copy, for annotation with the date and hour of  
16 filing, to be returned to the agency.

17 D. The state records administrator, after written  
18 notification to the filing agency, may make minor,  
19 nonsubstantive corrections in spelling, grammar and format in  
20 filed rules. The state records administrator shall make a  
21 record of the correction and shall deliver the record to the  
22 filing agency and issuing authority within ten days of the  
23 change. Within thirty days of receiving that state records  
24 administrator's record of a correction, the agency shall  
25 provide to the public notice of the correction in the same

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1 manner as the agency used to give notice of the rulemaking  
2 proceeding pursuant to Section 4 of this 2017 act."

3 SECTION 3. Section 14-4-5 NMSA 1978 (being Laws 1967,  
4 Chapter 275, Section 6, as amended) is amended to read:

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

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

10 B. An agency shall not adopt a rule until the  
11 public comment period has ended. If the agency fails to take  
12 action on a proposed rule within two years after the notice  
13 of proposed rulemaking is published in the New Mexico  
14 register, the rulemaking is automatically terminated unless  
15 the agency takes action to extend the period. The agency may  
16 extend the period of time for adopting the proposed rule for  
17 an additional period of two years by filing a statement of  
18 good cause for the extension in the rulemaking record, but it  
19 shall provide for additional public participation, comments  
20 and rule hearings prior to adopting the rule.

21 C. An agency may terminate a rulemaking at any  
22 time by publishing a notice of termination in the New Mexico  
23 register. If a rulemaking is terminated pursuant to this  
24 section, the agency shall provide notice to the public.

25 D. Within fifteen days after adoption of a rule,

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1 an agency shall file the adopted rule with the state records  
2 administrator or the administrator's designee and shall  
3 provide to the public the adopted rule. The state records  
4 administrator or the administrator's designee shall publish  
5 rules as soon as practicable after filing, but in no case  
6 later than ninety days after the date of adoption of the  
7 proposed rule. Unless a later date is otherwise provided by  
8 law or in the rule, the effective date of a rule shall be the  
9 date of publication in the New Mexico register.

10 E. A proposed rule shall not take effect unless it  
11 is adopted and filed within the time limits set by this  
12 section."

13 SECTION 4. A new section of the State Rules Act is  
14 enacted to read:

15 "NOTICE OF PROPOSED RULEMAKING.--

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

20 (1) a summary of the full text of the  
21 proposed rule;

22 (2) a short explanation of the purpose of  
23 the proposed rule;

24 (3) a citation to the specific legal  
25 authority authorizing the proposed rule and the adoption of

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1 the rule;

2 (4) information on how a copy of the full  
3 text of the proposed rule may be obtained;

4 (5) information on how a person may comment  
5 on the proposed rule, where comments will be received and  
6 when comments are due;

7 (6) information on where and when a public  
8 rule hearing will be held and how a person may participate in  
9 the hearing; and

10 (7) a citation to technical information, if  
11 any, that served as a basis for the proposed rule, and  
12 information on how the full text of the technical information  
13 may be obtained.

14 B. An agency may charge a reasonable fee for  
15 providing any records in nonelectronic form when provided to  
16 a person pursuant to this section. An agency shall not  
17 charge a fee for providing any records in electronic form  
18 when provided to a person pursuant to this section.

19 C. An internet link providing free access to the  
20 full text of the proposed rule shall be included on the  
21 notice of proposed rulemaking.

22 D. If the agency changes the date of the public  
23 rule hearing or the deadline for submitting comments as  
24 stated in the notice, the agency shall provide notice to the  
25 public of the change.

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1           E. The state records administrator or the  
2 administrator's designee shall timely publish the notice of  
3 proposed rulemaking in the next publication of the New Mexico  
4 register."

5           **SECTION 5.** A new section of the State Rules Act is  
6 enacted to read:

7           "PUBLIC PARTICIPATION, COMMENTS AND RULE HEARINGS.--

8           A. The notice of proposed rulemaking shall specify  
9 a public comment period of at least thirty days after  
10 publication in the New Mexico register during which a person  
11 may submit information and comment on the proposed rule.

12           The information or comment may be submitted in an electronic  
13 or written format or at a public rule hearing pursuant to  
14 Subsection B of this section. The agency shall consider all  
15 information and comment on a proposed rule that is submitted  
16 within the comment period.

17           B. At the public rule hearing, members of the  
18 public shall be given a reasonable opportunity to submit  
19 data, views or arguments orally or in writing. Each agency  
20 shall determine, in accordance with governing statutory and  
21 case law, the manner in which parties to the proceeding and  
22 members of the public will be able to participate in public  
23 hearings. All public hearings shall be conducted in a fair  
24 and equitable manner. Except as otherwise provided by law,  
25 an agency representative or hearing officer shall preside

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1 over a public rule hearing.

