

STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF PROPOSED  
REVISIONS TO THE RULEMAKING  
RULES FOR THE WATER QUALITY  
CONTROL COMMISSION, 20.1.6 NMAC

No. WQCC 17-06 (R)

New Mexico Environment Department

*Petitioner.*

**PETITION TO AMEND RULEMAKING PROCEDURES AND  
REQUEST FOR HEARING**

Pursuant to NMSA 1978, Sections 74-6-4(E) (2009) and 74-6-6 (1993) and 20.1.6 NMAC, the New Mexico Environment Department (“Department”) hereby petitions the New Mexico Water Quality Control Commission (“Commission”) and requests a hearing before the Commission to amend *Rulemaking Procedures* at 20.1.6 NMAC. The Department proposes amendments primarily to the notice and post-hearing requirements of the Rulemaking Procedures in compliance with recent amendments to the State Rules Act, NMSA 1978, Sections 14-4-1 to -11, passed during the most recent session of the New Mexico Legislature as House Bill 58.

The Department includes with this petition a statement of reasons attached as NMED Exhibit 1, the text of the proposed amendments attached as NMED Exhibit 2, and House Bill 58 attached as NMED Exhibit 3. The Department requests that a hearing be scheduled on this matter for the Commission’s regularly scheduled January 2018 meeting, and the Department further requests that the Commission appoint a hearing officer to preside over the proceedings. The Department anticipates a hearing on this matter will take approximately one and one-half hours.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

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STATEMENT OF REASONS

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1. In 2016, the New Mexico Environment Department (“Department”) petitioned the New Mexico Water Quality Control Commission (“Commission”) to adopt rulemaking procedures. Prior to 2016, the Commission conducted rulemakings under guidelines that did not have the force of law.
2. Following a rulemaking hearing, the Commission adopted 20.1.6 NMAC, which became effective in May of 2017.
3. In 2017, the New Mexico Legislature passed House Bill 58 (“HB58”) addressing public participation in the rulemaking process. 2017 N.M. Laws, ch. 137 § 3.
4. HB58 establishes requirements for executive agency rulemaking notices, post-hearing steps, and maintenance of and access to the rulemaking record. *See* NMED Exhibit 3. In particular, HB58 requires agencies to publish a Notice of Proposed Rulemaking in the New Mexico Register and provide that notice to the public through specific, additional notice requirements. Sections 1 and 4, NMED Exhibit 3. Additionally, HB58 establishes timelines for agency action after publication of the Notice of Proposed Rulemaking and adoption of a final rule. Section 3, NMED Exhibit 3.
5. In addition to the notice and record requirements, HB58 includes amendments to the State Rules Act that impact the Commission’s rulemaking procedures, *see* NMED Exhibit 2, but because of the relatively new adoption of 20.1.6 NMAC, the changes are not extensive. *Id.*

6. HB58 also requires the New Mexico Attorney General to adopt default rulemaking procedures. NMED Exhibit 3, Section 10. The Attorney General shall adopt these rules no later than January 1, 2018.

7. However, HB58 allows agencies to adopt their own or continue existing procedures that provide at least as much opportunity for public participation as the Attorney General's rules. *Id.*

8. The Department proposes to amend 20.1.6 NMAC because the Water Quality Act establishes specific rulemaking requirements for the Commission that are not contemplated by the State Rules Act. *Compare e.g.* NMSA 1978, § 74-6-6(C) (1993) with NMSA 1978, § 14-4-2(E) (2017). It is further unlikely that any default rules promulgated by the Attorney General will be able to fully comply with the Water Quality Act while remaining generally applicable for a diverse group of executive agencies.

9. While 20.1.6 NMAC states that governing law controls over the Commission's Rulemaking Procedures, 20.1.6.2 NMAC, adoption of the proposed amendments will reduce confusion for petitioners before the Commission by compiling all applicable provisions in one location.

10. The Commission's Rulemaking Procedures are designed to encourage participation in rulemakings, 20.1.6.6 NMAC, but adoption of the HB58-based amendments will further facilitate public participation.

1 TITLE 20 ENVIRONMENTAL PROTECTION  
2 CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL  
3 PART 6 RULEMAKING PROCEDURES - WATER QUALITY CONTROL COMMISSION  
4

5 20.1.6.1 ISSUING AGENCY: New Mexico Water Quality Control Commission.  
6 [20.1.6.1 NMAC - N, 05/01/17]  
7

8 20.1.6.2 SCOPE: This part governs the procedures to be followed by the commission, and by participants before the  
9 commission, in connection with all rulemaking hearings before the commission, except to the extent this part may be  
10 inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking  
11 procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part.  
12 [20.1.6.2 NMAC - N, 05/01/17]  
13

14 20.1.6.3 STATUTORY AUTHORITY: Subsection E of Section 74-6-4 NMSA 1978 directs the commission to  
15 adopt, promulgate and publish regulations. Section 74-6-6 NMSA 1978 requires a public hearing prior to the adoption,  
16 amendment or repeal of a regulation, and specifies requirements for such a hearing. Sections 14-4-1 through 14-4-11  
17 NMSA 1978 requires specific public notice process and specifies filing requirements with the State Records  
18 Administrator.  
19 [20.1.6.3 NMAC - N, 05/01/17]  
20

21 20.1.6.4 DURATION: Permanent.  
22 [20.1.6.4 NMAC - N, 05/01/17]  
23

24 20.1.6.5 EFFECTIVE DATE: May 1, 2017, unless a later date is cited at the end of a section.  
25 [20.1.6.5 NMAC - N, 05/01/17]  
26

