

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL**  
**PART 1 RULEMAKING PROCEDURES - ENVIRONMENTAL IMPROVEMENT BOARD**

**20.1.1.1 ISSUING AGENCY:** Environmental Improvement Board.  
[20.1.1.1 NMAC - Rp, 20.1.1.1 NMAC, 04/14/2018]

**20.1.1.2 STATUTORY AUTHORITY:** This part is adopted pursuant to Sections 14-4-1 to -11, 50-9-12, 74-1-5, 74-1-8, 74-1-9, 74-2-6, 74-3-5, 74-4-5 and 74-9-27 NMSA 1978.  
[20.1.1.2 NMAC - Rp, 20.1.1.2 NMAC, 04/14/2018]

**20.1.1.3 SCOPE:** This part governs the procedures in all rulemaking hearings before the board, except to the extent that this part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part.  
[20.1.1.3 NMAC - Rp, 20.1.1.3 NMAC, 04/14/2018]

**20.1.1.4 DURATION:** Permanent.  
[20.1.1.4 NMAC - Rp, 20.1.1.4 NMAC, 04/14/2018]

**20.1.1.5 EFFECTIVE DATE:** April 14, 2018, unless a later date is cited at the end of a section.  
[20.1.1.5 NMAC - Rp, 20.1.1.5 NMAC, 04/14/2018]

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

- A.** to standardize the procedures used in rulemaking proceedings before the board;
- B.** to encourage public participation in the hearings conducted by the board for the promulgation of regulations;
- C.** to make possible the effective presentation of the evidence and points of view of parties and members of the general public; and
- D.** to assure that board hearings are conducted in a fair and equitable manner.

[20.1.1.6 NMAC - Rp, 20.1.1.6 NMAC, 04/14/2018]

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

- A.** “board administrator” means the department employee designated by the secretary of environment to provide staff support to the board;
- B.** “board” means the environmental improvement board;
- C.** “department” means the New Mexico environment department;
- D.** “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 brought to or before the board for its consideration, but does not include a cover letter accompanying a document transmitted for filing;
- E.** “exhibit” means any document or tangible item submitted for inclusion in the hearing record;
- F.** “general public” includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;
- G.** “governing law” means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change;
- H.** “hearing officer” means the person designated by the board to conduct a hearing under this part;
- I.** “hearing record” means:
  - (1) the transcript of proceedings; and
  - (2) the record proper;
- J.** “participant” means any person who participates in a rulemaking proceeding before the board;
- K.** “party” means the petitioner; any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance;

**L.** “person” means an individual or any entity, including federal, state and local governmental entities, however organized;

**M.** “petitioner” means the person who petitioned the board for the regulatory change that is the subject of the hearing;

**N.** “provide to the public” means for the board to distribute rulemaking information by:

- (1) posting it on the board’s 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 board administrator;
- (5) sending it by email to persons who have participated in the rulemaking and who have provided an email address to the board 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 for distribution to appropriate interim and standing legislative committees.

**O.** “record proper” means all documents related to the hearing and received or generated by the board prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

- (1) the petition for hearing and any response thereto;
- (2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;
- (3) the notice of hearing;
- (4) affidavits of publication;
- (5) a copy of all publications in the New Mexico register relating to the proposed rule;
- (6) notices of intent to present technical testimony;
- (7) all written pleadings, including motions and responsive pleadings and orders;
- (8) a copy of any technical information that was relied upon in formulating the final rule;
- (9) statements for the public record or other relevant materials received by the agency during the public comment period;
- (10) the hearing officer’s report, if any;
- (11) 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;
- (12) post-hearing submissions, if allowed;
- (13) the audio recordings (or an appropriate extract of the recordings) of the meeting(s) at which the board deliberated on the adoption of the proposed regulatory change;
- (14) the board’s decision and the reasons therefore; and
- (15) any corrections made by the state records administrator pursuant to Section 14-4-3

NMSA 1978.

**P.** “regulation” means any rule, regulation or standard promulgated by the board and affecting one or more persons, besides the board 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;

**Q.** “regulatory change” means the adoption, amendment or repeal of a regulation;

**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 the 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 record of any motion hearings or prehearing conferences.