2 C. The public rule hearing shall be open to the  
3 public and be recorded."

4 SECTION 6. A new section of the State Rules Act is  
5 enacted to read:

6 "AGENCY RECORD IN RULEMAKING PROCEEDING.--

7 A. An agency shall maintain a rulemaking record  
8 for each rule it proposes to adopt. The record and materials  
9 incorporated by reference in the proposed rule shall be  
10 readily available for public inspection in the central office  
11 of the agency and available for public display on the state  
12 sunshine portal. If an agency determines that any part of  
13 the rulemaking record cannot be practicably displayed or is  
14 inappropriate for public display on the sunshine portal, the  
15 agency shall describe that part of the record, shall note on  
16 the sunshine portal that the part of the record is not  
17 displayed and shall provide instructions for accessing or  
18 inspecting that part of the record.

19 B. A rulemaking record shall contain:

20 (1) a copy of all publications in the New  
21 Mexico register relating to the proposed rule;

22 (2) a copy of any technical information that  
23 was relied upon in formulating the final rule;

24 (3) any official transcript of a public rule  
25 hearing or, if not transcribed, any audio recording or

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1 verbatim transcript of the hearing, and any memoranda  
2 summarizing the contents of the hearing prepared by the  
3 hearing officer or agency official who presided over the  
4 hearing;

5 (4) a copy of all comments and other  
6 material received by the agency during the public comment  
7 period and at the public hearing;

8 (5) a copy of the full text of the initial  
9 proposed rule and the full text of the final adopted rule and  
10 the concise explanatory statement filed with the state  
11 records administrator or the administrator's designee; and

12 (6) any corrections made by the state  
13 records administrator pursuant to Section 14-4-3 NMSA 1978."

14 **SECTION 7.** A new section of the State Rules Act is  
15 enacted to read:

16 "CONCISE EXPLANATORY STATEMENT.--At the time it adopts a  
17 rule, an agency shall provide to the public a concise  
18 explanatory statement containing:

19 A. the date the agency adopted the rule;

20 B. a reference to the specific statutory or other  
21 authority authorizing the rule; and

22 C. any findings required by a provision of law for  
23 adoption of the rule."

24 **SECTION 8.** A new section of the State Rules Act is  
25 enacted to read:

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1 "EMERGENCY RULE.--

2 A. An agency shall comply with the rulemaking  
3 procedures of the State Rules Act unless the agency finds  
4 that the time required to complete the procedures would:

5 (1) cause an imminent peril to the public  
6 health, safety or welfare;

7 (2) cause the unanticipated loss of funding  
8 for an agency program; or

9 (3) place the agency in violation of federal  
10 law.

11 B. The agency shall provide to the public a record  
12 of any finding pursuant to Subsection A of this section and a  
13 detailed justification for that finding before issuing an  
14 emergency rule. The record shall include a statement that  
15 the emergency rule is temporary. After such record has been  
16 provided to the public, the agency may issue the emergency  
17 rule immediately without a public rule hearing or with any  
18 abbreviated notice and hearing that it finds practicable.

19 C. When an agency makes a finding pursuant to  
20 Subsection A of this section, the agency shall follow the  
21 provisions of this section in addition to any more specific  
22 requirements in statute that pertain to the agency regarding  
23 promulgating emergency or interim rules.

24 D. Emergency rules may take effect immediately  
25 upon filing with the state records administrator or the

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1 administrator's designee or at a later date specified in the  
2 emergency rule. Emergency rules shall be published in the  
3 New Mexico register.

4 E. No emergency rule shall permanently amend or  
5 repeal an existing rule. An emergency rule shall remain in  
6 effect until a permanent rule takes effect under the normal  
7 rulemaking process. If no permanent rule is adopted within  
8 one hundred eighty days from the effective date of the  
9 emergency rule, the emergency rule shall expire and may not  
10 be readopted as an emergency rule. If an expired emergency  
11 rule temporarily amended or repealed an existing rule, the  
12 rule shall revert to what it would have been had the  
13 emergency rule not been issued."

14 SECTION 9. A new section of the State Rules Act is  
15 enacted to read:

16 "CONFLICTS BETWEEN RULE AND STATUTE--VARIANCE BETWEEN  
17 PROPOSED AND FINAL ACTION.--

18 A. No rule is valid or enforceable if it conflicts  
19 with statute. A conflict between a rule and a statute is  
20 resolved in favor of the statute.