27 20.1.6.6 OBJECTIVE: The objectives of this rule are:  
28 A. to standardize the procedures used in rulemaking proceedings before the commission;  
29 B. to encourage public participation in the hearings conducted by the commission for the promulgation  
30 of regulations;  
31 C. to make possible the effective presentation of the evidence and points of view of parties and members  
32 of the general public;  
33 D. to allow all interested persons a reasonable opportunity to submit data, views or arguments orally or  
34 in writing; and  
35 E. to assure that commission hearings are conducted in a fair and equitable manner.  
36 [20.1.6.6 NMAC - N, 05/01/17]  
37

38 20.1.6.7 DEFINITIONS: As used in this part:  
39 A. "Act" means the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978.  
40 B. "Commission administrator" means the department employee designated by the secretary of  
41 environment to provide staff support to the commission.  
42 C. "Commission" means the water quality control commission.  
43 D. "Constituent agency" means any or all agencies of the state defined as such under the act.  
44 E. "Department" means the New Mexico environment department.  
45 F. "Document" means any paper, exhibit, pleading, motion, response, memorandum, decision, order or  
46 other written or tangible item that is filed in a proceeding under this part, or brought to or before the commission for its  
47 consideration, but does not include a cover letter accompanying a document transmitted for filing.  
48 G. "Exhibit" means any document or tangible item submitted for inclusion in the hearing record.  
49 H. "General public" means any person attending a hearing who has not submitted a notice of intent to  
50 present technical testimony.  
51 I. "Governing law" means the statute, including any applicable case law, which authorizes and governs  
52 the decision on the proposed regulatory change.  
53 J. "Hearing officer" means the person designated by the commission to conduct a hearing under this  
54 part

1 K. "Hearing record" means:

2 (1) the transcript of proceedings; and

3 (2) the record proper.

4 L. "Participant" means any person who participates in a rulemaking proceeding before the commission.

5 M. "Party" means the petitioner, any person filing a notice of intent to present technical testimony, and

6 any person filing an entry of appearance.

7 N. "Person" means an individual or any entity, including federal, state and local governmental entities,

8 however organized.

9 O. "Petitioner" means the person who petitioned the commission for the regulatory change that is the

10 subject of the hearing.

11 P. "Provide to the public" means for the commission to distribute rulemaking information by:

12 (1) posting it on the commission's website;

13 (2) posting in on the New Mexico sunshine portal;

14 (3) making it available at the applicable constituent agency's district, field, and regional offices, if

15 any;

16 (4) sending it by email to persons who have made a written request for notice of announcements

17 addressing the subject of the rulemaking proceeding and who have provided an email address to the commission

18 administrator;

19 (5) sending it by email to persons who have participated in the rulemaking and who have

20 provided an email address to the commission administrator;

21 (6) sending written notice that includes, at a minimum, an internet and street address where the

22 information may be found to persons who provide a postal address; and

23 (7) providing it to the New Mexico legislative council for distribution to appropriate interim and

24 standing legislative committees.

25 ~~[P.]~~Q. "Record proper" means all documents related to the hearing and received or generated by the

26 commission prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

27 (1) the petition for hearing and any response thereto;

28 (2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition

29 for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;

30 (3) the notice of hearing;

31 (4) affidavits of publication;

32 ~~(5)~~ (6) a copy of all publications in the New Mexico register relating to the proposed rule;

33 ~~(5)~~(6) notices of intent to present technical testimony;

34 ~~(7)~~ (8) a copy of any technical information that was relied upon in formulating the final rule;

35 ~~(6)~~(8) all written pleadings, including motions and responsive pleadings, and orders;

36 ~~(7)~~(9) statements for the public record or other materials received by the agency during the public

37 comment period;

38 ~~(8)~~(10) the hearing officer's report, if any;

39 ~~(11)~~ (11) a copy of the full text of the initial proposed rule, the full text of the final adopted rule, and the

40 concise explanatory statement filed with the state records administrator;

41 ~~(9)~~(12) post-hearing submissions, if allowed;

42 ~~(10)~~(13) the audio recordings (or an appropriate extract of the recordings) of the meeting(s)

43 at which the commission deliberated on the adoption of the proposed regulatory change; ~~and~~

44 ~~(11)~~(14) the commission's decision and the reasons therefore~~[-]~~; and

45 ~~(15)~~ (15) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA

46 1978.

47 ~~[Q.]~~R. "Regulation" means any rule, regulation or standard promulgated by the commission and affecting

48 one or more persons, besides the commission and the department, except for any order or decision issued in connection

49 with the disposition of any case involving a particular matter as applied to a specific set of facts.

50 ~~[R.]~~S. "Regulatory change" means the adoption, amendment or repeal of a regulation.

51 ~~[S.]~~T. "Service" means personally delivering a copy of the document, exhibit or pleading to the person

52 required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by electronic

53 transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by

54 mail is complete upon mailing the document; service by electronic transmission is complete upon transmission of the

1 document.

2 ~~T~~U. "Technical testimony" means scientific, engineering, economic or other specialized testimony, but  
3 does not include legal argument, general comments, or statements of policy or position concerning matters at issue in  
4 the hearing.

5 ~~U~~V. "Transcript of proceedings" means the verbatim record (audio recording or stenographic) of the  
6 proceedings, testimony and argument in the matter, together with all exhibits proffered at the hearing, whether or not  
7 admitted into evidence, including the record of any motion hearings or prehearing conferences.

8 [20.1.6.7 NMAC - N, 05/01/17]

9  
10 **20.1.6.8 LIBERAL CONSTRUCTION:** This part shall be liberally construed to carry out its purpose.

11 [20.1.6.8 NMAC - N, 05/01/17]

12  
13 **20.1.6.9 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder of this part, or its  
14 application to other situations or persons, shall not be affected.

