

# ARTICLE 4

## State Rules

### 14-4-1. Short title.

Chapter 14, Article 4 NMSA 1978 may be cited as the "State Rules Act".

**History:** 1953 Comp., § 71-7-1, enacted by Laws 1967, ch. 275, § 1; 1995, ch. 110, § 1.

### ANNOTATIONS

**The 1995 amendment**, effective July 1, 1995, substituted "Chapter 14, Article 4, NMSA 1978" for "This act".

**This act is inapplicable to interstate agreements.** *State v. Ellis*, 1980-NMCA-187, 95 N.M. 427, 622 P.2d 1047.

**Interstate contract is not similar to rules, reports and notices** issued by state agencies. *State v. Ellis*, 1980-NMCA-187, 95 N.M. 427, 622 P.2d 1047.

**State corporation commission (now public regulation commission) may promulgate regulations interpreting school bus exemption in Motor Carrier Act without holding hearing** prior to the issuance of the regulation, so long as it complies with State Rules Act, unless and until the legislature were to place the state corporation commission (now public regulation commission) under the Administrative Procedures Act, 12-8-1 NMSA 1978 et seq. 1969 Op. Att'y Gen. No. 69-100.

**Law reviews.** — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For survey of 1988-89 Administrative Law, see 21 N.M.L. Rev. 481 (1991).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73 C.J.S. Public Administrative Law and Procedure §§ 112, 114.

### 14-4-2. Definitions.

As used in the State Rules Act:

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;

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;

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; and

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

**History:** 1953 Comp., § 71-7-2, enacted by Laws 1967, ch. 275, § 2; 1969, ch. 92, § 1; 2017,

ch. 137, § 1.

## ANNOTATIONS

**The 2017 amendment**, effective July 1, 2017, defined "proceeding", "proposed rule", "provide to the public", and "rulemaking", and revised the definitions of certain terms, as used in the State Rules Act; in Subsection B, after "business trusts", added "political subdivisions", and deleted "and" at the end of the subsection; added new Subsections C through E and redesignated former Subsection C as Subsection F; in Subsection F, after "regulation", deleted "order" and added "or", after "standard", deleted "statement of policy", after "including", added "those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and", after "repeals", added "and renewals", after "the issuing agency", added ", including affecting persons served by the agency", deleted "Such term shall" and added "'Rule' does", after "charitable institution, the", deleted "Springer" and added "New Mexico", after "welfare home", deleted "of" and added "or", after "any hospital", deleted "nor to", after "elementary or otherwise", deleted "nor to", after the semicolon, added "or", and after "graduation of students", deleted "therefrom" and added "from any educational institution; and"; and added Subsection G.

**A standard is a rule**, if the proper procedure has been followed in promulgating it. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 1979-NMSC-090, 93 N.M. 546, 603 P.2d 285.

**Prison rules.** — The Legislature could not have made it more clear that rules relating to the management, confinement, discipline or release of inmates are not subject to filing under the State Rules Act since, although the Corrections Department Act requires that all rules be filed in accordance with the State Rules Act, the latter clearly excludes certain rules relating to inmates from its definition of rules, in 14-4-2 NMSA 1978. *Johnson v. Francke*, 1987-NMCA-029, 105 N.M. 564, 734 P.2d 804.

**"Rules" and "standards".** — The terms "rule" and "standard" include procedural standards, manuals, directives and requirements if they purport to affect one or more agencies besides the issuing agency or persons other than the issuing agencies' members or employees. 1993 Op. Att'y Gen. No. 93-01.

**Museum resolution.** — A resolution of the Museum of New Mexico permitting only Indians to sell handicrafts under the portal of the Palace of the Governors in Santa Fe was a rule within the meaning of the State Rules Act. *Livingston v. Ewing*, 1982-NMSC-110, 98 N.M. 685, 652 P.2d 235; *State v. Joyce*, 1980-NMCA-086, 94 N.M. 618, 614 P.2d 30.