21 B. A word or phrase that is defined in an  
22 applicable statute should not be defined in rule. A conflict  
23 between a definition that appears in a rule and in an  
24 applicable statute is resolved in favor of the statute."

25 SECTION 10. A new section of the State Rules Act is

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1 enacted to read:

2 "PROCEDURAL RULES.--No later than January 1, 2018, the  
3 attorney general shall adopt default procedural rules for  
4 public rule hearings for use by agencies that have not  
5 adopted their own procedural rules consistent with the State  
6 Rules Act. Each agency may adopt its own procedural rules,  
7 or continue in effect existing rules, which shall provide at  
8 least as much opportunity for participation by parties and  
9 members of the public as is provided in the procedural rules  
10 adopted by the attorney general. An agency that adopts its  
11 own procedural rules shall send a copy of those procedural  
12 rules to the attorney general and shall maintain those  
13 procedural rules on the agency's website."

14 SECTION 11. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2017. \_\_\_\_\_

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**This is an amendment to 1.24.10 NMAC, Sections 3, 10, 11, 15 through 17, effective 7/1/2017.**

These changes are to align the following rule to the 2017 statutory amendments to the State Rules Act, Section 14-4-1 et seq.

**1.24.10.3 STATUTORY AUTHORITY:** Section 14-4-7.2 NMSA 1978 directs the state records administrator to create and publish a New Mexico administrative code, and to adopt regulations setting forth procedures for compiling the code and prescribing the format and structure of the code. Section 14-4-3 NMSA 1978 directs that [~~“...each agency of the executive branch of state government promulgating any rule shall place the rule in the format and style required by rule of the records center and shall deliver one original paper copy and one electronic copy to the records center.”~~] promulgated rules shall be in style and format required by and delivered to the state records administrator together with a concise explanatory statement to be filed noting the date and hour of filing.

[1.24.10.3 NMAC - Rp 1 NMAC 3.3.10.3, 2/29/2000; A, 7/1/2017]

**1.24.10.10 ISSUING AUTHORITY:**

**A.** The issuing authority is responsible for ensuring compliance with the requirements set forth in this part.

**B.** Where delegation is authorized, the agency may, by rule or formal appointment, specify an issuing authority other than that named in statute. The agency shall forward, in writing, the title, name and signature of the designee to the state records administrator. The agency shall notify, in writing, the state records administrator of any change in the designation. Designation shall only be made by the issuing authority. Formally appointed designees are not allowed to appoint other designees.

**C.** The administrative law division shall not accept a rule filing or a concise explanatory statement signed by other than the issuing authority, or a formally appointed designee.

[1.24.10.10 NMAC - Rp 1 NMAC 3.3.10.9, 2/29/2000; A, 6/30/2004; A, 11/30/2015; A, 7/1/2017]

**1.24.10.11 WHAT CONSTITUTES A RULE:**

~~— **A.** Agency directives that affect persons outside the agency or have significant indirect affect upon such persons are rules.~~

~~— **B.** Manuals of procedure may contain material that affects other state agencies, the public or agency clients. Such material shall be filed as a rule. If it cannot be separated from other material, the entire manual shall be filed. Agencies are encouraged to separate rule material even if it is later included in a manual of procedure.~~

~~— **C.** Procedures for public hearings and open meetings shall be filed as a rule.~~

~~— **D.** Contracts, requests for proposals (RFPs) or requests for information (RFIs), including form contracts, are not rules; however, agencies may issue rules that require contractual terms.~~

~~— **E.** Materials specifically exempted by statute from the State Rules Act are not rules.~~

~~— **F.** Computations of annual assessments based on rule or statute are not rules— i.e., tax tables.~~

~~— **G.** Minutes of meetings are not rules.] “Rule” and “proposed rule” have been defined and set forth within statute (See Section 14-4-2 NMSA 1978).~~

[1.24.10.11 NMAC - N, 2/29/2000; A, 6/30/2004; A, 7/1/2017]

**1.24.10.15 NMAC TRANSMITTAL FORM:**

**A.** Each rule filing delivered to the records center shall be accompanied by a completed NMAC transmittal form in hard copy with an original signature in black ink or with a valid digital signature.

**B.** The administrative law division shall provide agencies with blank NMAC transmittal forms in electronic format.

**C.** The filing agency shall complete the NMAC transmittal form and submit to the administrative law division for review and approval prior to [filing] adoption of any rule making.