[20.1.1.7 NMAC - Rp, 20.1.1.7 NMAC, 04/14/2018]

**20.1.1.8 - 20.1.1.106 [RESERVED]**

**20.1.1.107 POWERS AND DUTIES OF BOARD AND HEARING OFFICER:**

**A.** Board: The board shall exercise all powers and duties prescribed under this part and not otherwise delegated to the hearing officer or the board administrator.

**B.** Hearing officer: The board shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer may be a member of the board. 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 for 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) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;
- (3) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;
- (4) if requested by the board, preparing and filing a report of the hearing, with recommendations for board action;
- (5) requesting parties to file original documents with the board administrator; and
- (6) requesting a party to submit a proposed statement of reason in support of the board's decision.

[20.1.1.107 NMAC - Rp, 20.1.1.107 NMAC, 04/14/2018]

**20.1.1.108 LIBERAL CONSTRUCTION:** This part shall be liberally construed to carry out their purpose.  
[20.1.1.108 NMAC - Rp, 20 NMAC 1.1.108, 04/14/2018]

**20.1.1.109 SEVERABILITY:** If any part or application of this part is held invalid, the remainder of this part, or their application to other persons or situations, shall not be affected.  
[20.1.1.109 NMAC - Rp, 20.1.1.109 NMAC, 04/14/2018]

**20.1.1.110 GENERAL PROVISIONS - COMPUTATION OF TIME:**

**A.** 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 him, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the act.

**B.** Extension of time: The board 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.

[20.1.1.110 NMAC – Rp, 20.1.1.110 NMAC, 04/14/2018]

**20.1.1.111 GENERAL PROVISIONS - RECUSAL:** No board member shall participate in any action in which his or her impartiality or fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the board and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the board member may rely upon the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, the Financial Disclosures Act, Sections 10-16A-1 through 10-16A-8 NMSA 1978, or any other relevant authority.

[20.1.1.111 NMAC – RP, 20.1.1.111 NMAC, 04/14/2018]

**20.1.1.112 GENERAL PROVISIONS - EX PARTE DISCUSSIONS:** At no time after the initiation and before the conclusion of a proceeding under this part, shall the department, or any other party, interested participant, or their representatives discuss ex parte the merits of the proceeding with any board member or the hearing officer.

[20.1.1.112 NMAC – Rp, 20.1.1.112 NMAC, 04/14/2018]

**20.1.1.113 - 20.1.1.199 [RESERVED]**

**20.1.1.200 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:**

**A.** The filing of any document as required by this part shall be accomplished by delivering the document to the board administrator and the board legal counsel.

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

(1) provide the board administrator with the original and nine copies of the document, provided that the board administrator may waive the requirement to provide nine copies if an electronic copy of the original is provided in a format acceptable for distribution to the board members;

(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;

(3) any document filed pursuant to this part shall be filed with the board administrator at least 20 days before any meeting at which the board will consider the document. If the document is a motion seeking an order from the hearing officer in a rules hearing, the motion must also be served at the same time with the hearing officer and the board legal counsel.

**C.** Whenever this part requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by facsimile or by electronic transmission to that person. Agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to this part. Service shall also be made upon the board's legal counsel. 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.

**D.** 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 board 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.

**E.** 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.

**F.** The board administrator shall provide copies of all documents to each board member at least 15 days before the meeting at which the board will consider the documents. With regard to those documents filed in conjunction with any rules hearing, the hearing officer may make exception to this requirement.

[20.1.1.200 NMAC - Rp, 20.1.1.200 NMAC, 04/14/2018]

**20.1.1.201 EXAMINATION OF DOCUMENTS FILED:**

**A.** 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 board. Such documents shall be made available by the board administrator, as appropriate, and shall also be made available on the New Mexico sunshine portal. If the board 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 board 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.

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

[20.1.1.201 NMAC - Rp, 20.1.1.201 NMAC, 04/14/2018]

**20.1.1.202 - 20.1.1.299 [RESERVED]**

**20.1.1.300 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:**

**A.** Any person may file a petition with the board to adopt, amend or repeal any regulation within the jurisdiction of the board.

**B.** The petition shall be in writing and shall include a statement of the reasons for the regulatory change. The petition shall cite the relevant statutes that authorize the board to adopt the proposed rules and shall

estimate the time that will be needed to conduct the rules hearing, if at all possible. A copy of the entire rule, including proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the board in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit the petition in the form required by these rules.

