



Soloria, Karla <ksoloria@nmag.gov>

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## 11.5.1.16 NMAC - EIB 20-55 Comment #1

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Chris Mechels [REDACTED]

Mon, Dec 7, 2020 at 9:40 AM

To: Public.Facilitation@state.nm.us

Cc: KSoloria <KSoloria@nmag.gov>, Jennifer Hower <Jennifer.Hower@state.nm.us>

Dear Administrator,

This comment deals with improper notice of this hearing.

The SunshinePortal notice has the cutoff for comments as 11/27/2020. I very nearly did not comment as I was after that date.

However, I decided to check the newspaper notice, and it has comments until the hearing date.

The SSP error has the effect of cutting off comments which should have been allowed, as I was very nearly cutoff. This error seem unrecoverable, and suggests the hearing be rescheduled.

It seems from the newspaper notice that the 11/27/2020 date has to do with Notices of Intent, and that your office got the SSP notice wrong. You should be more attentive.

Regards,

Chris Mechels  
[REDACTED]

**From:** [Chris Mechels](#)  
**To:** [Public Facilitation, NMENV](#)  
**Cc:** [KSoloria](#); [Hower, Jennifer, NMENV](#)  
**Subject:** [EXT] NMAC - EIB 20-55 Comment #3  
**Date:** Saturday, December 12, 2020 9:23:22 AM

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Dear Administrator,

This comment again deals with the EIB Rules Hearing Procedure, 20.1.1 NMAC, which seems noncompliant with the Rules Act.

The main area of concern is that this Procedure does not meet the requirement of 14-4-5.8. NMSA.

14-4-5.8. 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.

As the following old email shows, this problem was known, and communicated, over two years ago.

We are left with the question of whether NMED, and the Attorney General, will follow our New Mexico laws.

And, if not, whether we really "have" a government, or simply a fraud.

----- Forwarded Message -----

**From:** Chris Mechels [REDACTED]  
**To:** Sally Malave <[smalave@nmag.gov](mailto:smalave@nmag.gov)>  
**Cc:** Hector Balderas <[hbalderas@nmag.gov](mailto:hbalderas@nmag.gov)>  
**Sent:** Fri, 14 Sep 2018 11:29:49 -0400 (EDT)  
**Subject:** HB58

Dear Ms. Malave,

This email concerns the implementation of HB58, which concerns the NM Rules Act.

As you may recall, I was very interested in, and participated in the hearing on, the HB58 implementation NMAC.

I recently followed up, by checking the AG website and find no evidence of this implementation. This is very disappointing.

Furthermore, I checked the EIB and WQCC, as they neither follows the default format. HB58 seems to require that they post their Hearing Procedure on their website, and provide a copy to

the AG office. I find no evidence that any of this has been done.

Please advise on the status of this very important process, and a contact person responsible for the implementation.

It is fine to pass laws, even better to actually implement them once passed.

Regards,

Chris Mechels



**From:** [Chris Mechels](#)  
**To:** [Public Facilitation, NMENV](#)  
**Cc:** [KSoloria](#); [Hower, Jennifer, NMENV](#)  
**Subject:** [EXT] NMAC - EIB 20-55 Comment #4  
**Date:** Monday, December 14, 2020 9:51:08 AM

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Subject: [11.5.1.16](#) NMAC - EIB 20-55 Comment #4

Dear Administrator,

This comment deals with the 12/3/2020 Emergency Rulemaking involving this rule;

<https://www.env.nm.gov/wp-content/uploads/2020/12/11.5.1-emergency-amendment-3.pdf>

This seems very unwise, and certainly illegal. It directly conflicts with 14-4-5.6.E NMSA as follows: "the emergency rule shall expire and may not be readopted as an emergency rule"

Furthermore, it fails the Rules Act posting requirements, which include 14-4-5.6.B NMSA:

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

As defined at 14-4-2-E NMSA, this includes posting to the Sunshine Portal, which you have not done. As you may issue the rule "after such record has been provided", the rule is invalid.

Also, no rationale was provided for this Emergency Rule, such as was provided for the August 2020 rulemaking.