**D.** The NMAC transmittal form shall not be handwritten and shall be suitable for reproduction.

**E.** The following shall appear on the NMAC transmittal form:

- (1) issuing agency name and address;
- (2) three digit DFA account code for the agency (if applicable);
- (3) ~~[issuing agency mailing address]~~ volume, issue, publication date in register for rule filing;
- (4) contact person's name, phone number, and e-mail address;
- (5) type of filing - i.e., new, amendment, renumber, repeal, repeal/replace or emergency

filing;

- (6) total number or pages;
- (7) date(s) of any public hearing(s) on the proposed rule or amendment;
- (8) effective date of the rule filing [~~cannot precede publication in the New Mexico register unless it is an emergency rule~~];
- (9) NMAC title, chapter and part name and number;
- (10) description of amendment (for amendment filing only, i.e. “amending two sections”);
- (11) amendment’s NMAC citation (i.e. 1.24.10.15 and 16 NMAC);
- (12) sequence number and most recent filing date of the part (if applicable and designated for administrative law division use only);
- (13) declaration of incorporated material;
- (14) if reference materials are attached and are protected by copyright:
  - (a) indication if copyright permission was obtained;
  - (b) the proof of permission; or
  - (c) material is within the definition of public domain;
- (14) [~~legal citation(s) that grants~~] specific statutory or other authority authorizing the rulemaking by the issuing agency [the authority] to promulgate rules [on the subject area; and];
- (15) [~~legal citation(s) that specifies who can authorize the rule in the agency~~] any findings required by a provision of law for adoption of the rule;
- (16) rule adoption date; and
- (17) rule effective date.

**F.** Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form. If authority is delegated, the box shall be checked.

**G.** Those portions of the transmittal form that are completed by the issuing agency under the concise explanatory statement heading shall be considered sufficient compliance with State Rules Act and shall be provided to the public at the time the issuing agency adopts any rule making.

[1.24.10.15 NMAC - Rp, 1 NMAC 3.3.10.11, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017]

#### **1.24.10.16 FILING A RULE:**

**A.** At the time of filing the filing agency shall present the following, which has been reviewed and pre-approved by administrative law division:

- (1) one paper version of the completed NMAC transmittal form;
- (2) one electronic version of the text of the rule or amendment;
- (3) one electronic version of the integrated part (if filing an amendment); and
- (4) one electronic version of the billing information sheet.

**B.** Other material to be published in the New Mexico register in conjunction with promulgation of the rule or amendment shall be delivered to the administrative law division at the time of filing. Examples include synopses, short-form publication, conversion tables, any technical information relied upon in formulating the final rule, any comments or other material received by agency during rule hearing, and summaries of public comment.

**C.** At the time of filing, an agency may submit to the administrative law division an additional paper copy, for annotation on the first page of the rule with the date and hour of filing, to be returned to the agency (Section 14-4-3 NMSA 1978).

**D.** If a short-form publication or synopsis is made in accordance with the requirements of 1.24.15 NMAC, the full text of the rule shall be submitted as part of the rule filing. The full text shall be published in the NMAC at no additional cost to the agency.

**E.** No rule shall be valid and enforceable until it is filed with the administrative law division and published in the New Mexico register as provided by the State Rules Act. If properly submitted and not published as a result of error, the rule shall be deemed to have been published three weeks after filing with the records center (Sections 14-4-3 and 14-4-5 NMSA 1978).

**F.** A valid purchase order number must be included on the billing information sheet at the time of filing. A purchase order must be submitted to the records center by paper or electronic version at least one business day prior to the publication date.

[1.24.10.16 NMAC - Rp, 1 NMAC 3.3.10.10, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017]

#### **1.24.10.17 REJECTED RULE FILINGS:**

**A.** The administrative law division shall refuse to file written material if it is not a rule as defined in [~~1.24.1.7 NMAC~~] the State Rules Act or if the materials submitted for rule filing do not conform to the style and

format requirements detailed in 1.24.10 NMAC.

- (1) Materials that are not rules may be filed as a publication.
- (2) Rule filings that do not conform to style and format requirements shall be returned to the filing agency and shall not be filed or published in the New Mexico register.
- (3) Rule filings that do not meet the minimum statutory time periods for notice of proposed rulemaking, public participation, and public comments shall be returned to the filing agency and shall not be filed or published in the New Mexico register.

**B.** The administrative law division shall identify material previously filed as a rule but not conforming to the definition of a rule. The material shall be removed from the rules collection and rule history database with 30 days written notice to the affected agency.

**C.** If an affected agency finds it previously filed material as a rule that does not conform to the definition of a rule, that agency shall notify the administrative law division in writing. If the administrative law division agrees the material does not conform to the definition of a rule, the material shall be removed from the rules collection and the rule history database within 30 days of receiving the notice.

