

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL**  
**PART 9 RULEMAKING PROCEDURES - ENVIRONMENT DEPARTMENT**

**20.1.9.1 ISSUING AGENCY:** New Mexico Environment Department.  
[20.1.9.1 NMAC - Rp 20.1.9.1 NMAC, 12/11/18]

**20.1.9.2 STATUTORY AUTHORITY:** This part is adopted pursuant to Section 3-29-9, Subsection D of Section 9-7A-6, and Sections 14-4-1 through 14-4-11 NMSA 1978.  
[20.1.9.2 NMAC - Rp 20.1.9.2 NMAC, 12/11/2018]

**20.1.9.3 SCOPE:** This part governs the procedures in all regulatory change hearings before the department pursuant to the Department of Environment Act, Subsection D of Section 9-7A-6 NMSA 1978; the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978; and the State Rules Act Sections 14-4-1 through 14-4-11 NMSA 1978.  
[20.1.9.3 NMAC - Rp 20.1.9.3 NMAC, 12/11/2018]

**20.1.9.4 DURATION:** Permanent.  
[20.1.9.4 NMAC - Rp 20.1.9.4 NMAC, 12/11/2018]

**20.1.9.5 EFFECTIVE DATE:** December 11, 2018, unless a later date is cited at the end of a section.  
[20.1.9.5 NMAC - Rp 20.1.9.5 NMAC, 12/11/2018]

**20.1.9.6 OBJECTIVE:** The purposes of this part are:

- A.** to standardize the procedures used in rulemaking proceedings before the department pursuant to the Department of Environment Act, the Sanitary Projects Act, and the State Rules Act;
- B.** to encourage public participation in the regulatory change hearings conducted by the department pursuant to the Department of Environment Act and Sanitary Projects Act;
- C.** to make possible the effective presentation of the evidence and points of view of parties and members of the general public;
- D.** to allow all interested persons a reasonable opportunity to submit data, views, or arguments orally or in writing; and
- E.** to assure that rulemaking proceedings pursuant to the Department of Environment Act, the Sanitary Projects Act, and the State Rules Act are conducted by the department in a fair and equitable manner.

[20.1.9.6 NMAC - Rp 20.1.9.6 NMAC, 12/11/2018]

**20.1.9.7 DEFINITIONS:** As used in this part:

- A.** “**department**” means the New Mexico environment department;
- B.** “**document**” means any paper, exhibit, pleading, motion, response, memorandum, decision, order, or other written or tangible item that is filed in a proceeding under this part, or is brought to or before the secretary for consideration, but does not include a cover letter accompanying a document transmitted for filing;
- C.** “**exhibit**” means any document or tangible item submitted for inclusion in the hearing record;
- D.** “**general public**” includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;
- E.** “**governing law**” means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change;
- F.** “**hearing clerk**” means the department employee designated by the secretary as the hearing clerk for the department;
- G.** “**hearing officer**” means the person designated by the secretary of the department to conduct a hearing under this part; the hearing officer may be an employee of the department;
- H.** “**hearing record**” means:
  - (1) the transcript of proceedings; and
  - (2) the record proper;