**Orders and decisions excluded by definition from class of rules** to which State Rules Act applies are not subject to the provisions of those sections and, in particular, are not governed by 14-4-3 and 14-4-5 NMSA 1978. 1979 Op. Att'y Gen. No. 79-32.

**Law reviews.** — For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

### 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.

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

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

D. The state records administrator, after written notification to the filing agency, may make minor, nonsubstantive corrections in spelling, grammar and format in filed rules. The state records administrator shall make a record of the correction and shall deliver the record to the filing agency and issuing authority within ten days of the change. Within thirty days of receiving that state records administrator's record of a correction, the agency shall provide to the public notice of the correction in the same manner as the agency used to give notice of the rulemaking proceeding pursuant to Section 4 of this 2017 act [[14-4-5.2 NMSA 1978](#)].

**History:** 1953 Comp., § 71-7-3, enacted by Laws 1967, ch. 275, § 3; 1969, ch. 92, § 2; 1987, ch. 40, § 1; [1995, ch. 110, § 2](#); [2017, ch. 137, § 2](#).

## ANNOTATIONS

**Cross references.** — For records of state agencies and databases under Public Records Act, see [14-3-15.1 NMSA 1978](#).

For electronic authentication and substitution for signature, see [14-3-15.2 NMSA 1978](#).

**The 2017 amendment**, effective July 1, 2017, replaced the "records center" with the "state records administrator" for purposes of receiving promulgated rules, revised the requirements for submitting a rule to the state records administrator, allowed the state records administrator to make minor, non-substantive corrections to submitted rules, and required the agency to give public notice of minor non-substantive corrections made by the state records administrator in the same manner as required for rulemaking; ; added new subsection designation "A."; in Subsection A, after "required by rule of the", deleted "records center" and added "state records administrator", after "shall deliver", deleted "one original paper copy and one electronic copy" and added "the rule", after "to the", deleted "records center" and added "state records administrator or the administrator's designee, accompanied by the concise explanatory statement required by the State Rules Act"; added subsection designation "B."; in Subsection B, after "shall maintain", deleted "the original" and added "a", after "copy", added "of the rule", after "office hours,", deleted "and shall have the rule" and added "on the website of the records center"; added subsection designation "C."; in Subsection C, after "may submit to the", deleted "records center an additional paper" and added "state records administrator or the administrator's designee a"; and added Subsection D.

**The 1995 amendment**, effective July 1, 1995, substituted "deliver one original paper copy and one electronic copy" for "cause seven copies to be delivered" in the first sentence; substituted "maintain the original copy" for "a list of places to file copies" in the third sentence; added the language at the end of the section beginning "and shall have"; and made minor stylistic changes throughout the section.

**Records center may require certificate of compliance.** — Pursuant to its authority under this section to adopt a rule governing the style and format of the rules and regulations to be filed, the records center may require a certificate of compliance as a matter of style or format. While the records center has no authority to look behind a certificate of compliance or to make any determination of actual compliance, failure to incorporate such a certificate of compliance on rules and regulations submitted for filing would constitute a failure to comply with the required style and format. 1978 Op. Att'y Gen. No. [78-07](#).

**Orders and decisions excluded by definition from class of rules** to which this article and [13-3-24](#) and [13-3-25](#) NMSA 1978 apply are not subject to the provisions of those sections and, in particular, are not governed by this section and [14-4-5](#) NMSA 1978. 1979 Op. Att'y Gen. No. [79-32](#).

**Law reviews.** — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

#### **14-4-4. Publication filing and distribution; official depository.**

Each agency issuing any publication, pamphlet, report, notice, proclamation or similar instrument shall immediately file five copies thereof with the records center. The records center shall deliver three copies to the state library, which shall keep one copy available for public inspection during office hours. All other copies may be circulated. The state library is designated to be an official depository of all such publications, pamphlets, reports, notices, proclamations and similar instruments.

