

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 24 RULES
PART 25 DEFAULT PROCEDURAL RULE FOR RULEMAKING

1.24.25.1 ISSUING AGENCY: New Mexico Office of the Attorney General, 408 Galisteo Street, Santa Fe, NM 87501.
[1.24.25.1 NMAC - N, 04/10/2018]

1.24.25.2 SCOPE: State agencies that have not adopted their own procedural rules consistent with the State Rules Act, Sections 14-4-1 to -11 NMSA 1978 (1967, as amended through 2017).
[1.24.25.2 NMAC - N, 04/10/2018]

1.24.25.3 STATUTORY AUTHORITY: Section 14-4-5.8 NMSA 1978.
[1.24.25.3 NMAC - N, 04/10/2018]

1.24.25.4 DURATION: Permanent.
[1.24.25.4 NMAC - N, 04/10/2018]

1.24.25.5 EFFECTIVE DATE: April 10, 2018, unless a later date is cited at the end of a section.
[1.24.25.5 NMAC - N, 04/10/2018]

1.24.25.6 OBJECTIVE: To provide 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 and to facilitate public engagement with the administrative rulemaking process in a transparent, organized, and fair manner.
[1.24.25.6 NMAC - N, 04/10/2018]

1.24.25.7 DEFINITIONS: This rule adopts the definitions found in Section 14-4-2 NMSA 1978.
[1.24.25.7 NMAC - N, 04/10/2018]

1.24.25.8 AGENCY ADOPTION OF PROCEDURAL RULES:

A. Agencies that have not adopted their own procedural rules consistent with the State Rules Act shall apply these default rules, until such time as they have adopted their own rules.

B. Agencies may adopt these default rules, in whole or in part as their own, or continue to use their existing rules, so long as those rules satisfy the requirements of the State Rules Act and provide as much opportunity for public participation as provided by these rules.

C. Agencies that adopt their own rules must submit a copy to the office of the attorney general within 30 calendar days of adoption, and post a copy of those rules on the agency's website, if one exists.
[1.24.25.8 NMAC - N, 04/10/2018]

1.24.25.9 INITIATION OF THE RULEMAKING PROCESS BY AN AGENCY:

A. The rulemaking process may be initiated by an agency when a notice for a rule hearing is publicly posted pursuant to this rule.

B. The agency shall proceed with the rulemaking process by posting public notice, publishing the proposed rule for comment, and setting a public rule hearing in accordance with the State Rules Act and any other applicable law.

C. If the agency is a public body subject to the Open Meetings Act, the decision to initiate the rulemaking process must be an action taken by vote of the public body in open session.

D. Once the agency initiates the rulemaking process, the agency must maintain a record as prescribed in Section 14-4-5.4 NMSA 1978.
[1.24.25.9 NMAC - N, 04/10/2018]

1.24.25.10 INITIATION OF THE RULEMAKING PROCESS BY THE PUBLIC:

A. Any person may file a petition for rulemaking with an agency.

B. A petition for rulemaking shall be made in writing and include an explanation of the purpose or statement of reasons for the proposed rule. A petition shall include a citation to the legal authority authorizing the agency to adopt the rule and a copy of or citation to technical information, if any, that serves as the basis for the

proposed rule. A petition should be as clear as possible and may include the proposed rule in underline and strikethrough format, consistent with requirements of the state records administrator.

C. The agency to which a petition is made shall, if required by law, consider the petition and make a determination whether to grant or deny the petition. If the agency denies the petition, it shall issue a concise written statement explaining its reason for denial. No affirmative duty to respond to a public petition is created by these rules. If a public right to petition an agency exists in law, the agency must follow all timelines or responses governed by law of the agency.

D. If the agency is a public body subject to the Open Meetings Act, the decision to grant a petition must be an action taken by vote of the public body in open session.

E. Once the agency initiates the rulemaking process, the agency must maintain a record as prescribed in Section 14-4-5.4 NMSA 1978.

[1.24.25.10 NMAC - N, 04/10/2018]

1.24.25.11 RULEMAKING NOTICE: The agency shall provide to the public, as defined in Section 14-4-2 NMSA 1978, notice of the proposed rulemaking a minimum of 30 calendar days prior to the public rule hearing and in accordance with requirements of Section 14-4-5.2 NMSA 1978.

[1.24.25.11 NMAC - N, 04/10/2018]

1.24.25.12 WRITTEN COMMENT PERIOD:

A. The public comment period must be at least 30 calendar days, beginning after publication of the notice in the New Mexico register and issuance of the rulemaking notice. The agency shall not adopt a proposed rule before the end of the public comment period.

B. A person may submit, by mail or electronic form, written comments on a proposed rule, and those comments shall be made part of the record. Written comments may be submitted through the end of the public comment period.