- I.** “**participant**” means any person who participates in a rulemaking proceeding before the secretary;
- J.** “**party**” means the petitioner, any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance;
- K.** “**person**” means an individual or entity, including federal, state, local, and tribal governmental entities, however organized;
- L.** “**petitioner**” means the person who petitioned the secretary for the regulatory change that is the subject of the rulemaking hearing;
- M.** “**provide to the public**” means for the secretary to distribute rulemaking information by:
- (1) posting it on the department website;
  - (2) posting it on the New Mexico sunshine portal;
  - (3) making it available at the department’s district, field, and regional offices;
  - (4) sending it by email to persons who have made a written request for notice of announcements addressing the subject of the rulemaking proceeding and who have provided an email address to the secretary’s hearing office administrator;
  - (5) sending it by email to persons who have participated in the rulemaking and who have provided an email address to the secretary’s hearing office administrator;
  - (6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provided a postal address; and
  - (7) providing it to the New Mexico legislative council service for distribution to appropriate interim and standing legislative committees.
- N.** “**record proper**” means all documents related to the hearing and received or generated by the secretary prior to the beginning, or after the conclusions, of the hearing, including but not limited to:
- (1) the petition for hearing, including the proposed regulatory change and any response thereto;
  - (2) the notice of hearing;
  - (3) affidavits of publication;
  - (4) a copy of all publications in the New Mexico register relating to the proposed rule;
  - (5) notices of intent to present technical testimony;
  - (6) all written pleadings, including motions and responsive pleadings and orders;
  - (7) a copy of any technical information that was relied upon in formulating the final rule;
  - (8) statements for the public record or other relevant materials received by the department during the public comment period;
  - (9) the hearing officer’s report, if any;
  - (10) a copy of the full text of the initial proposed rule, the full text of the final adopted rule, and the concise explanatory statement filed with the state records administrator;
  - (11) post-hearing submissions, if allowed; and
  - (12) the secretary’s decision and the reasons therefore; and
  - (13) any correction made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.
- O.** “**regulation**” means any regulation, rule, or standard promulgated by the secretary and affecting one or more persons, besides the secretary and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts;
- P.** “**regulatory change**” means the adoption, amendment or repeal of a regulation;
- Q.** “**secretary**” means the secretary of the New Mexico environment department, the secretary’s designee, or any person who properly assumes the role of the secretary in the event of the secretary’s recusal or disqualification.
- R.** “**service**” means personally delivering a copy of the document, exhibit, or pleading to the person required by this part to be served; mailing it to that person; or if that person has agreed, sending it by facsimile or electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by facsimile or electronic transmission is complete upon transmission of the document.
- S.** “**technical testimony**” means scientific, engineering, economic, or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

**T. “transcript of proceedings”** means the verbatim record (audio recording or stenographic) of the proceedings, testimony, and argument in the matter, together with all exhibits proffered at the hearing, whether or not admitted into evidence, including the recording of any motion hearings or prehearing conferences.  
[20.1.9.7 NMAC - Rp 20.1.9.7 NMAC, 12/11/18]

**20.1.9.8 POWERS AND DUTIES OF THE DEPARTMENT AND HEARING OFFICER:**

**A. Department:** The secretary of the department shall exercise all powers and duties prescribed by Subsection D of Section 9-7A-6 or Section 3-29-9 NMSA 1978, and by this part, and not otherwise delegated to the hearing officer. The secretary shall have the authority to take all measures necessary and appropriate to maintain an orderly, efficient and fair proceeding.

**B. Hearing officer:** The secretary shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer shall conduct a fair and equitable proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and or the efficient, fair, and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

- (1) conducting hearings under this part;
- (2) ruling on motions and procedural requests that do not seek final resolution of the proceeding, and issuing all necessary orders;
- (3) administering oaths and affirmations, admitting or excluding evidence, examining witnesses, and allowing post-hearing submissions;
- (4) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;
- (5) if requested by the secretary, preparing and filing a report of the hearing, with recommendations for the secretary’s action;
- (6) requesting parties to file original documents with the secretary’s hearing office administrator; and
- (7) requesting a party to submit a proposed statement of reasons in support of the secretary’s decision.

**C. Qualifications:** The hearing officer may be an independent contractor, shall be knowledgeable of the laws of the state and of administrative hearing procedures, and shall not be:

- (1) an employee of the department, except for the secretary, or unless employed by the department as a hearing officer;
- (2) a person who has a personal bias or prejudice concerning a party, a party’s lawyer, or consultant; has personal knowledge of disputed facts concerning the proceeding; is related to a party within the third degree of relationship; or has a financial interest in the proceeding.

**D. Notice of hearing officer assignment:** If a hearing officer other than the secretary is assigned, the secretary’s hearing office administrator shall notify the parties of the name and address of the hearing officer. The secretary’s hearing office administrator shall also, at that time, forward to the hearing officer copies of all documents filed to date.

[20.1.9.8 NMAC - Rp 20.1.9.8 NMAC, 12/11/2018]

**20.1.9.9 GENERAL PROVISIONS:**

**A. Liberal construction:** This part shall be liberally construed to carry out its purpose.

**B. Severability:** If any part or application of this part is held invalid, the remainder of this part or its application to other persons or situations shall not be affected.

**C. Computation of time:** In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon them, and service is by mail, three days is added to the prescribed period.

