

Petition 17-01



BEFORE THE NEW MEXICO MINING COMMISSION

**Petition for Hearing for the Adoption of Rule 19.10.15 NMAC
(Mining Commission Rulemaking)**

Submitted by the Mining and Minerals Division

The Mining and Minerals Division (“MMD”) of the New Mexico Energy Minerals and Natural Resources Department petitions the New Mexico Mining Commission (“Commission”) to hold a public hearing to consider adopting proposed rule 19.10.15 NMAC pursuant to the New Mexico Mining Act, NMSA 1978, Section 69-36-7(V), and Section 69-36-8. Proposed rule 19.10.15 NMAC will incorporate the requirements of the New Mexico Mining Act, NMSA 1978, Section 69-36-8, and changes to the State Rules Act in Laws of 2017, Chapter 137. Proposed rule 19.10.15 NMAC will also incorporate portions of the Commission’s Guidelines for Rulemaking and replace those Guidelines.

19.10.15 NMAC is proposed to achieve four objectives:

- 1) to establish procedures used in rulemaking proceedings before the Commission that comply with Sections 14-4-1 through 14-4-11, NMSA (as amended 2017);
- 2) to encourage the participation in the hearings the Commission conducts for the promulgation of rules;
- 3) to make possible the effective presentation of the evidence and points of view of parties and members of the public; and
- 4) to assure that rulemaking hearings are conducted in a fair and equitable manner.

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Proposed rule 19.10.15 NMAC is attached as Exhibit 1, the Commission's Guidelines for Rulemaking is attached as Exhibit 2, Laws of 2017, Sections 14-4-1 through 14-4-11, NMSA is attached as Exhibit 3, and the New Mexico Mining Act, NMSA 1978, Sections 69-36-7(V) and 69-36-8, are attached as Exhibit 4.

For the foregoing reasons, MMD respectfully requests the Commission hold a public hearing to consider adopting proposed rule 19.10.15 NMAC.

Respectfully submitted,



Fernando Martinez
Director, Mining and Minerals Division

9/27/2017

Date

**TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 10 NON-COAL MINING
PART 15 MINING COMMISSION RULEMAKING**

19.10.15.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Mining and Minerals Division, and Mining Commission.
[19.10.15.1 NMAC - N, 00/00/2017]

19.10.15.2 SCOPE: 19.15.3 NMAC applies to persons or entities engaged in rulemaking proceedings before the commission.
[19.10.15.2 NMAC - N, 00/00/2017]

19.10.15.3 STATUTORY AUTHORITY: 19.10.15 NMAC is adopted pursuant to the New Mexico Mining Act, Sections 69-36-1 to 69-36-20 NMSA 1978 (1993, as amended).
[19.10.15.3 NMAC - N, 00/00/2017]

19.10.15.4 DURATION: Permanent.
[19.10.15.4 NMAC - N, 00/00/2017]

19.10.15.5 EFFECTIVE DATE: _____, unless a later date is cited at the end of a section.
[19.10.15.5 NMAC - N, 00/00/2017]

19.10.15.6 OBJECTIVE: The objectives of 19.10.15 NMAC are:
A. to establish procedures used in rulemaking proceedings before the commission;
B. to encourage the participation in the hearings the commission conducts for the promulgation of rules;
C. to make possible the effective presentation of the evidence and points of view of parties and members of the public; and
D. to assure that rulemaking hearings are conducted in a fair and equitable manner.
[19.10.15.6 NMAC - N, 00/00/2017]

19.10.15.7 DEFINITIONS: See Section 69-36-3 NMSA 1978 and 19.10.1.7 NMAC for definitions. See also Section 14-4-2 NMSA 1978 (2017) for the definitions of “proceeding”, “proposed rule” and “rule”.
[19.10.15.7 NMAC - N, 00/00/2017]

19.10.15.8 LIBERAL CONSTRUCTION: 19.10.15 NMAC shall be liberally construed to carry out its purpose.
[19.10.15.8 NMAC - N, 00/00/2017]

19.10.15.9 SEVERABILITY: If any portion or application of 19.10.15 NMAC is held invalid, the remainder, or its application to other persons or situations, shall not be affected.
[19.10.15.9 NMAC - N, 00/00/2017]

