

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 1 GENERAL
PART 9 REGULATORY CHANGE PROCEDURES – NEW MEXICO
ENVIRONMENT DEPARTMENT

20.1.9.1 ISSUING AGENCY: New Mexico Environment Department.

20.1.9.2 AUTHORITY: This Part is adopted pursuant to Section 9-7A-6(D) NMSA 1978 and Section 3-29-9 NMSA 1978.

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, Section 9-7A-6.D NMSA 1978, and the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978.

20.1.9.4 DURATION: Permanent.

20.1.9.5 EFFECTIVE DATE: _____, 2007.

20.1.9.6 PURPOSE: The purposes of this Part are:

- A. to standardize the procedures used in regulatory change hearings before the Department pursuant to the Department of Environment Act and Sanitary Projects Act;
- B. to encourage participation in the regulatory change hearings conducted by the Department pursuant to the Department of Environment Act and Sanitary Projects Act; and
- C. to assure that the regulatory change hearings pursuant to the Department of Environment Act and Sanitary Projects Act are conducted by the Department in a fair and equitable manner.

20.1.9.7 DEFINITIONS: As used in this Part:

- A. “Department” means the New Mexico Environment Department.
- B. “Hearing Clerk” means the Department employee designated by the Secretary as the hearing clerk for the Department.
- C. “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.
- D. “Hearing Record” means the Transcript of Proceedings or tape record and the Record Proper.
- E. “person” means an individual or entity, including federal, state, local and tribal governmental entities, however organized.
- F. “petitioner” means the person who petitioned the Secretary for the regulatory change that is the subject of the regulatory change hearing.

G. “Record Proper” means all documents related to the hearing and received or generated by the Secretary including but not limited to:

- (1) the petition for hearing, including the proposed regulatory change;
- (2) affidavits of publication;
- (3) written comments and documents from the public;
- (4) the Hearing Officer’s Report, if any;
- (5) post-hearing submissions, if allowed; and
- (6) the Secretary’s final decision and statement of reasons.

H. “regulation” means any regulation, rule, or standard promulgated by the Secretary pursuant to this Part.

I. “regulatory change” means the adoption, amendment or repeal of a regulation.

J. “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.

20.1.9.8 POWERS AND DUTIES OF DEPARTMENT AND HEARING OFFICER:

A. Department: The Secretary of the Department shall exercise all powers and duties prescribed by Section 9-7A-6(D) and/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 impartial proceeding. The Hearing Officer shall have the authority to take all measures necessary and appropriate to maintain an orderly, efficient and fair proceeding. The authority of the Hearing Officer includes, but is not limited to:

- (1) conducting public hearings under this Part;
- (2) accepting comments as provided for under this Part;
- (3) making such orders as may be necessary to ensure an orderly, efficient and fair proceeding; and
- (4) if requested by the Secretary, preparing and filing a report of the proceeding, with recommendations for action by the Secretary.

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.

20.1.9.10 DOCUMENT REQUIREMENTS:

A. Filing and service of documents:

(1) The filing of any document required by this Part shall be accomplished by delivering the document to the Hearing Clerk or by transmitting the document by mail, facsimile or electronic mail to the Hearing Clerk. If a document is filed by facsimile or electronic mail, the original document shall be delivered or mailed to the Hearing Clerk.

(2) Filing by mail shall be complete upon receipt of the document by the Hearing Clerk. Filing by facsimile or electronic mail shall be complete when transmission of the document is completed.

(3) Any person filing a document shall serve a copy on the petitioner.

(4) Service of a document shall be made by delivering a copy of the document to the person, by mailing it to the person or, if the person agrees, by transmitting the document by facsimile or electronic mail to the person. If the person is represented by an attorney, service of the document shall be made on the attorney.

(5) Service by mail shall be complete upon mailing of the document. Service by facsimile or electronic mail shall be complete when transmission of the document is completed.

B. Examination of documents:

(1) Examination allowed: Subject to the provisions of law restricting public disclosure, any person may during normal business hours inspect and copy any document filed in a rulemaking proceeding before the Secretary.