**D. Extension of time:** The secretary or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.9.9 NMAC - Rp 20.1.9.9 NMAC, 12/11/2018]

**20.1.9.10 DOCUMENT REQUIREMENTS – FILING, SERVICE, AND EXAMINATION:**

**A.** The filing of any document as required by this part shall be accomplished by delivering the document to the secretary's hearing office administrator.

**B.** Any person filing any document shall:

(1) provide the secretary's administrator with the original document;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner.

**C.** The petitioner and any person who has filed a timely notice of intent to present technical testimony under this part may inspect all documents that have been filed in a proceeding in which they are involved as participants. Such inspection shall be permitted in accordance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. The secretary's hearing office administrator shall notify the petitioner and all persons who have filed a timely notice of intent to present technical testimony by email whenever any document is filed in a proceeding under this part. Any such person who does not provide an email address shall instead be notified by mail.

**D.** All documents filed under this part shall be made available to any person for inspection upon request and shall, to the extent required by law, be made available on the department's website and the New Mexico sunshine portal.

**E.** Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the secretary. Such documents shall be made available by the secretary's hearing office administrator, as appropriate, and shall also be made available on the New Mexico sunshine portal. If the secretary's hearing office administrator determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the New Mexico sunshine portal, the secretary's hearing office administrator shall describe that part of the record, shall note on the New Mexico sunshine portal that the part of the record is not displayed, and shall provide instructions for accessing or inspecting that part of the record.

**F.** Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents, but the secretary's hearing office administrator shall not charge a fee for providing the notice of proposed rulemaking in electronic form.

[20.1.9.10 NMAC – Rp 20.1.9.10 NMAC, 12/11/2018]

**20.1.9.11 EX PARTE DISCUSSIONS:** At no time after the filing of a petition under this part shall any petitioner or member of the public discuss ex parte the merits of the proceeding with the secretary or hearing officer. This prohibition does not preclude department staff who are not and have not been involved in the petition from conferring with the secretary or hearing officer.

[20.1.9.11 NMAC - Rp 20.1.9.11 NMAC, 12/11/2018]

**20.1.9.12 PREHEARING PROCEDURES:**

**A.** Petition for regulatory changes.

(1) Any person, including the department, may file a petition with the secretary to adopt, amend or repeal any regulation within the jurisdiction of the secretary.

(2) If the department is the petitioner and intends to file a petition under the Sanitary Projects Act, the department shall prepare the proposed regulatory change in consultation with representatives of the associations as defined in Section 3-29-2 NMSA 1978.

(3) The petition shall be in writing and shall include a statement of reasons for the regulatory change. The proposed regulatory change, indicating any language to be added or deleted, shall be attached to the petition.

(4) The secretary shall determine no later than 60 days after receipt of the petition whether or not to hold a public hearing on the petition.

(5) If the secretary determines to hold a public hearing on the petition, the secretary may issue such orders specifying procedures for the conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate.

**B.** Notice of hearings.

(1) The secretary shall provide to the public notice of the proposed rulemaking at least 30 days prior to the hearing. Notice of the proposed rulemaking shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, the department's website, and such other means as the secretary may direct or are required by law.

(2) The notice of proposed rulemaking shall state:

- (a) the subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule;
- (b) a citation to the specific legal authority authorizing the proposed rule and a short explanation of the purpose of the proposed rule;
- (c) 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;
- (d) the statutes, regulations, and procedural rules governing the conduct of the hearing;
- (e) the manner in which persons may present their views or evidence to the secretary, including the time, place, and information on participating in the public hearing;
- (f) the location where persons may secure copies of the full text of the proposed regulatory change;
- (g) an internet link providing free access to the full text of the proposed rule; and
- (h) if applicable, that the secretary may make a decision on the proposed regulatory change at the conclusion of the hearing.

**C. Participation by public.**

(1) Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with his or her testimony, so long as the exhibit is not unduly repetitious of the testimony.

(2) Any member of the general public who wishes to submit a written statement for the record, in lieu of giving oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Written comment must be mailed or delivered to the secretary's administrator.

**D. Location of hearing:** Unless otherwise permitted by governing law, the secretary shall hold hearings on proposed regulatory changes in Santa Fe and at other places the secretary may prescribe.