19.10.15.10 POWERS AND DUTIES OF COMMISSION AND HEARING OFFICER:
A. Commission. The commission shall exercise all powers and duties prescribed under 19.10.15 NMAC and not otherwise delegated to the hearing officer or the commission administrator.
B. Hearing officer. The commission shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under 19.10.15 NMAC. The hearing officer may be an appointed member of the commission. The hearing officer shall conduct a fair and impartial 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 19.10.15 NMAC governs, including, but not limited to:
(1) conducting hearings under 19.10.15 NMAC;
(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 commission, preparing and filing a report of the hearing, with recommendations for commission action;

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

(6) requesting a party to submit a proposed statement of reason in support of the commission's decision.

[19.10.15.10 NMAC - N, 00/00/2017]

19.10.15.11 GENERAL PROVISIONS - COMPUTATION OF TIME:

A. Computation of time. In computing any time prescribed or allowed by these rules, 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 or her, 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 commission 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.

[19.10.15.11 NMAC - N, 00/00/2017]

19.10.15.12 GENERAL PROVISIONS - RECUSAL: No commission 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 commission and the public by announcing this recusal on the record. In deciding to recuse himself or herself, the 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.

[19.10.15.12 NMAC N, 00/00/2017]

19.10.15.13 GENERAL PROVISIONS - EX PARTE DISCUSSIONS: At no time after the initiation and before the conclusion of a proceeding under 19.10.15 NMAC, shall the division, or any other party, interested participant or their representatives discuss ex parte the merits of the proceeding with any commission member or the hearing officer.

[19.10.15.13 NMAC - N, 00/00/2017]

19.10.15.14 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:

A. The filing of any document 19.10.15 NMAC requires shall be accomplished by delivering the document to the commission administrator and the commission legal counsel.

B. Any person filing any document shall:

(1) provide the commission administrator with nine original hard copies of the document and one identical bookmarked PDF file via email or personal delivery on CD or jump drive;

(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 19.10.15 NMAC shall be filed with the commission administrator at least 20 days before any meeting at which the commission will consider the document. If the document is a motion seeking an order from the hearing officer in a rulemaking hearing, the motion must also be served at the same time with the hearing officer and the commission's legal counsel.

C. Whenever 19.10.15 NMAC 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 19.10.15 NMAC service shall also be made upon the commission'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 accomplished when the transmission of the document is completed and acknowledged by designated recipient.

D. The petitioner and any person who has filed a timely notice of intent to present technical testimony under 19.10.15 NMAC 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 commission administrator shall notify by email the petitioner and all persons who have filed a timely notice of intent to present technical testimony whenever any document is filed in a proceeding under 19.10.15 NMAC. Any such person who does not provide an email address shall instead be notified by mail.

E. All documents filed under 19.10.15 NMAC shall be made available for inspection upon request and shall, to the extent possible, be made available on the division's website.
[19.10.15.14 NMAC - N, 00/00/2017]

19.10.15.15 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 commission. Such documents shall be made available on the division's website or by the commission administrator, as appropriate.

B. Cost of duplication. The person seeking copies of documents shall bear the cost of duplicating documents.
[19.10.15.15 NMAC - N, 00/00/2017]

19.10.15.16 PREHEARING PROCEDURES - PETITION FOR RULE CHANGE:

A. Any person, may file a petition with the commission to adopt, amend or repeal any rule within the commission's jurisdiction.

B. The petition shall be in writing and shall include a statement of the reasons for the rule change. The petition shall cite the relevant statutes that authorize the commission to adopt the proposed rules and shall estimate the time that will be needed to conduct the rules hearing, if possible. A copy of the entire rule, including the proposed rule 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 commission 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 his or her petition in the form 19.10.15 NMAC requires.

C. The commission shall determine at a public meeting within 60 days of submission of a petition for rule change whether to hold a hearing on the petition. Any person may respond to the petition for rule change either in writing prior to the public meeting or in person at the public meeting. If the commission determines not to hold a hearing, the commission's determination shall be subject to review as contemplated by Section 69-36-16 NMSA 1978.