**History:** 1953 Comp., § 71-7-5, enacted by Laws 1967, ch. 275, § 5; 1969, ch. 92, § 3; [1995, ch. 110, § 3](#).

#### **ANNOTATIONS**

**The 1995 amendment**, effective July 1, 1995, added the section heading.

**No fundamental right to notice and hearing.** — There is no fundamental right to notice and hearing before the adoption of a rule. Such a right is statutory only. *Livingston v. Ewing*, [1982-NMSC-110](#), [98 N.M. 685](#), [652 P.2d 235](#).

**Actual notice of rule does not dispel necessity of compliance** with State Rules Act. *State v. Joyce*, [1980-NMCA-086](#), [94 N.M. 618](#), [614 P.2d 30](#).

**What and with whom matters to be filed.** — Formerly, all official reports, pamphlets, publications, regulations, rules, codes of fair competition, proclamations and orders issued, prescribed or promulgated by the state corporation commission (now public regulation commission) of general application were to be filed, in accordance with statute, with the supreme court librarian of the state of New Mexico, with the exception of any rule or regulation or order or other document of the corporation commission (now public regulation commission), wherein it is exercising its duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telephone, telegraph, sleeping car or similar company and common carrier within the state. 1953 Op. Att'y Gen. No. **53-5814**.

**Law reviews.** — For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

#### **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.

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.

**History:** 1953 Comp., § 71-7-6, enacted by Laws 1967, ch. 275, § 6; 1969, ch. 92, § 4; **1995, ch. 110, § 4; 2017, ch. 137, § 3.**

#### **ANNOTATIONS**

**The 2017 amendment**, effective July 1, 2017, prohibited agencies from adopting rules until

the public comment period has ended, provided time limits on adoption of proposed rules after the public notice period, required the state records administrator to publish the rule within 90 days after the date of adoption of proposed rules, and provided for termination of the rulemaking if no action is taken on a proposed rule within two years after notice is published; in the catchline, added "Time limit on adoption of a proposed rule"; added subsection designation "A."; in Subsection A, added "Except in the case of an emergency rule", and after "until it is", deleted "filed with the records center and"; added Subsections B and C; added subsection designation "D."; in Subsection D, added the first two sentences of the subsection, after "provided by law", added "or in the rule", and deleted "Emergency regulations may go into effect immediately upon filing with the records center, but shall be effective no more than thirty days unless they are published in the New Mexico register"; and added Subsection E.

**The 1995 amendment**, effective July 1, 1995, added the section heading, substituted the language at the end of the first sentence beginning "filed with" for "so filed and shall only be valid and enforceable upon such filing and compliance with any other law", and added the last two sentences.

**When rule becomes valid or enforceable.** — The language of this section is categorical: a rule is not valid or enforceable until it is filed. There is no implicit exception that makes the rule effective before filing with respect to those with actual notice of the rule. *Pineda v. Grande Drilling Corp.*, [1991-NMCA-004](#), [111 N.M. 536](#), [807 P.2d 234](#).

**Prisoner disciplinary rules not covered by act.** — Disciplinary rules promulgated by the secretary of corrections, governing the conduct of prisoners confined within a penitentiary, were not required to be filed with the state's record center in the manner required under State Rules Act. *Johnson v. Francke*, [1987-NMCA-029](#), [105 N.M. 564](#), [734 P.2d 804](#).

**No fundamental right to notice and hearing.** — There is no fundamental right to notice and hearing before the adoption of a rule. Such a right is statutory only. *Livingston v. Ewing*, [1982-NMSC-110](#), [98 N.M. 685](#), [652 P.2d 235](#).

**Election rules.** — Secretary of state's memorandum # 80-50 which listed the name variations which could be counted for the various write-in candidates, and required the precinct officials to list all of the variations, was never filed in the records center as required by Section [14-4-5 NMSA 1978](#) and was void. *Weldon v. Sanders*, [1982-NMSC-136](#), [99 N.M. 160](#), [655 P.2d 1004](#).