15 [20.1.6.9 NMAC - N, 05/01/17]

16  
17 **20.1.6.10 - 20.1.6.99 [RESERVED]**

18  
19 **20.1.6.100 POWERS AND DUTIES OF THE COMMISSION AND HEARING OFFICER:**

20 **A. Commission:** The commission shall exercise all powers and duties prescribed under the act and this  
21 part not otherwise delegated to the hearing officer or the commission administrator.

22 (1) The commission may issue procedural orders that either impose additional procedural  
23 requirements or simplify the procedures provided in this part. In no event, may the commission eliminate any  
24 procedural requirements of the act.

25 (2) The appointment of a hearing officer does not preclude the commissioners from attending or  
26 participating in the proceeding.

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

32 (1) conducting hearings under this part;

33 (2) ruling on motions and procedural requests that do not seek final resolution of the  
34 proceeding, and issuing all necessary orders;

35 (3) administering oaths and affirmations, admitting or excluding evidence, examining witnesses  
36 and allowing post-hearing submissions;

37 (4) making such orders as may be necessary to preserve decorum and to protect the orderly  
38 hearing process;

39 (5) if requested by the commission, preparing and filing a report of the hearing, with  
40 recommendations for commission action;

41 (6) requesting parties to file original documents with the commission administrator; and

42 (7) requesting a party to submit a proposed statement of reasons in support of the commission's  
43 decision.

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

46 (1) an employee of the department, except for the commissioners themselves or their designees,  
47 or unless employed by the department as a hearing officer;

48 (2) a person who has a personal bias or prejudice concerning a party or a party's lawyer or  
49 consultant, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the third  
50 degree of relationship, or has a financial interest in the proceeding.

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

54 [20.1.6.100 NMAC - N, 05/01/17]

1  
2 **20.1.6.101 GENERAL PROVISIONS - COMPUTATION OF TIME:**

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

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

12 [20.1.6.101 NMAC - N, 05/01/17]  
13

14 **20.1.6.102 GENERAL PROVISIONS - RECUSAL:** No commission member shall participate in any action in  
15 which his or her impartiality of fairness may reasonably be questioned, and the member shall recuse himself or herself  
16 in any such action by giving notice to the commission and the general public by announcing this recusal on the record.  
17 In making a decision to recuse himself or herself, the commission member may rely upon the Governmental Conduct  
18 Act, Sections 10-16-1 through 10-16-18 NMSA 1978, the Financial Disclosures Act, Sections 10-16A-1 through 10-  
19 16A-8 NMSA 1978, or any other relevant authority.

20 [20.1.6.102 NMAC - N, 05/01/17]  
21

22 **20.1.6.103 GENERAL PROVISIONS - EX PARTE DISCUSSIONS:** At no time after the commission's  
23 determination to hold a public hearing on a petition and before the issuance of the commission's written decision under  
24 this part, shall the department, or any other party, interested participant or their representatives discuss *ex parte* the  
25 merits of the proceeding with any commission member or the hearing officer.

26 [20.1.6.103 NMAC - N, 05/01/2017]  
27

28 **20.1.6.104 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:**

29 A. The filing of any document as required by this part shall be accomplished by delivering the document  
30 to the commission administrator.

31 B. Any person filing any document shall:

32 (1) provide the commission administrator with the original along with up to 15 copies of the  
33 document, provided that the commission administrator may waive the requirement to provide up to 15 copies if an  
34 electronic copy of the original is provided in a format acceptable for distribution to the commission members;

35 (2) serve a copy of the document on each other party. If a party is represented by an attorney,  
36 service of the document shall be made on the attorney; and

37 (3) include a certificate of service, as shown in Section 500 of this rule.

38 C. Whenever this part requires service of a document, service shall be made by delivering a copy to the  
39 person to be served by mailing it, or, if that person has agreed, by sending it by electronic transmission to that person.  
40 Agreement to be served by electronic transmission may be evidenced by placing the person's email address on a  
41 document filed pursuant to this part. Service by mail is complete upon mailing the document. Service by electronic  
42 transmission is complete upon transmission of the document.

43 D. Form of documents: Unless otherwise ordered by the hearing officer, all documents, except exhibits,  
44 shall be prepared on 8 ½ x 11-inch white paper, printed single-sided, and where appropriate, the first page of every  
45 document shall contain a heading and caption as shown in Section 500 of this rule.

46 E. Documents issued by commission or hearing officer: All documents issued by the commission or  
47 hearing officer shall be filed with the commission administrator, who shall promptly serve copies of the documents upon  
48 all parties.

49 [20.1.6.104 NMAC - N, 05/01/2017]  
50

51 **20.1.6.105 EXAMINATION OF DOCUMENTS FILED:**

52 A. Examination allowed: Subject to the provisions of law restricting the public disclosure of  
53 confidential information, any person may, during normal business hours, inspect and copy any document filed in any  
54 rulemaking proceeding before the commission. Such documents shall be made available by the commission



1 administrator, as appropriate~~[.]~~ and shall also be made available on the New Mexico sunshine portal. If the commission  
2 administrator determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for  
3 public display on the New Mexico sunshine portal, the commission administrator shall describe that part of the record,  
4 shall note on the New Mexico sunshine portal that the part of the record is not displayed, and shall provide instructions for  
5 accessing or inspecting that part of the record.

6 B. Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies  
7 of such documents, but the commission administrator shall not charge a fee for providing records in electronic form.