**C.** The board shall determine, at a public meeting occurring at least 15 days and no later than 60 days, after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting.

**D.** If the board determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate to fully inform the board of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination  
[20.1.1.300 NMAC - Rp, 20.1.1.300 NMAC, 04/14/2018]

#### **20.1.1.301 NOTICE OF HEARINGS:**

**A.** Unless otherwise allowed by governing law and specified by the board, the board shall provide to the public notice of the proposed rulemaking at least 60 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, and such other means of providing notice as the board may direct or are required by law.

**B.** The notice of proposed rulemaking shall state:

- (1) 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;
- (2) a citation to the specific legal authority authorizing the proposed rule and a short explanation of the purpose of the proposed rule;
- (3) 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;
- (4) the statutes, regulations and procedural rules governing the conduct of the hearing;
- (5) the manner in which persons may present their views or evidence to the board, including the time, place, and information on participating in the public hearing;
- (6) the location where persons may secure copies of the full text of the proposed regulatory change;
- (7) an internet link providing free access to the full text of the proposed rule; and
- (8) if applicable, that the board may make a decision on the proposed regulatory change at the conclusion of the hearing.

[20.1.1.301 NMAC - Rp, 20.1.1.301 NMAC, 04/14/2018]

#### **20.1.1.302 TECHNICAL TESTIMONY:**

**A.** Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 20 days prior to the hearing, file a notice of intent to present technical testimony with the board 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 educational 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 hearing.

[20.1.1.302 NMAC - Rp, 20.1.1.302 NMAC, 04/14/2018]

**20.1.1.303 ENTRY OF APPEARANCE:** Any person may file an entry of appearance as a party. The entry of appearance shall be filed with the board 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.

[20.1.1.303 NMAC – Rp, 20.1.1.303 NMAC, 04/14/2018]

**20.1.1.304 PARTICIPATION BY GENERAL PUBLIC:**

**A.** 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 testimony, so long as the exhibit is not unduly repetitious of the testimony.

**B.** A member of the general public who wishes to submit a written statement for the record, in lieu of providing 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 board administrator; email comments will not be accepted. However, comments may be submitted electronically on the board webpage.

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

[20.1.1.304 NMAC - Rp, 20.1.1.304 NMAC, 04/14/2018]

**20.1.1.305 LOCATION OF HEARING:** Unless otherwise provided by governing law, the board may hold hearings on proposed regulatory changes of statewide application in Santa Fe or within any area of the state substantially affected by the proposed regulatory change, and shall hold hearings on proposed changes of local application within the area affected by the proposal.

[20.1.1.305 NMAC - Rp, 20.1.1.305 NMAC, 04/14/2018]

**20.1.1.306 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:**

**A.** A member of the board may participate in a meeting or hearing of the board by means of a conference telephone or other similar communications equipment, when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the board who speaks at the meeting or hearing. A board member's participation by such means shall constitute presence in person at the meeting or hearing. A board member who wishes to participate in a rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing so as to permit the board administrator to arrange for adequate telephone hookup.

**B.** A witness may participate in a rules hearing of the board 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 rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing. No witness may participate in a rules hearing by telephone conference unless he makes a request sufficiently in advance of the rules hearing so as to permit the board 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.

[20.1.1.306 NMAC - Rp, 20.1.1.306 NMAC, 04/14/2018]

**20.1.1.307 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 20.1.1.200 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 board 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 board administrator.

[20.1.1.307 NMAC - Rp, 20.1.1.307 NMAC, 04/14/2018]

#### **20.1.1.308 - 20.1.1.399 [RESERVED]**

#### **20.1.1.400 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 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 20.1.1.404 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.

[20.1.1.400 NMAC - Rp, 20.1.1.400 NMAC, 04/14/2018]

#### **20.1.1.401 TESTIMONY AND CROSS-EXAMINATION:**

**A.** All testimony will be taken under oath or affirmation which may be accomplished in mass 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 of 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.

[20.1.1.401 NMAC - Rp, 20.1.1.401 NMAC, 04/14/2018]

**20.1.1.402 EXHIBITS:**

**A.** Any person offering an exhibit at hearing, other than a document filed and served before the hearing, shall provide at least an original and nine copies for the board, 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 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.