**Actual notice of rule does not dispel necessity of compliance** with State Rules Act. *State v. Joyce*, [1980-NMCA-086](#), [94 N.M. 618](#), [614 P.2d 30](#).

**Effect of failure to comply with statutory requirements.** — Where the board of cosmetology failed to (1) comply with the repeal procedure of [12-8-4A NMSA 1978](#), in failing to give notice to interested parties and to hold a hearing prior to taking action, and (2) failed to file the record of its regulatory proceedings with the state records administrator as required by this section, the action of the board in repealing a licensing reciprocity regulation was contrary to law and the repeal was invalid. *Rivas v. Board of Cosmetologists*, [1984-NMSC-076](#), [101 N.M. 592](#), [686 P.2d 934](#).

**Effect of unfiled rules and regulations.** — Former statutes (4-10-13 to 4-10-19, 1953 Comp.) did not provide that all unfiled rules and regulations were ineffective, but merely provided that such rules and regulations would not be valid as against any person who did not have actual knowledge of their contents. *Maestas v. Christmas*, 1958-NMSC-021, 63 N.M. 447, 321 P.2d 631.

**Amendment has no effect on validity of previous resolution.** — The subsequent adoption of an amended resolution has no effect on the validity of a previous resolution. *Livingston v. Ewing*, 1982-NMSC-110, 98 N.M. 685, 652 P.2d 235.

**Criminal trespass charges not a means to enforce rule until filing.** — Criminal trespass charges under 30-20-13 NMSA 1978 are not a means to enforce a rule available to the state until the rule is properly filed in compliance with State Rules Act. *State v. Joyce*, 1980-NMCA-086, 94 N.M. 618, 614 P.2d 30.

**Policies that affect other agencies.** — If a policy manual or directive contains statements of policy purporting to affect one or more agencies besides the agency issuing the manual or to affect persons not members or employees of the issuing agency, it must be filed in accordance with the State Rules Act. 1993 Op. Att'y Gen. No. 93-01.

**Statute does not authorize center to investigate validity of rules.** — The statute makes no provision for a preliminary investigation by the records center with respect to the compliance of the submitting agency to any notice and hearing requirements. As an administrative body, the records center can only act within the scope of the authority delegated by statute, and any independent investigation into the validity of the rules and regulations submitted for filing does not come within the records center's authority; therefore the records center has no power to make a determination as to whether, in fact, the promulgating agency has complied with notice and hearing requirements. 1978 Op. Att'y Gen. No. 78-07.

**Orders and decisions excluded by definition from class of rules** to which State Rules Act applies are not subject to the provisions of those sections and, in particular, are not governed by 14-4-3 NMSA 1978 and this section. 1979 Op. Att'y Gen. No. 79-32.

**What and with whom matters to be filed.** — Formerly, all official reports, pamphlets, publications, regulations, rules, codes of fair competition, proclamations and orders issued, prescribed or promulgated by the state corporation commission (now public regulation commission) of general application were to be filed, in accordance with statute, with the supreme court librarian of the state of New Mexico, with the exception of any rule or regulation or order or other document of the corporation commission (now public regulation commission), wherein it is exercising its duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telephone, telegraph, sleeping car or similar company and common carrier within the state. 1953 Op. Att'y Gen. No. 53-5814.

**Law reviews.** — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

### 14-4-5.1. Temporary provision.

Notwithstanding the provisions of 14-4-5 NMSA 1978, rules filed prior to July 1, 1995 shall



continue in effect if such rules were filed with the state records center in accordance with the law applicable at the time of filing, and they have not otherwise been repealed, amended, or superseded.