8 [20.1.6.105 NMAC - N, 05/01/17]

9  
10 20.1.6.106 - 20.1.1.199 [RESERVED]

11  
12 20.1.6.200 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:

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

15 B. The petition shall be in writing and shall include a statement of the reasons for the regulatory change.  
16 The petition shall cite the relevant statutes that authorize the commission to adopt the proposed rules and shall estimate  
17 the time that will be needed to conduct the hearing. A copy of the entire rule, including the proposed regulatory change,  
18 indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its  
19 proposed changes shall be submitted to the commission in redline fashion, and shall include line numbers. Any  
20 document that does not include all the items required to be in a petition shall be returned to the petitioner along with a  
21 copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit their petition in the  
22 form required by these rules.

23 C. The commission shall determine, at a public meeting occurring no later than 90 days after receipt of  
24 the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in  
25 writing prior to the public meeting or in person at the public meeting.

26 D. If the commission determines to hold a public hearing on the petition, it may issue such orders  
27 specifying procedures for conduct of the hearing, in addition to those provided by this part, as may be necessary and  
28 appropriate to fully inform the commission of the matters at issue in the hearing or control the conduct of the hearing.  
29 Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct  
30 testimony in writing prior to the hearing, or limiting testimony or cross-examination.

31 [20.1.6.200 NMAC - N, 05/01/17]

32  
33 20.1.6.201 NOTICE OF HEARINGS:

34 A. Unless otherwise allowed by governing law and specified by the commission, the commission shall  
35 ~~[give public]~~ provide to the public notice of the ~~[hearing]~~ proposed rulemaking at least 60 days prior to the hearing.

36 B. Public notice for proposed regulatory changes of general application to the state shall include  
37 publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, and  
38 such other means of providing notice as the commission may direct or are required by law. Notice for proposed  
39 regulatory changes that are confined in effect to a specific geographic area shall also be published in a newspaper of  
40 general circulation in the area affected.

41 ~~[C. The commission shall make reasonable efforts to give notice to persons who have made a written~~  
42 ~~request to the commission for advance notice of regulatory change hearings. Requests for such notice shall be~~  
43 ~~addressed to the commission administrator, and shall designate those areas of commission activity which are of interest.]~~

44 [D]C. ~~[Public notice of the hearing]~~The notice of proposed rulemaking shall state:

45 (1) ~~the subject of the proposed rule, including a [description of the proposed regulatory change,~~  
46 ~~and the time and place of the hearing;]~~summary of the full text of the proposed rule and a short explanation of the purpose  
47 of the proposed rule;

48 (2) a citation to the specific legal authority authorizing the proposed rule and the adoption of the  
49 rule;

50 (3) a citation to technical information, if any, that served as a basis for the proposed rule, and  
51 information on how the full text of the technical information may be obtained;

52 ~~(2)~~(4) the statutes, regulations, and procedural rules governing the conduct of the hearing;

53 ~~(3)~~(5) the manner in which persons may present their views or evidence to the commission,  
54 including information on participating in the public hearing;

1                    ~~(4)~~(6) the location where persons may secure copies of the proposed regulatory change; ~~and~~  
2                    (7) an internet link providing free access to the full text of the proposed rule; and  
3                    ~~(5)~~(8) if applicable, that the commission may make a decision on the proposed regulatory change  
4 at the conclusion of the hearing.

5 [20.1.6.201 NMAC - N, 05/01/17]  
6

7 **20.1.6.202 TECHNICAL TESTIMONY:**

8            A. Any person, including the petitioner, who intends to present technical testimony at the hearing shall,  
9 no later than 20 days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

- 10            (1) identify the person for whom the witness(es) will testify;  
11            (2) identify each technical witness the person intends to present, and state the qualifications of  
12 that witness, including a description of their educational and work background;  
13            (3) if the hearing will be conducted at multiple locations, indicate the location or locations at  
14 which the witnesses will be present;  
15            (4) include a copy of the direct testimony of each technical witness in narrative form, and state  
16 the estimated duration of the direct oral testimony of that witness;  
17            (5) include the text of any recommended modifications to the proposed regulatory change; and  
18            (6) list and attach all exhibits anticipated to be offered by that person at the hearing.

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

24 [20.1.6.202 NMAC - N, 05/01/17]  
25

26 **20.1.6.203 ENTRY OF APPEARANCE:** Any person may file an entry of appearance as a party. The entry of  
27 appearance shall be filed no later than 20 days before the date of the hearing on the petition. In the event of multiple  
28 entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or  
29 divide the service list to avoid waste of resources.

30 [20.1.6.203 NMAC - N, 05/01/17]  
31

32 **20.1.6.204 PARTICIPATION BY GENERAL PUBLIC:**

33            A. Any member of the general public may testify at the hearing. No prior notification is required to  
34 present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection  
35 with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

36            B. A member of the general public who wishes to submit a written statement for the record, in lieu of  
37 providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing.  
38 Written comment must be mailed or delivered to the commission administrator.

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

41 [20.1.6.204 NMAC - N, 05/01/17]  
42

43 **20.1.6.205 LOCATION OF HEARING:** Unless otherwise provided by governing law, the commission shall  
44 hold hearings on proposed regulatory changes of statewide application in Santa Fe, and at other places the commission  
45 may prescribe. The commission may hold hearings on proposed regulatory changes that are not of statewide application  
46 within the area substantially affected by the proposal.

47 [20.1.6.205 NMAC - N, 05/01/17]  
48

49 **20.1.6.206 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:**

50            A. A member of the commission may participate in a meeting or hearing of the commission by means of  
51 a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the  
52 member to attend the meeting or hearing in person, provided that each member participating by conference telephone  
53 can be identified when speaking, all participants are able to hear each other at the same time and members of the public  
54 attending the meeting or hearing are able to hear any member of the commission who speaks at the meeting or hearing.

1 A commission member's participation by such means shall constitute presence in person at the meeting or hearing. A  
2 commission member who needs to participate in this manner must notify the commission administrator sufficiently in  
3 advance so as to permit the commission administrator to arrange for the appropriate communications equipment.

