

This is an amendment to 21.1.1 NMAC, Sections 9, 10, 11, 12, 14, 15 and 16 effective 12/01/2022.

21.1.1.9 RULEMAKING PREREQUISITES:

A. Prior to the adoption, amendment, or repeal of any rule, the department shall publish notice of its proposed action in the New Mexico register and at least 30 days prior to its proposed action, not including the publication or the day of proposed action, shall:

- (1) if required by statute, publish notice of its proposed action in newspapers or trade, industrial, or professional publications, as will reasonably give public notice to interested persons;
- (2) notify by mail or electronic mail any person or group filing a written request for such notification to the New Mexico department of agriculture, notification being by mail or electronic mail to the last address specified by the person or group; ~~requests from such persons or groups shall be renewed annually.~~
- (3) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;
- (4) post on the agency website;
- (5) post on the sunshine portal;
- (6) make available at the agency district and field offices;
- (7) provide to the New Mexico legislative council.

B. The notice described in Subsection A of 21.1.1.9 NMAC above shall include:

- (1) information on the public hearing and how a person may participate;
- (2) information on how comments may be submitted to the department where the comments will be received, and when the comments are due;
- (3) a summary describing the full text of the proposed rule;
- (4) a short explanation describing the substance of the proposed action;
- (5) information on how the proposed rule may be obtained and internet link that provides free access to the full text of the proposed rule;
- (6) a reference to the statutory authority under which the rule is proposed; and
- (7) a citation to technical information, if any, and how to obtain the technical information.

[21.1.1.9 NMAC, Rp, 21.1.1.8 NMAC, 11/01/2018, A; 12/01/2022]

21.1.1.10 RULEMAKING HEARINGS: Rulemaking hearings shall be conducted as follows.

A. The rules of civil procedure and the rules of evidence shall not apply.

B. Unless the circumstances otherwise justify the order of appearance will be as follows:

- (1) comments of department staff;
- (2) comments of each proponent;
- (3) comments of each opponent; and
- (4) comments ~~[of other interested persons.]~~ from the general public.

C. Comments from any individual who provides public comment at the hearing may be questioned by the agency or hearing officer or, at the discretion of the agency or hearing officer, or as otherwise provided by law, by other persons at the hearing.

D. Public hearings shall be conducted in a fair and equitable manner.

E. Public hearings shall be open to the public and recorded.

[21.1.1.10 NMAC, Rp. 21.1.1.9 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.11 PUBLIC COMMENT: The department shall afford all interested persons reasonable opportunity to submit written data, views, or arguments in support of or opposition to a proposed rule. Any interested person seeking to modify a proposed rule in any way must submit a proposed modification in writing to the department.

A. Information or comment submitted may be in electronic or written format;

B. public comment period will be open for a period of at least 30 days after the date of notice in the NM register; and

C. the department will consider all comments respecting the proposed rule prior to a final decision.

D. All comments filed on proposed rule shall be made available to any person for inspection upon request and shall be posted to the agency's website within three (3) business days of receipt.

[21.1.1.11 NMAC, N, 11/01/2018; A, 12/01/2022]

21.1.1.12 HEARING OFFICER: The director ~~may~~ shall appoint an agency representative or hearing officer to conduct the hearing and receive statements and supporting data. The agency representative or hearing officer will be authorized to make all rulings in the conduct of the proceedings and in the receipt of statements and supporting data.

[21.1.1.12 NMAC, Rp, 21.1.1.10 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.14 ADOPTION OF THE RULE: Adoption of any rule will be through the board of regents of New Mexico state university at a scheduled board meeting. The board shall be presented with a complete hearing record and recommended action of the director. ~~[A.]~~ At the time a rule is adopted, the department shall provide a concise explanatory statement to the public containing:

~~[(1)]~~ A. the date the agency adopted the rule and effective date if different than adopted date;

~~[(2)]~~ B. a reference to the specific statutory or other authority authorizing the rule; and

~~[(3)]~~ C. any findings required by a provision of law for the adoption of the rule;

D. reasons for any changes between the published proposed rule and the final rule;

E. reasons for not accepting substantive arguments made through public comment.

~~[B.]~~ Within 15 days after the adoption of the rule the department shall file the adopted rule with the state records office, and shall provide to the public as defined in Section 14-4-2 NMSA 1978, the adopted rule. The effective date of the rule shall be the date of publication in the New Mexico register unless a later date is provided for in the rule.]

[21.1.1.14 NMAC, Rp, 21.1.1.14 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.15 EMERGENCY RULE: ~~[The director may adopt an emergency rule if he finds that the time required to complete the rule making procedures would: cause imminent peril to the public health, safety or welfare; cause the unanticipated loss of funding for an agency program; or place the agency in violation of federal law. The agency shall provide to the public a record justifying the finding for the need of the emergency rule, prior to the publication of the emergency rule. The director's finding and a brief statement of the reasons for its finding shall be incorporated in the public record, the public record will also state that the rule is temporary and will not exceed 180 days.]~~ The department shall comply with emergency rulemaking procedures in Section 14-4-5.6 NMSA 1978.

[21.1.1.15 NMAC, N, 11/01/2018; A, 12/01/2022]

21.1.1.16 FILING RULES: Each rule, amendment, or repeal thereof adopted by the department shall be filed with the state records center in accordance with the ~~[law.]~~ State Rules Act, Section 14-4-5 NMSA 1978

[21.1.1.16 NMAC, Rp, 21.1.1.15 NMAC, 11/01/2018; A, 12/01/2022]