**History:** [Laws 1995, ch. 110, § 10.](#)

### **14-4-5.2. Notice of proposed 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.

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

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

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

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

**History:** [Laws 2017, ch. 137, § 4.](#)

### **ANNOTATIONS**

**Effective dates.** — [Laws 2017, ch. 137, § 11](#) made [Laws 2017, ch. 137, § 4](#) effective July 1, 2017.

### **14-4-5.3. Public participation, comments and 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.

**History:** [Laws 2017, ch. 137, § 5](#).

### **ANNOTATIONS**

**Effective dates.** — [Laws 2017, ch. 137, § 11](#) made [Laws 2017, ch. 137, § 5](#) effective July 1, 2017.

### **14-4-5.4. Agency record in rulemaking proceeding.**

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

B. A rulemaking record shall contain:

- (1) a copy of all publications in the New Mexico register relating to the proposed rule;
- (2) a copy of any technical information that was relied upon in formulating the final rule;

(3) any official transcript of a public rule hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing, and any memoranda summarizing the contents of the hearing prepared by the hearing officer or agency official who presided over the hearing;

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

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

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

**History:** [Laws 2017, ch. 137, § 6](#).

### ANNOTATIONS

**Effective dates.** — [Laws 2017, ch. 137, § 11](#) made [Laws 2017, ch. 137, § 6](#) effective July 1, 2017.

#### 14-4-5.5. Concise explanatory statement.

At the time it adopts a rule, an agency shall provide to the public a concise explanatory statement containing:

- A. the date the agency adopted the rule;
- B. a reference to the specific statutory or other authority authorizing the rule; and
- C. any findings required by a provision of law for adoption of the rule.

**History:** [Laws 2017, ch. 137, § 7](#).

### ANNOTATIONS

**Effective dates.** — [Laws 2017, ch. 137, § 11](#) made [Laws 2017, ch. 137, § 7](#) effective July 1, 2017.

#### 14-4-5.6. Emergency rule.

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

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

- (2) cause the unanticipated loss of funding for an agency program; or
- (3) place the agency in violation of federal law.

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

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

D. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register.

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

**History:** [Laws 2017, ch. 137, § 8](#).

#### ANNOTATIONS

**Effective dates.** — [Laws 2017, ch. 137, § 11](#) made [Laws 2017, ch. 137, § 8](#) effective July 1, 2017.

#### **14-4-5.7. Conflicts between rule and statute; variance between proposed and final action.**

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

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

**History:** [Laws 2017, ch. 137, § 9](#).

#### ANNOTATIONS

**Effective dates.** — [Laws 2017, ch. 137, § 11](#) made [Laws 2017, ch. 137, § 9](#) effective July 1,

2017.

### **14-4-5.8. Procedural rules.**

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

**History:** [Laws 2017, ch. 137, § 10](#).

#### **ANNOTATIONS**

**Effective dates.** — [Laws 2017, ch. 137, § 11](#) made [Laws 2017, ch. 137, § 10](#) effective July 1, 2017.

### **14-4-6. [Trade, sale and exchange of agency rules, publications and reports by records center.]**

The records center is hereby authorized to trade, sell or exchange such rules, pamphlets, reports or similar instruments for rules, pamphlets, reports or similar instruments of similar value and to sell the same at a reasonable price.

**History:** 1953 Comp., § 71-7-7, enacted by [Laws 1967, ch. 275, § 7](#).

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Law reviews.** — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

### **14-4-7. Current listing of rules; rule repeals.**

A. The state records administrator shall prepare and publish a listing and index of all current rules which are filed with the records center.

B. All pamphlets, reports, proclamations or similar instruments which are filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act and which would, if filed after the effective date of the State Rules Act, be filed with the records center shall be transferred to the records center.

C. The records center shall be furnished a reasonable opportunity to obtain copies of all rules, as defined in the State Rules Act, filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act.

D. All rules filed with the librarian of the supreme court law library that have not been filed with the records center pursuant to the State Rules Act by June 30, 1991 are repealed.