4 **B.** A witness may participate in a hearing of the commission by means of a conference telephone or  
5 other similar communications equipment when an emergency or circumstances make it impossible for the witness to  
6 attend the hearing in person. A witness who needs to participate in this manner must receive permission from the  
7 hearing officer sufficiently in advance of the hearing so as to permit the commission administrator to arrange for the  
8 appropriate communications equipment. Each witness participating in this manner must be identified when speaking, all  
9 participants must be able to hear each other at the same time, and members of the public attending the hearing must be  
10 able to hear any witness who speaks during the hearing.

11 [20.1.6.206 NMAC - N, 05/01/17]

12  
13 **20.1.6.207 MOTIONS:**

14 **A.** General: All motions, except those made orally during a hearing, shall be in writing, specify the  
15 grounds for the motion, and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or  
16 other evidence relied upon and shall be served as provided by 20.1.6.104 NMAC.

17 **B.** Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was  
18 obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

19 **C.** Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or  
20 why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

21 **D.** Response to motions: Any party upon whom an opposed motion is served shall have 15 days after  
22 service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have  
23 waived any objection to the granting of the motion.

24 **E.** Reply to response: The moving party may, but is not required to, submit a reply to any response  
25 within 10 days after service of the response.

26 **F.** Decision: Non-dispositive motions may be decided by the hearing officer without a hearing. The  
27 hearing officer shall refer any motion that would effectively dispose of the matter to the commission for a decision, and  
28 may refer any other motion to the commission. A procedural motion may be ruled upon prior to the expiration of the  
29 time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The  
30 hearing officer shall file all original documents with the commission administrator.

31 [20.1.6.207 NMAC - N, 05/01/17]

32  
33 **20.1.6.208 - 20.1.6.299 [RESERVED]**

34  
35 **20.1.6.300 HEARING PROCEDURES - CONDUCT OF HEARINGS:**

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

37 **B.** The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons  
38 to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary  
39 repetition. The hearing shall proceed as follows.

40 (1) The hearing shall begin with an opening statement from the hearing officer. The statement  
41 shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

42 (2) The hearing officer may allow a brief opening statement by any party who wishes to make  
43 one.

44 (3) Unless otherwise ordered, the petitioner shall present its case first.

45 (4) The hearing officer shall establish an order for the testimony of other participants. The  
46 order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses  
47 who cannot be present for the entire hearing.

48 (5) If the hearing continues for more than one day, the hearing officer shall provide an  
49 opportunity each day for testimony from members of the general public. Members of the general public who wish to  
50 present testimony should indicate their intent on a sign-in sheet.

51 (6) The hearing officer may allow a brief closing argument by any person who wishes to make  
52 one.

53 (7) At the close of the hearing, the hearing officer shall determine whether to keep the record  
54 open for written submittals in accordance with 20.1.6.304 NMAC. If the record is kept open, the hearing officer shall

1 determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

2 C. If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's  
3 witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not  
4 required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than  
5 one location.

6 [20.1.6.300 NMAC - N, 05/01/17]

7  
8 **20.1.6.301 TESTIMONY AND CROSS-EXAMINATION:**

9 A. All testimony will be taken under oath or affirmation which may be accomplished in mass or  
10 individually.

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

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

18 [20.1.6.301 NMAC - N, 05/01/17]

19  
20 **20.1.6.302 EXHIBITS:**

21 A. Any person offering an exhibit at hearing other than a document filed and served before the hearing  
22 shall provide at least an original and up to 15 copies for the commission, and a sufficient number of copies for every  
23 other party.

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

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

29 [20.1.6.302 NMAC - N, 05/01/17]

30  
31 **20.1.6.303 TRANSCRIPT OF PROCEEDINGS:**

32 A. [A] Unless specified by the commission or the hearing officer, a verbatim transcript shall be made of  
33 the hearing, including any deliberations. The cost of the original transcript of the proceeding and of providing a copy  
34 for each commission member shall be borne by the petitioner.

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

37 [20.1.6.303 NMAC - N, 05/01/17]

38  
39 **20.1.6.304 POST-HEARING SUBMISSIONS:** The hearing officer may allow the record to remain open for a  
40 reasonable period of time following the conclusion of the hearing for written submission of additional evidence,  
41 comments and arguments, revised proposed rule language, and proposed statements of reasons. The hearing officer's  
42 determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering  
43 whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented  
44 during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

45 [20.1.6.304 NMAC - N, 05/01/17]

46  
47 **20.1.6.305 HEARING OFFICER'S REPORT:** If the commission directs, the hearing officer shall file a report  
48 of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals, and the  
49 evidence supporting or opposing those proposals, including discussion or recommendations as requested by the  
50 commission, and shall be filed with the commission administrator within the time specified by the commission. The  
51 commission administrator shall promptly notify each party that the hearing officer's report has been filed and shall  
52 provide a copy of the report along with a notice of any deadline set for comments on that report.

53 [20.1.6.305 NMAC - N, 05/01/17]

54

1 **20.1.6.306 DELIBERATION AND DECISION:**

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

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

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

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

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

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

19 G. If the commission fails to act on a proposed rule within two years after the notice of proposed  
20 rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the commission  
21 acts to extend the period for an additional two years by filing a statement of good cause for the extension in the  
22 rulemaking record. If the commission extends the rulemaking period, it shall provide for additional public participation,  
23 comments, and hearing prior to adopting the rule.