**E.** If the secretary changes the date of the hearing or the deadline for submitting comments as stated in the notice of proposed rulemaking, the secretary shall provide notice to the public of the change.

[20.1.9.12 NMAC - Rp 20.1.9.12 NMAC, 12/11/2018]

**20.1.9.13 TECHNICAL TESTIMONY:**

**A.** Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 15 days prior to the hearing, file a notice of intent to present technical testimony with the secretary's hearing office administrator. The notice shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;
- (4) include a copy of the direct testimony of each technical witness in narrative form;
- (5) include the text of any recommended modifications to the proposed regulatory change;

and

(6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

**B.** The hearing officer may enforce the provisions of this section through such action as the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to the hearing.

[20.1.9.13 NMAC - Rp 20.1.9.13 NMAC, 12/11/2018]

**20.1.9.14 ENTRY OF APPEARANCE:** Any person may file an entry of appearance as a party. The entry of appearance shall be filed with the secretary's hearing office administrator no later than 20 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.

[20.1.9.14 NMAC - Rp 20.1.9.14 NMAC, 12/11/2018]

**20.1.9.15 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:** A witness may participate in a rulemaking hearing before the secretary by means of a telephone conference or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who wishes to participate in a rulemaking hearing in this manner must receive permission from the hearing officer or the secretary sufficiently in advance of the rulemaking hearing. No witness may participate in a rulemaking hearing by telephone conference unless the witness makes a request sufficiently in advance of the rulemaking hearing so as to permit the secretary's hearing office administrator to arrange for an adequate telephone hookup. Each witness participating by telephone must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.  
[20.1.9.15 NMAC – N, 12/11/2018]

**20.1.9.16 MOTIONS:**

- A.** General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate, or other evidence relied upon and shall be served as provided by 20.1.9.10 NMAC.
- B.** Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.
- C.** Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.
- D.** Response to motions: Any party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.
- E.** Reply to response: The moving party may, but is not required to, submit a reply to any response within 10 days after service of the response.
- F.** Decision: All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer *sua sponte* or upon written request of any party. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion, to the secretary for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the secretary's hearing office administrator.  
[20.1.9.16 NMAC – N, 12/11/2018]

**20.1.9.17 HEARING PROCEDURES – CONDUCT OF HEARINGS:**

- A.** The rules of civil procedure and the rules of evidence shall not apply.
- B.** The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition. The hearing shall proceed as follows:
  - (1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.
  - (2) The hearing officer may allow a brief opening statement by any party who wishes to make one.
  - (3) Unless otherwise ordered, the petitioner shall present its case first.
  - (4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets, and the availability of witnesses who cannot be present for the entire hearing.
  - (5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from the members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.
  - (6) The hearing officer may allow a brief closing argument by any person who wishes to make one.
  - (7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.9.21 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.
- C.** If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's

witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.9.17 NMAC - N, 12/11/2018]

**20.1.9.18 TESTIMONY AND CROSS-EXAMINATION:**

**A.** All testimony will be taken under oath or affirmation which may be accomplished en masse or individually.

**B.** The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor or against the proposed rule.

**C.** Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time, or undue repetition.

[20.1.9.18 NMAC - N, 12/11/2018]

**20.1.9.19 EXHIBITS:**

**A.** Any person offering an exhibit at hearing, other than a document filed and served before the hearing, shall provide an original for the secretary and a sufficient number of copies for every other party.

**B.** All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he or she shall identify each exhibit with an index tab or by other appropriate means.

**C.** Large charts and diagrams, models, and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.1.9.19 NMAC - N, 12/11/2018]

**20.1.9.20 TRANSCRIPT OF PROCEEDINGS:**

**A.** Unless specified by the secretary or hearing officer, a verbatim transcript shall be made of the hearing. The cost of the original transcript of the proceeding and of providing a copy for each member shall be borne by the petitioner.

**B.** Any person may obtain a copy of the transcript of a proceeding. It shall be obtained directly from the court reporter, and the cost of the transcript shall be paid directly to the source.