**History:** 1953 Comp., § 71-7-8, enacted by Laws 1967, ch. 275, § 10; 1969, ch. 92, § 5; 1991, ch. 221, § 1.

## ANNOTATIONS

**Compiler's notes.** — The phrase "effective date of the State Rules Act", used three times in this section, means April 14, 1967, the effective date of Laws 1967, Chapter 275.

**The 1991 amendment,** effective June 14, 1991, added the section heading; designated the formerly undesignated provisions as Subsections A to C; deleted the former last sentence of the section which read: "The librarian of the supreme court shall not be required to retain more than the original or one copy thereof"; added Subsection D; and made minor stylistic changes throughout the section.

**Interstate agreement not contemplated within this act.** — Despite the broad language in this section regarding "[a]ll pamphlets, reports, proclamations or similar instruments," an interstate agreement contract is not contemplated within the State Rules Act. *State v. Ellis*, [1980-NMCA-187](#), [95 N.M. 427](#), [622 P.2d 1047](#).

**Interstate contract is not instrument similar to rules, reports and notices** issued by state agencies. *State v. Ellis*, [1980-NMCA-187](#), [95 N.M. 427](#), [622 P.2d 1047](#).

**Law reviews.** — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

### 14-4-7.1. New Mexico register.

A. The state records administrator shall provide for publication of a New Mexico register at least twice a month. The New Mexico register shall be published in such a way as to minimize the cost to the state. To accomplish this, the state records administrator is authorized to provide for charges for subscriptions and for publication of notice and other items, including advertising, in the 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.

C. The New Mexico register shall be available by subscription and single copy purchase to any person, including agencies of the executive, judicial and legislative branches of state government and its political subdivisions, at a reasonable charge approved by the state records administrator. The administrator may authorize distribution of a certain number of copies of the register without charge to agencies or political subdivisions as deemed economically feasible and appropriate.

D. The New Mexico register may include a summary or the text of any governor's executive order, a summary, listing or the text of any attorney general's opinion, a calendar listing the date, time and place of all or selected agency rule-making hearings, a list of gubernatorial appointments of state officials and board and commission members or other material related to administrative law and practice.

E. The state records administrator shall adopt and promulgate rules necessary for the implementation and administration of this section.

**History:** Laws 1989, ch. 38, § 1; 1995, ch. 110, § 5.

## ANNOTATIONS

**The 1995 amendment**, effective July 1, 1995, in Subsection A, substituted "for publication" for "if economically feasible, for development and publication" and deleted "after January 1, 1990" following "month"; in Subsection B, redesignated the last two sentences as Paragraph (1) and rewrote the paragraph to make publication of the full text of adopted rules mandatory, and added Paragraph (2); and made minor stylistic changes throughout the section.

**Adequate notice under Open Meetings Act.** — A notice of proposed rulemaking in the New Mexico register probably would not constitute reasonable notice under the Open Meetings Act, 10-15-1 to 10-15-4 NMSA 1978, because the register is not widely circulated and is not readily available to the general public. 1993 Op. Att'y Gen. No. 93-02.

**Notice requirements for legal publication.** — A notice published in the New Mexico register would not fulfill the requirements for legal publication under 14-11-1 to 14-11-8 NMSA 1978 because the register is not a newspaper of general paid circulation. 1993 Op. Att'y Gen. No. 93-02.

**Publication in human services register.** — Publication of a notice, proposed rule, or adopted rule in the New Mexico human services register does not fulfill the human services department's duty to publish materials required by the New Mexico register. 1993 Op. Att'y Gen. No. 93-02.

**Publication requirements under the Administrative Procedures Act.** — The state rules

administrator was not required to publish a separate bulletin under former **12-8-6 NMSA 1978** for agencies subject to the Administrative Procedures Act. Specifically, the provisions of this section superseded the requirements in former **12-8-6 NMSA 1978** for issuing a bimonthly publication, for publishing the full text of rules except under the specified conditions and for providing bulletins free of charge to state agencies and political subdivisions upon request. 1993 Op. Att'y Gen. No. **93-03**.