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

27 [20.1.6.306 NMAC - N, 05/01/17]

28  
29 **20.1.6.307 NOTICE OF COMMISSION ACTION:**

30 ~~A. The commission administrator shall provide to the public notice of the commission's action [to each~~  
31 ~~of the parties, to any person heard or represented at the hearing, and to all other persons who have made a written~~  
32 ~~request to the commission for notification of the action taken].~~

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

35 ~~(1) the date that the commission adopted the rule;~~

36 ~~(2) a reference to the specific statutory authority authorizing the rule; and~~

37 ~~(3) any findings required by law for adoption of the rule.~~

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

39 ~~D. If the state records administrator notifies the commission of having made any minor, nonsubstantive~~  
40 ~~corrections in spelling, grammar, and format in the filed rule, [F] the commission administrator shall provide to the public~~  
41 ~~notice of the correction within 30 days of receiving the state records administrator's record of correction.~~

42 [20.1.6.307 NMAC - N, 05/01/17]

43  
44 **20.1.6.308 - 20.1.6.399 [RESERVED]**

45  
46 **20.1.6.400 APPEAL OF REGULATIONS:**

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

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

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

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

53 [20.1.6.400 NMAC - N, 05/01/17]

54

1 **20.1.6.401 STAY OF COMMISSION REGULATIONS:**

2 A. Any person who is or may be affected by a rule adopted by the commission may file a motion with  
3 the commission seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal  
4 authority supporting, the granting of a stay. The movant shall file and serve the motion in accordance with the  
5 requirements of Section 104 of this part at least 30 days before the meeting at which the commission will consider the  
6 motion. The commission chair will decide at which meeting the motion will be heard.

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

10 C. In determining whether good cause is present for the granting of a stay, the commission, upon at least  
11 a two-thirds vote of the members voting shall consider:

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

16 D. If no action is taken within 60 days after filing of the motion, the commission shall be deemed to  
17 have denied the motion for stay.

18 [20.1.6.401 NMAC - N, 05/01/17]

19  
20 **20.1.6.402 - 20.1.6.499 [RESERVED]**

21  
22 **20.1.6.500 PREFERRED FORMAT:**

23  
24 **STATE OF NEW MEXICO**  
25 **WATER QUALITY CONTROL COMMISSION**

26  
27 **IN THE MATTER OF PROPOSED**  
28 **AMENDMENTS TO \_\_\_\_\_ NMAC**

29  
30 **[Name of Petitioner],**  
31 **Petitioner.**

32  
33  
34 **CERTIFICATE OF SERVICE**  
35

36 I hereby certify that a true and correct copy of the foregoing [name of document] was served by [hand-delivery] [first  
37 class mail] [email] to all parties on [date].

38 [20.1.6.500 NMAC - N, 05/01/17]

39  
40 **HISTORY OF 20.1.6 NMAC:**

41 **Pre-NMAC History:** The material in this part was derived from Guidelines for Water Quality Control Commission  
42 Regulation Hearings (Approved November 10, 1992; Amended June 8, 1993).

43  
44 **History of Repealed Material:** [RESERVED] **Other History:** [RESERVED]  
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AN ACT

RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,  
ADOPTING, AMENDING OR REPEALING RULES; AMENDING AND ENACTING  
SECTIONS OF THE STATE RULES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 14-4-2 NMSA 1978 (being Laws 1967,  
Chapter 275, Section 2, as amended) is amended to read:

"14-4-2. DEFINITIONS.--As used in the State Rules Act:

A. "agency" means any agency, board, commission,  
department, institution or officer of the state government  
except the judicial and legislative branches of the state  
government;

B. "person" includes individuals, associations,  
partnerships, companies, business trusts, political  
subdivisions and corporations;

C. "proceeding" means a formal agency process or  
procedure that is commenced or conducted pursuant to the  
State Rules Act;

D. "proposed rule" means a rule that is provided  
to the public by an agency for review and public comment  
prior to its adoption, amendment or repeal, and for which  
there is specific legal authority authorizing the proposed  
rule;

E. "provide to the public" means for an agency to

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Page 1

1 distribute rulemaking information by:

2 (1) posting it on the agency website, if  
3 any;

4 (2) posting it on the sunshine portal;

5 (3) making it available in the agency's  
6 district, field and regional offices, if any;

7 (4) sending it by electronic mail to persons  
8 who have made a written request for notice from the agency of  
9 announcements addressing the subject of the rulemaking  
10 proceeding and who have provided an electronic mail address  
11 to the agency;

12 (5) sending it by electronic mail to persons  
13 who have participated in the rulemaking and who have provided  
14 an electronic mail address to the agency;

15 (6) sending written notice that includes, at  
16 a minimum, an internet and street address where the  
17 information may be found to persons who provide a postal  
18 address; and

19 (7) providing it to the New Mexico  
20 legislative council for distribution to appropriate interim  
21 and standing legislative committees;

22 F. "rule" means any rule, regulation, or standard,  
23 including those that explicitly or implicitly implement or  
24 interpret a federal or state legal mandate or other  
25 applicable law and amendments thereto or repeals and renewals



1     thereof, issued or promulgated by any agency and purporting  
2     to affect one or more agencies besides the agency issuing the  
3     rule or to affect persons not members or employees of the  
4     issuing agency, including affecting persons served by the  
5     agency. An order or decision or other document issued or  
6     promulgated in connection with the disposition of any case or  
7     agency decision upon a particular matter as applied to a  
8     specific set of facts shall not be deemed such a rule, nor  
9     shall it constitute specific adoption thereof by the agency.  
10    "Rule" does not include rules relating to the management,  
11    confinement, discipline or release of inmates of any penal or  
12    charitable institution, the New Mexico boys' school, the  
13    girls' welfare home or any hospital; rules made relating to  
14    the management of any particular educational institution,  
15    whether elementary or otherwise; or rules made relating to  
16    admissions, discipline, supervision, expulsion or graduation  
17    of students from any educational institution; and

18           G. "rulemaking" means the process for adoption of  
19    a new rule or the amendment, readoption or repeal of an  
20    existing rule."