[20.1.1.402 NMAC - Rp, 20.1.1.402 NMAC, 04/14/2018]

**20.1.1.403 TRANSCRIPT OF PROCEEDINGS:**

**A.** Unless specified by the board 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 board 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.

[20.1.1. 403 NMAC - Rp, 20.1.1.403 NMAC, 04/14/2018]

**20.1.1.404 POST-HEARING SUBMISSIONS:** The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and 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 the material to be submitted and the necessity for a prompt decision.

[20.1.1. 404 NMAC - Rp, 20.1.1.404 NMAC, 04/14/2018]

**20.1.1.405 HEARING OFFICER'S REPORT:** If the board 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 board, and shall be filed with the board administrator within the time specified by the board. The board 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.

[20.1.1.405 NMAC - Rp, 20.1.1.405 NMAC, 04/14/2018]

**20.1.1.406 DELIBERATION AND DECISION:**

**A.** If a quorum of the board attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the board may immediately deliberate and make a decision on the proposed regulatory change.

**B.** If the board does not reach a decision at the conclusion of the hearing, the board administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each board member that did not attend the hearing and, if necessary, to other board members, board counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

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

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

**E.** The board shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

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



**G.** If the board fails to act 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 board 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 board extends the rulemaking period, it shall provide for additional public participation, comments, and hearing prior to adopting the rule.

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

[20.1.1.406 NMAC - Rp, 20.1.1.406 NMAC, 04/14/2018]

**20.1.1.407 NOTICE OF BOARD ACTION:**

**A.** The board administrator shall provide to the public notice of the board'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 board delivers the final rule to the state records administrator, accompanied by a concise explanatory statement that contains:

- (1) the date that the board adopted the rule;
- (2) a reference to the specific statutory or other authority authorizing the rule; and
- (3) any findings required by law for adoption of the rule.

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

**D.** If the state records administrator notifies the board of having made any minor, nonsubstantive corrections in spelling, grammar, and format in the filed rule, the board administrator shall provide to the public notice of the correction within 30 days of receiving the state records administrator's record of correction.

[20.1.1.407 NMAC - Rp, 20.1.1.407 NMAC, 04/14/2018]

**20.1.1.408 - 20.1.1.499 [RESERVED]**

**20.1.1.500 APPEALS AND STAYS - APPEAL OF REGULATIONS:**

**A.** Appeal of any regulatory change by the board shall be taken in accordance with governing law.

**B.** The appellant shall serve a copy of the notice of appeal on the board and on each party.

**C.** The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the expense of appellant.

**D.** Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the regulatory change being appealed.

[20.1.1.500 NMAC - Rp, 20.1.1.500 NMAC, 04/14/2018]

**20.1.1.501 STAY OF BOARD REGULATIONS:**

**A.** Any person who is or may be affected by a rule adopted by the board may file a motion with the board 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 shall file the motion with the board administrator at least 30 days before the meeting at which the board will consider the motion. The movant shall serve the motion for a stay as provided by this part, and shall further serve all parties in the rulemaking proceeding. The board chair will decide at which meeting the stay motion will be heard.

**B.** Unless otherwise provided by governing law, the board may grant a stay pending appeal of any regulatory change promulgated by the board. The board 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 board, upon at least a two-thirds vote of the members voting 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 of the motion, the board shall be deemed to have denied the motion for stay.

[20.1.1.501 NMAC - Rp, 20.1.1.501 NMAC, 04/14/2018]

**HISTORY OF 20.1.1 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records, state records center and archives under:

EIB 93-1, Rules of Procedure for Environmental Improvement Board Regulation Hearings, filed 1/21/93.

**History of Repealed Material:** 20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board (filed 10/27/95) repealed 08/27/06.

20.1.1 NMAC, Rulemaking Procedures - Environmental Improvement Board, filed 08/27/06, repealed 04/14/18.

**Other History:**

EIB 93-1, Rules of Procedure for Environmental Improvement Board Regulation Hearings (filed 1/21/93) was renumbered, reformatted, amended and replaced by 20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board, effective 11/30/95.

20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board (filed 10/27/95) was renumbered, reformatted, and replaced by 20.1.1 NMAC, Rulemaking Procedures - Environmental Improvement Board, effective 08/27/06.