C. The agency may decide to amend the comment period if it provides to the public, as defined in Section 14-4-2 NMSA 1978, notice of the changes.

D. The agency shall post all written comments on its website, if one exists, as soon as practicable, and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency.

[1.24.25.12 NMAC - N, 04/10/2018]

1.24.25.13 PUBLIC HEARING:

A. Prior to adopting a proposed rule, the agency must hold a public rule hearing. The purpose of the hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed rule. The agency, at its sole discretion, may determine whether to hold more than one hearing.

B. The agency may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask questions and provide comments for clarification purposes only, but should refrain from providing opinions or engaging in discussion regarding the merits of the proposed rule or any public comment presented.. The hearing officer shall identify and mark all written comments submitted during the public comment period, as well as any written comments submitted during the hearing. The public comment should be labeled as exhibits for reference, but do not require formal admission into the hearing record.

D. Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath unless required by law or separate rule of the agency. 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.

E. The hearing shall be conducted in a fair and equitable manner. The agency or hearing officer may determine the format in which the hearing is conducted (e.g. introduction of each part or section one at a time for comment), but the hearing should be conducted in a simple and organized manner that facilitates public comment and a clear rulemaking record.

F. The rules of evidence do not apply to public rule hearings and the agency or hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

G. The agency must hold the hearing in a venue that reasonably accommodates all persons who wish to participate or observe, and appropriate audio equipment should be secured to ensure all in attendance can hear the proceeding and be heard when presenting comment. Reasonable efforts shall be made to accommodate the use of audio and video recording devices. Hearings shall be open to the public, but are not subject to the New Mexico Open Meetings Act, unless conducted by a quorum of a public body.

H. The hearing shall be recorded by any stenographic method in use in the district court or by audio recording.

[1.24.25.13 NMAC - N, 04/10/2018]

1.24.25.14 RULEMAKING RECORD AND ADOPTION OF RULE:

A. The agency shall maintain a record of the rulemaking proceeding as required in Section 14-4-5.4 NMSA 1978, and any written comment, document, or other exhibit entered into the record during the rule hearing shall be labeled clearly. Pre-filed written comments are part of the rulemaking record without the need for formal admission. Pre-filed comments include, but are not limited to: the petition; public notices of the rulemaking, including any lists of individuals to whom notice was mailed or sent electronically; the proposed rule in underline and strikethrough format; and any written comment submitted during the comment period prior to the rule hearing. Written comments or other documents introduced during the hearing should be admitted into the record after being marked as an exhibit.

B. If the rule hearing is conducted by a designated hearing officer, the complete rulemaking record, including any memoranda summarizing the contents of the hearing, if written, shall be compiled and forwarded to the agency head or members of the board or commission with sufficient time to review. The agency head or members of the board or commission shall familiarize themselves with the rulemaking record before rendering a decision on the proposed rule.

C. The agency may adopt, amend or reject the proposed rule. Any amendments to the proposed rule must fall within the scope of the current rulemaking proceeding. Amendments that exceed the scope of the noticed rulemaking may require a new rulemaking proceeding. Amendments to a proposed rule may fall outside of the scope of the rulemaking based on the following factors:

(1) any person affected by the adoption of the rule, if amended, could not have reasonably expected that the change from the published proposed rule would affect the person's interest;

(2) subject matter of the amended rule or the issues determined by that rule are different from those in the published proposed rule; or

(3) effect of the adopted rule differs from the effect of the published proposed rule.

D. In instances where the agency is a board or commission, consideration and approval of adoption of the proposed rule shall occur during a public meeting.

E. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement.

F. The concise explanatory statement shall include, but not limited to, the following:

(1) citation to specific statutory or other authority authorizing the rule;

(2) effective date of the rule;

(3) date of adoption of the rule, if different than the date of the concise explanatory statement;

(4) if the agency is a board or commission, the date of the meeting at which the agency voted to approve the adoption of the rule;

(5) reasons for adopting the rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;

(6) reasons for any change between the published proposed rule and the final rule; and

(7) reasons for not accepting substantive arguments made through public comment.

[1.24.25.14 NMAC - N, 04/10/2018]

1.24.25.15 FILING AND PUBLICATION; EFFECTIVE DATE:

A. Within 15 calendar days after the date of adoption of a rule, the agency shall file the adopted rule with the state records administrator and shall provide to the public the adopted rule and concise explanatory statement in accordance with the State Rules Act.

B. Unless another date is stated in the agency's concise explanatory statement, or otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico register.

[1.24.25.15 NMAC - N, 04/10/2018]

1.24.25.16 **EMERGENCY RULES:** The agency shall comply with the rulemaking procedures in Section 14-4-5.6 NMSA 1978, regarding the promulgation of emergency rules.
[1.24.25.16 NMAC - N, 04/10/2018]

HISTORY OF 1.24.25 NMAC: [RESERVED]