[1.24.10.17 NMAC - N, 2/29/2000; A, 6/30/2004; A 9/15/2014; A, 11/30/2015; A, 7/1/2017]

**This is an amendment to 1.24.15 NMAC, Sections 3, 8, 9 and 13, effective 7/1/2017.**

These changes are to align the following rule to the 2017 statutory amendments to the State Rules Act, Section 14-4-1 et seq.

**1.24.15.3 STATUTORY AUTHORITY:** Subsection E of Section 14-4-7.1 NMSA 1978 directs the state records administrator to adopt and promulgate rules necessary for the implementation and administration of the New Mexico register.

[1.24.15.3 NMAC - Rp 1 NMAC 3.3.15.3, 2/29/2000; A, 7/1/2017]

**1.24.15.8 REQUIREMENTS FOR AGENCIES RELATIVE TO PUBLISHING NOTICES AND RULES IN THE NEW MEXICO REGISTER:**

**A.** Agencies shall publish in the New Mexico register:  
 (1) notices of rule-making; and  
 (2) adopted rules filed with the administrative law division of the state records center under the State Rules Act, either in full text, short-form publication or in synopsis; synopses shall have prior approval of the state records administrator and such approval shall also be published;

~~(3) emergency rules.~~

**B.** Agencies may publish other materials related to administrative law at their discretion.

**C.** History notes, histories of the part, and amendments to history notes need not be published in the New Mexico register.

[1.24.15.8 NMAC - Rp 1 NMAC 3.3.15.8, 2/29/2000; A, 7/15/2003; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017]

**1.24.15.9 REQUIREMENTS FOR NOTICES:** All notices submitted for filing must conform to the following requirements:

**A.** The content of any notice of proposed rulemaking must have at least the following:  
~~[(1) name of agency holding the meeting;~~  
~~(2) where and when the meeting will be held, that includes the address, date and time;~~  
~~(3) where copies of the meeting agenda can be found;~~  
~~(4) where copies of the proposed rules can be found;~~  
~~(5) what accommodations are being made for individuals with disabilities; and~~  
~~(6) if public comment is allowed at the hearing, how and where to submit written or oral comments to the agency.]~~  
 (1) name of agency holding the meeting;  
 (2) a summary of or the actual full text of the proposed rule;  
 (3) a short explanation of the purpose of the proposed rule;  
 (4) a citation to specific legal authority authorizing the proposed rule and the adoption of the proposed rule;  
 (5) information on how a copy of full text of proposed rule may be obtained, if full text is not already included within the body of the notice;  
 (6) information on how a person may comment on proposed rule, where comments will be received and when comments are due;  
 (7) where and when the public rule hearing will be held, that includes the address, date and time and how a person may participate in the hearing;  
 (8) a citation to technical information, if any, that serves as a basis for the proposed rule and information on how the full text of the technical information may be obtained, if not already included within the body of the notice;  
 (9) an internet link providing free access to the full text of the proposed rule, if full text is not already included within the body of the notice;

**B.** The form of any notice must conform to the following:  
 (1) the notice heading shall be in bold or capital letters and be centered at top of page;  
 (2) the notice heading shall simply and accurately describe the rulemaking hearing;  
 (3) the text of the notice shall be flush with the document's left margin; and,  
 (4) the use of legal, case, or other headings is discouraged.

**C.** ~~[If special or unique circumstances are requested by an agency for deviation from any of the above requirements, the state records administrator has the authority to grant an exception.]~~ The administrative law division, as designation by the state records administrator, shall not accept for publication any notice of proposed



rulemaking that does not on its face meet the statutory 30 day minimum time periods for public rule hearing, public participation and public comments.

[1.24.15.9 NMAC - N, 11/30/2015; A, 7/1/2017]

**1.24.15.13 CHARGES FOR PUBLISHING IN THE NEW MEXICO REGISTER:** There shall be a \$3.00 per column inch charge to agencies publishing material in the New Mexico register. All material shall be published in the New Mexico register shall use Word document Times New Roman, 10-point font.

[1.24.15.12 NMAC - Rp, 1 NMAC 3.3.15.10, 2/29/2000; A, 7/15/2003; A, 7/1/2009; A, 10/15/2014; 1.24.15.13 NMAC - Rn, 1.24.15.12 NMAC, 11/30/2015; A, 1/1/2017; A, 7/1/2017]

[Charges for publishing in the New Mexico register are also found in 1.13.2.18 NMAC.]