(2) Cost of duplication: The cost of duplicating documents shall be borne by the person requesting copies of such documents.

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.

20.1.9.12 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 give public notice of the hearing at least 30 days prior to the hearing. Public notice 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 Secretary shall make reasonable efforts to give notice to persons who have made a written request for advance notice of regulatory change hearings. Requests for such notice shall be addressed to the Hearing Clerk.

(3) Notice of the hearing shall state:

(a) the subject of the hearing, including a general description of the proposed regulatory change; and the time and place of the hearing;

(b) the statutes, regulations and procedural rules governing the conduct of the hearing;

(c) the manner in which persons may present their comments to the Secretary; and

(d) the location where persons may secure a copy of the proposed regulatory change.

C. Participation by public:

(1) Any member of the public may give oral comments at the hearing. Any such member may also submit documents in connection with his or her comments.

(2) Any member of the public who wishes to submit a written statement, in lieu of giving oral comments, shall file the written statement prior to the hearing or submit it at the hearing.

D. Location of hearing: The Secretary shall hold hearings on proposed regulatory changes in Santa Fe.

20.1.9.13 HEARING PROCEDURES:

A. Conduct of hearings:

(1) 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 or irrelevant comments or documents.

(2) The hearing shall proceed as follows:

(a) The hearing shall begin with an opening statement from the Hearing Officer identifying the nature and subject matter of the hearing and explaining the procedures that will be followed.

(b) The Hearing Officer may allow a brief opening statement from the petitioner.

(c) The Hearing Officer shall establish the order for receiving comments from the public and the Department, if the Department is not the petitioner. The order may be based on a sign-in sheet or the availability of members of the public.

B. Transcript of Proceedings:

(1) A verbatim transcript, tape or electronic recording shall be made of the hearing unless otherwise specified by the Hearing Officer. The cost of the Transcript of Proceedings for the Secretary shall be borne by the petitioner.

C. 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 comments, documents, arguments and proposed statements of reasons. The Hearing Officer's determination shall be announced at the conclusion of the hearing. In considering whether to keep the record open, the Hearing Officer may 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.

D. Hearing Officer's Report: If the Secretary directs, the Hearing Officer shall file a report of the hearing within 30 days following close of the record. The report shall identify the issues addressed at the hearing, explain the comments, and make a recommendation for action by the Secretary. The hearing officer report shall be filed with the Hearing Clerk, with a copy served on the petitioner. The Hearing Clerk shall promptly notify each person who submitted comments that the Hearing Officer's Report has been filed and shall provide a copy upon request.

E. Decision:

(1) The Secretary shall render his final decision on the proposed regulatory changes within 60 days following close of the record.

(2) The Secretary shall issue the final decision on the proposed regulatory changes in a suitable format. The final decision shall include a statement of reasons for the action taken.

(3) The Hearing Clerk shall provide notice of the Secretary's final decision to all persons who submitted oral or written comments, and to all other persons who have made written request to the Hearing Clerk for notification of the action taken.

20.1.9.14 APPEALS AND STAYS

A. Appeal of regulations:

(1) Appeal of any final decision of the Secretary shall be taken in accordance with governing law.

(2) The appellant shall service a copy of the appeal on the Secretary and the petitioner.

(3) The appellant shall be responsible for preparation of a sufficient number of copies of the Hearing Record at the appellant's expense.

B. Stay of Secretary Regulations:

(1) Unless otherwise ordered by the Secretary in accordance with this paragraph or otherwise provided by law, the filing of an appeal shall not act as a stay on the regulatory change being appealed.

(2) The Secretary may grant a stay of the regulatory change pending appeal only if good cause is shown after a motion is filed and hearing is held.

(3) In determining whether good cause is present for the granting of a stay, the Secretary shall consider:

(a) the likelihood that the moving party will prevail on the merits of the appeal;

(b) whether the moving party will suffer irreparable harm if a stay is not granted;

(c) whether substantial harm will result to other interested persons; and

(d) the public interest.

(4) If no action is taken within 60 days after filing the motion for stay, the Secretary shall be deemed to have denied the motion.