This simply serves to call into question this whole enterprise, which involves using the OSHA worker safety regime to interfere in a public health crisis.

Chris Mechels



**From:** [Chris Mechels](#)  
**To:** [Public Facilitation, NMENV](#)  
**Cc:** [KSoloria](#); [Hower, Jennifer, NMENV](#)  
**Subject:** [EXT] NMAC - EIB 20-55 Comment #5  
**Date:** Monday, December 14, 2020 10:27:43 AM

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Subject: [11.5.1.16](#) NMAC - EIB 20-55 Comment #5

Dear Administrator,

This comment concerns the failure to provide the rationale for the proposed change, thus failing to comply with the Rules Act.

The 8/5/2020 Emergency Rule detailed at some length the reason for the rule. It seems that the Department of Health (DOH), the lead agency under the PHERA Act in the Covid response, was in disarray and could not timely report positive Covid tests to other agencies, including NMED. This compromised the Rapid Response effort, which dates back to 5/11/2020. A good amount of data was provided to indicate the DOH reporting failure, and its consequences. Failing, apparently, any prospect of timely solution to DOH problems, the NMED Emergency Rule set up an alternative reporting system, forcing the business owners to report, under threat of OSHA sanctions.

This seems very questionable legally, as OSHA is NOT about public health, it's about Worker Safety. By thus using OSHA to cover DOH failings, the whole purpose of OSHA is confused and compromised. At some point this needs to be challenged in our courts. Under the PHERA Act, three NM agencies are responsible: DOH, DPS, DHS. Note that NMED is NOT listed.

No explanation is provided for the current Public Hearing as to the status of DOH reporting. Have the difficulties been resolved?? Is NMED to permanently cover for DOH reporting failures?? A detailed report on these questions would be appropriate, but no mention is made of this. We are left to "assume" that the rationale for the 8/5/2020 Emergency Rulemaking still pertains. We must hope that the DOH has corrected its many problems since August.

Without detailed answers as to the Current Status of DOH/NMED reporting, the EIB is simply "flying blind", following blindly the path of the August 2020 NMED rulemaking.

Without these answers, and due to the legal issues concerning the EIB Rulemaking Procedure, the EIB should refuse approval of this change, which involves OSHA outside of its area of responsibility.

This simply serves to call into question this whole enterprise, which involves using the OSHA worker safety regime to interfere in a public health crisis.

Chris Mechels  




Soloria, Karla <ksoloria@nmag.gov>

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## 11.5.1.16 NMAC - EIB 20-55 Comment #2

1 message

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**Chris Mechels** [REDACTED]

Mon, Dec 7, 2020 at 10:38 AM

To: Public Facilitation <Public.Facilitation@state.nm.us>

Cc: KSoloria <KSoloria@nmag.gov>, Jennifer Hower <Jennifer.Hower@state.nm.us>

Dear Administrator,

This comment deals with the EIB Rules Hearing Procedure, 20.1.1 NMAC, which seems noncompliant with the Rules Act.

The main area of concern is that this Procedure does not meet the requirement of 14-4-5.8. NMSA.

14-4-5.8. 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.

The EIB procedure does not "provide at least as much opportunity ..." as the Default Procedure, esp at 1.24.25.12 and 1.24.25.14 NMAC. This is perhaps due to modifying the EIB procedure before the Default Procedure was finalized. The NMED Hearing Procedure, modified later, captured more of the Default Procedure.

The other failure was that the EIB failed to send a copy of their Rule Hearing procedure to the NM Attorney General as required. Perhaps the AG "might" have caught the problems if they had gotten a copy of the EIB procedure. The NMED Hearing Procedure WAS sent to the AG, as required by law. My information is from an October 2020 IPRA request to the AG.

The EIB Rules Hearing Procedure seems noncompliant with the Rules Act, and such noncompliance would leave the hearing result "invalid" per the Rules Act.

This suggests that the hearing be postponed until this is addressed.

I look forward to the EIB solving this procedural problem promptly.

Regards,

Chris Mechels  
[REDACTED]

Regards,

Chris Mechels  
[REDACTED]