**Incorporation by reference.** — An agency may not avoid filing and publishing a rule by incorporating by reference any otherwise properly filed and published rule. However, this section grants the state records administrator and the issuing agency discretion to agree on publication of less than a full text of incorporated materials. 1993 Op. Att'y Gen. No. **93-01**.

## **14-4-7.2. New Mexico Administrative Code.**

A. The state records administrator shall create and have published a New Mexico Administrative Code, which shall contain all adopted rules. The administrator shall adopt regulations setting forth procedures for the compilation of the code and prescribing the format and structure of the code, including provisions for at least annual supplementation or revision.

B. All rulemaking agencies shall revise, restate and repromulgate their existing rules as needed to expedite publication of the New Mexico Administrative Code.

**History:** 1978 Comp., § 14-4-7.2, enacted by **Laws 1995, ch. 110, § 6**.

### **ANNOTATIONS**

**Effective dates.** — **Laws 1995, ch. 110, § 12** made the act effective January 1, 1995.

**8.302.1.15 NMAC recognizes alternative sources of payment**, but intends for Medicaid to be the final payer for services and where the plaintiff sought and received payment from Medicaid, the plaintiff was precluded from seeking payment from defendant insurers. *Alliance Health of Santa Teresa, Inc. v. Natl. Presto Industries, Inc.*, **2007-NMCA-157, 143 N.M. 133, 173 P.3d 55**.

## **14-4-8. Documents not required to be filed with state library.**

The state librarian may by appropriate written instructions advise the records center that he no longer desires a particular class of instrument to be filed with the state library and thereafter such records center shall no longer file such class of documents with the state library unless such rejection is rescinded in writing and sent to such agency or agencies.

**History:** 1953 Comp., § 71-7-9, enacted by **Laws 1967, ch. 275, § 11; 1977, ch. 246, § 47**.

## **14-4-9. [Law governing filing of agency rules, documents and**



## publications.]

Wherever any law requires an agency to file a rule, pamphlet, document or publication with the librarian of the supreme court law library such shall be accomplished by the delivery and filing as provided in the State Rules Act.

**History:** 1953 Comp., § 71-7-10, enacted by Laws 1967, ch. 275, § 12.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **14-4-10. State publications for sale or issue by state agencies; listing by state records administrator.**

The state records administrator shall maintain a file of all state publications which are for sale or issue by agencies of the state. He shall prepare and publish a list of all such publications which are current and effective. The list shall include such documents as books, manuals, pamphlets, bulletins, monographs and periodicals designed to instruct, inform or direct either the general public or public officers and employees. Correspondence and those documents developed by agencies for their own internal administration are excluded.

**History:** 1953 Comp., § 71-6-23, enacted by Laws 1967, ch. 275, § 8; 1977, ch. 301, § 3; 1978 Comp., § 14-3-24, recompiled as 1978 Comp., § 14-4-10 by [Laws 1995, ch. 110, § 9](#).

#### **14-4-11. [Personal files, records and documents of elected state officials; placing in state archives by the state records administrator.]**

The state records administrator may accept and place in the state archives the personal files, records and documents of elected state officials or of former elected state officials, subject to any reasonable restrictions, moratoriums and requirements concerning their use by other persons. Such restrictions, moratoriums and requirements made by the donor, however, shall not prevent the archivist of the state records center from having access to the files, records and documents for indexing and cataloguing purposes.

**History:** 1953 Comp., § 71-6-24, enacted by Laws 1967, ch. 275, § 9; 1978 Comp., § 14-3-25, recompiled as 1978 Comp., § 14-4-11 by [Laws 1995, ch. 110, § 9](#).

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