21           SECTION 2. Section 14-4-3 NMSA 1978 (being Laws 1967,  
22    Chapter 275, Section 3, as amended) is amended to read:

23           "14-4-3.   FORMAT OF RULES--FILING--DISTRIBUTION.--

24           A. Each agency promulgating any rule shall place  
25    the rule in the format and style required by rule of the

1 state records administrator and shall deliver the rule to the  
2 state records administrator or the administrator's designee,  
3 accompanied by the concise explanatory statement required by  
4 the State Rules Act. The state records administrator or the  
5 administrator's designee shall note thereon the date and hour  
6 of filing.

7 B. The state records administrator or the  
8 administrator's designee shall maintain a copy of the rule as  
9 a permanent record open to public inspection during office  
10 hours, on the website of the records center, published in a  
11 timely manner in the New Mexico register and compiled into  
12 the New Mexico Administrative Code.

13 C. At the time of filing, an agency may submit to  
14 the state records administrator or the administrator's  
15 designee a copy, for annotation with the date and hour of  
16 filing, to be returned to the agency.

17 D. The state records administrator, after written  
18 notification to the filing agency, may make minor,  
19 nonsubstantive corrections in spelling, grammar and format in  
20 filed rules. The state records administrator shall make a  
21 record of the correction and shall deliver the record to the  
22 filing agency and issuing authority within ten days of the  
23 change. Within thirty days of receiving that state records  
24 administrator's record of a correction, the agency shall  
25 provide to the public notice of the correction in the same

1 manner as the agency used to give notice of the rulemaking  
2 proceeding pursuant to Section 4 of this 2017 act."

3 SECTION 3. Section 14-4-5 NMSA 1978 (being Laws 1967,  
4 Chapter 275, Section 6, as amended) is amended to read:

5 "14-4-5. TIME LIMIT ON ADOPTION OF A PROPOSED RULE--  
6 FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

7 A. Except in the case of an emergency rule, no  
8 rule shall be valid or enforceable until it is published in  
9 the New Mexico register as provided by the State Rules Act.

10 B. An agency shall not adopt a rule until the  
11 public comment period has ended. If the agency fails to take  
12 action on a proposed rule within two years after the notice  
13 of proposed rulemaking is published in the New Mexico  
14 register, the rulemaking is automatically terminated unless  
15 the agency takes action to extend the period. The agency may  
16 extend the period of time for adopting the proposed rule for  
17 an additional period of two years by filing a statement of  
18 good cause for the extension in the rulemaking record, but it  
19 shall provide for additional public participation, comments  
20 and rule hearings prior to adopting the rule.

21 C. An agency may terminate a rulemaking at any  
22 time by publishing a notice of termination in the New Mexico  
23 register. If a rulemaking is terminated pursuant to this  
24 section, the agency shall provide notice to the public.

25 D. Within fifteen days after adoption of a rule,

1 an agency shall file the adopted rule with the state records  
2 administrator or the administrator's designee and shall  
3 provide to the public the adopted rule. The state records  
4 administrator or the administrator's designee shall publish  
5 rules as soon as practicable after filing, but in no case  
6 later than ninety days after the date of adoption of the  
7 proposed rule. Unless a later date is otherwise provided by  
8 law or in the rule, the effective date of a rule shall be the  
9 date of publication in the New Mexico register.

10 E. A proposed rule shall not take effect unless it  
11 is adopted and filed within the time limits set by this  
12 section."

13 SECTION 4. A new section of the State Rules Act is  
14 enacted to read:

15 "NOTICE OF PROPOSED RULEMAKING.--

16 A. Not later than thirty days before a public rule  
17 hearing, the agency proposing the rule shall provide to the  
18 public and publish in the New Mexico register a notice of  
19 proposed rulemaking. The notice shall include:

20 (1) a summary of the full text of the  
21 proposed rule;

22 (2) a short explanation of the purpose of  
23 the proposed rule;

24 (3) a citation to the specific legal  
25 authority authorizing the proposed rule and the adoption of

1 the rule;

2 (4) information on how a copy of the full  
3 text of the proposed rule may be obtained;

4 (5) information on how a person may comment  
5 on the proposed rule, where comments will be received and  
6 when comments are due;

7 (6) information on where and when a public  
8 rule hearing will be held and how a person may participate in  
9 the hearing; and

10 (7) a citation to technical information, if  
11 any, that served as a basis for the proposed rule, and  
12 information on how the full text of the technical information  
13 may be obtained.

14 B. An agency may charge a reasonable fee for  
15 providing any records in nonelectronic form when provided to  
16 a person pursuant to this section. An agency shall not  
17 charge a fee for providing any records in electronic form  
18 when provided to a person pursuant to this section.

19 C. An internet link providing free access to the  
20 full text of the proposed rule shall be included on the  
21 notice of proposed rulemaking.

22 D. If the agency changes the date of the public  
23 rule hearing or the deadline for submitting comments as  
24 stated in the notice, the agency shall provide notice to the  
25 public of the change.

1           E. The state records administrator or the  
2 administrator's designee shall timely publish the notice of  
3 proposed rulemaking in the next publication of the New Mexico  
4 register."

5           SECTION 5. A new section of the State Rules Act is  
6 enacted to read:

7           "PUBLIC PARTICIPATION, COMMENTS AND RULE HEARINGS.--

8           A. The notice of proposed rulemaking shall specify  
9 a public comment period of at least thirty days after  
10 publication in the New Mexico register during which a person  
11 may submit information and comment on the proposed rule.  
12 The information or comment may be submitted in an electronic  
13 or written format or at a public rule hearing pursuant to  
14 Subsection B of this section. The agency shall consider all  
15 information and comment on a proposed rule that is submitted  
16 within the comment period.