[20.1.9.20 NMAC - N, 12/11/2018]

**20.1.9.21 POST-HEARING SUBMISSIONS:** The hearing officer may allow the record to remain open for a reasonable period of time following conclusion of the hearing for written submission of additional evidence, comments arguments, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted, and the necessity for a prompt decision. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

[20.1.9.21 NMAC - N, 12/11/2018]

**20.1.9.22 HEARING OFFICER'S REPORT:** If the secretary directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals, and the evidence supporting those proposals, including discussion or recommendations as requested by the secretary, and shall be filed with the secretary's administrator within the time specified by the secretary. The secretary's hearing office administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.

[20.1.9.22 NMAC - N, 12/11/2018]

**20.1.9.23 DELIBERATION AND DECISION:**

**A.** If the hearing notice indicated that a decision might be made at the conclusion of the hearing, the

secretary may immediately make a decision on the proposed regulatory change.

**B.** The secretary shall reach a decision on the proposed regulatory change within 60 days following close of the record or the date the hearing officer's report is filed, whichever is later.

**C.** If the secretary determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the secretary may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

**D.** The secretary shall issue a decision on the proposed regulatory change in a suitable format which shall include the secretary's reasons for the action taken.

**E.** The secretary's written decision is the official version of the secretary's action, and the reasons for that action. Other written or oral statements by the secretary are not recognized as part of the secretary's official decision.

**F.** If the secretary fails to act on a proposed regulatory change within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the secretary acts to extend the period for an additional two years by filing a statement of good cause for the extension in the rulemaking record. If the secretary extends the rulemaking period, the secretary shall provide for additional public participation, comments, and hearing(s) prior to adopting the rule.

**G.** The secretary may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If the secretary terminates a rulemaking in this manner, the secretary shall provide to the public notice of the action.

[20.1.9.23 NMAC - N, 12/11/2018]

#### **20.1.9.24 NOTICE OF SECRETARY ACTION:**

**A.** The secretary's administrator shall provide to the public notice of the secretary's action and a concise explanatory statement.

**B.** The adopted rule shall not take effect unless within 15 days of adoption of the rule, the secretary delivers the final rule to the state records administrator, accompanied by a concise explanatory statement that contains:

- (1) the date that the secretary adopted the rule;
- (2) the effective date of the rule;
- (3) a reference to the specific statutory or other authority authorizing the rule;
- (4) any findings required by law for adoption of the rule;
- (5) reasons for any change between the published proposed rule and the final rule; and
- (6) reasons for not accepting substantive argument made through public comment.

**C.** Adoption of the final rule occurs upon signature of the written decision.

**D.** If the state records administrator notifies the secretary of having made any minor, non-substantive corrections in spelling, grammar, or format in the filed rule, the secretary's hearing office administrator shall provide to the public notice of the correction within 30 days of receiving the state records administrator's record of correction.

[20.1.9.24 NMAC - N, 12/11/2018]

#### **20.1.9.25 STAYS AND APPEALS OF SECRETARY REGULATIONS:**

**A.** Any person who is or may be affected by a rule adopted by the secretary may file a motion with the secretary's hearing administrator seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant that serve the motion for a stay as provided by this part and shall further serve all parties in the rulemaking proceeding. The secretary will decide when the motion will be heard. Unless otherwise ordered by the secretary or otherwise provided by law, the filing of an appeal shall not act as a stay on the regulatory change being appealed.

**B.** Unless otherwise provided by governing law, the secretary may grant a stay pending appeal of any regulatory change promulgated by the secretary. The secretary may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

**C.** In determining whether good cause is present for the granting of a stay, the secretary shall consider:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) whether the moving party will suffer irreparable harm if a stay is not granted;
- (3) whether substantial harm will result to other interested persons; and
- (4) whether harm will ensue to the public interest.



- D.** If no action is taken within 60 days after filing the motion, the secretary shall be deemed to have denied the motion for stay.
  - E.** Appeal of any final decision of the secretary shall be taken in accordance with the governing law.
  - F.** The appellant shall service a copy of the appeal on the secretary and the petitioner.
  - G.** The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the appellant's expense.
- [20.1.9.25 NMAC - N, 12/11/2018]

#### **HISTORY OF 20.1.9 NMAC:**

##### **History of Repealed Material:**

20.1.9 NMAC, Rulemaking Procedures - Environmental Improvement Board, filed 10/27/07, repealed 12/11/2018.