17           B. At the public rule hearing, members of the  
18 public shall be given a reasonable opportunity to submit  
19 data, views or arguments orally or in writing. Each agency  
20 shall determine, in accordance with governing statutory and  
21 case law, the manner in which parties to the proceeding and  
22 members of the public will be able to participate in public  
23 hearings. All public hearings shall be conducted in a fair  
24 and equitable manner. Except as otherwise provided by law,  
25 an agency representative or hearing officer shall preside

1 over a public rule hearing.

2 C. The public rule hearing shall be open to the  
3 public and be recorded."

4 SECTION 6. A new section of the State Rules Act is  
5 enacted to read:

6 "AGENCY RECORD IN RULEMAKING PROCEEDING.--

7 A. An agency shall maintain a rulemaking record  
8 for each rule it proposes to adopt. The record and materials  
9 incorporated by reference in the proposed rule shall be  
10 readily available for public inspection in the central office  
11 of the agency and available for public display on the state  
12 sunshine portal. If an agency determines that any part of  
13 the rulemaking record cannot be practicably displayed or is  
14 inappropriate for public display on the sunshine portal, the  
15 agency shall describe that part of the record, shall note on  
16 the sunshine portal that the part of the record is not  
17 displayed and shall provide instructions for accessing or  
18 inspecting that part of the record.

19 B. A rulemaking record shall contain:

20 (1) a copy of all publications in the New  
21 Mexico register relating to the proposed rule;

22 (2) a copy of any technical information that  
23 was relied upon in formulating the final rule;

24 (3) any official transcript of a public rule  
25 hearing or, if not transcribed, any audio recording or

1 verbatim transcript of the hearing, and any memoranda  
2 summarizing the contents of the hearing prepared by the  
3 hearing officer or agency official who presided over the  
4 hearing;

5 (4) a copy of all comments and other  
6 material received by the agency during the public comment  
7 period and at the public hearing;

8 (5) a copy of the full text of the initial  
9 proposed rule and the full text of the final adopted rule and  
10 the concise explanatory statement filed with the state  
11 records administrator or the administrator's designee; and

12 (6) any corrections made by the state  
13 records administrator pursuant to Section 14-4-3 NMSA 1978."

14 SECTION 7. A new section of the State Rules Act is  
15 enacted to read:

16 "CONCISE EXPLANATORY STATEMENT.--At the time it adopts a  
17 rule, an agency shall provide to the public a concise  
18 explanatory statement containing:

19 A. the date the agency adopted the rule;

20 B. a reference to the specific statutory or other  
21 authority authorizing the rule; and

22 C. any findings required by a provision of law for  
23 adoption of the rule."

24 SECTION 8. A new section of the State Rules Act is  
25 enacted to read:



1 "EMERGENCY RULE.--

2 A. An agency shall comply with the rulemaking  
3 procedures of the State Rules Act unless the agency finds  
4 that the time required to complete the procedures would:

5 (1) cause an imminent peril to the public  
6 health, safety or welfare;

7 (2) cause the unanticipated loss of funding  
8 for an agency program; or

9 (3) place the agency in violation of federal  
10 law.

11 B. The agency shall provide to the public a record  
12 of any finding pursuant to Subsection A of this section and a  
13 detailed justification for that finding before issuing an  
14 emergency rule. The record shall include a statement that  
15 the emergency rule is temporary. After such record has been  
16 provided to the public, the agency may issue the emergency  
17 rule immediately without a public rule hearing or with any  
18 abbreviated notice and hearing that it finds practicable.

19 C. When an agency makes a finding pursuant to  
20 Subsection A of this section, the agency shall follow the  
21 provisions of this section in addition to any more specific  
22 requirements in statute that pertain to the agency regarding  
23 promulgating emergency or interim rules.

24 D. Emergency rules may take effect immediately  
25 upon filing with the state records administrator or the

1 administrator's designee or at a later date specified in the  
2 emergency rule. Emergency rules shall be published in the  
3 New Mexico register.

4 E. No emergency rule shall permanently amend or  
5 repeal an existing rule. An emergency rule shall remain in  
6 effect until a permanent rule takes effect under the normal  
7 rulemaking process. If no permanent rule is adopted within  
8 one hundred eighty days from the effective date of the  
9 emergency rule, the emergency rule shall expire and may not  
10 be readopted as an emergency rule. If an expired emergency  
11 rule temporarily amended or repealed an existing rule, the  
12 rule shall revert to what it would have been had the  
13 emergency rule not been issued."

14 SECTION 9. A new section of the State Rules Act is  
15 enacted to read:

16 "CONFLICTS BETWEEN RULE AND STATUTE--VARIANCE BETWEEN  
17 PROPOSED AND FINAL ACTION.--

18 A. No rule is valid or enforceable if it conflicts  
19 with statute. A conflict between a rule and a statute is  
20 resolved in favor of the statute.

21 B. A word or phrase that is defined in an  
22 applicable statute should not be defined in rule. A conflict  
23 between a definition that appears in a rule and in an  
24 applicable statute is resolved in favor of the statute."

25 SECTION 10. A new section of the State Rules Act is

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enacted to read:

"PROCEDURAL RULES.--No later than January 1, 2018, the attorney general shall adopt 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. Each agency may adopt its own procedural rules, or continue in effect existing rules, which shall provide at least as much opportunity for participation by parties and members of the public as is provided in the procedural rules adopted by the attorney general. An agency that adopts its own procedural rules shall send a copy of those procedural rules to the attorney general and shall maintain those procedural rules on the agency's website."

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017. \_\_\_\_\_