D. If the commission 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 19.10.15 NMAC, as may be necessary and appropriate to fully inform the commission 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 written testimony prior to the hearing or limiting testimony or cross-examination.
[19.10.15.16 NMAC - N, 00/00/2017]

19.10.15.17 RULEMAKING NOTICE:

A. The commission shall distribute a notice of proposed rulemaking at least 60 days before the hearing on the rule change by:

- (1) posting the notice on the division website;
- (2) posting the notice on the sunshine portal;
- (3) making the notice available in the division's district offices, if any;
- (4) sending the notice by mail or electronic mail to persons who have made a written request to the commission for advance notice of hearings and who have provided a mail or an electronic mail address to the commission;
- (5) providing the notice to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and
- (6) publishing the notice in the New Mexico register and in a newspaper of general circulation in the state.

- B. Content.** The notice shall include:
- (1) a summary of the full text of the proposed rule;
 - (2) a short explanation of the purpose of the proposed rule;
 - (3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;
 - (4) information on how a copy of the full text of the proposed rule may be obtained, including an internet link to the full text;
 - (5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
 - (6) information on where and when a rulemaking hearing will be held and how a person may participate in the hearing; and
 - (7) 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.
- [19.10.15.16 NMAC - N, 00/00/2017]

19.10.15.17 ENTRY OF APPEARANCE: Any person who is or may be affected by the proposed rule change may file an entry of appearance as a party. The entry of appearance shall be filed no later than 10 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.

[19.10.15.17 NMAC - N, 00/00/2017]

19.10.15.18 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 19.10.15.14 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 granting 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 the response is served.

F. Decision. The hearing officer shall decide all motions without a hearing, unless otherwise ordered by the hearing officer sua sponte or upon any party's written request. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the commission 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 commission administrator.

[19.10.15.18 NMAC - N, 00/00/2017]

19.10.15.19 TECHNICAL TESTIMONY:

A. Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 10 days prior to the hearing, file a notice of intent to present technical testimony. 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 each witness's qualifications, including a description of their educational and work background, and the anticipated duration of each witness's testimony;
- (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;

(4) summarize or 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 rule 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 19.10.15.19 NMAC's provisions through such action as the hearing officer deems appropriate, including 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 parties submit written rebuttal testimony prior to hearing.

[19.10.15.19 NMAC - N, 00/00/2017]

19.10.15.20 PARTICIPATION BY PUBLIC:

A. Any member of the 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 with his or her testimony, so long as the exhibit is not unduly repetitious of the testimony.

B. A member of the 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 may be submitted electronically, mailed or delivered to the commission administrator.

[19.10.15.20 NMAC - N, 00/00/2017]

19.10.15.21 PARTICIPATION BY CONFERENCE TELEPHONE OR SIMILAR DEVICE:

A. A commission member may participate in a meeting or hearing of the commission 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 commission who speaks at the meeting or hearing. A commission member's participation by such means shall constitute presence in person at the meeting or hearing. A commission member who wishes to participate in a rulemaking hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rulemaking hearing so as to permit the commission administrator to arrange for adequate telephone hookup.

B. A witness may participate in a rulemaking hearing of the commission 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 rulemaking hearing in this manner must receive permission from the hearing officer in advance of the rulemaking hearing. No witness may participate in a rulemaking hearing by telephone conference unless he or she makes a request sufficiently in advance of the rulemaking hearing to permit the commission administrator to arrange for an adequate telephone or electronic hookup. Each witness participating remotely 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.

[19.10.15.21 NMAC - N, 00/00/2017]

19.10.15.22 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 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 hearing's nature and subject matter, 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 the proposed rule 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 public. Members of the 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 19.10.15.26 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.

[19.10.15.22 NMAC - N, 00/00/2017]

19.10.15.23 TESTIMONY AND CROSS-EXAMINATION:

A. The hearing officer shall allow all interested persons a reasonable opportunity to submit arguments and to examine witnesses testifying at the hearing.

B. All testimony will be taken under oath or affirmation, which may be accomplished in mass or individually.

C. 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.

D. Any person who testifies at the hearing may be 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 may conduct such cross-examination if 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.

[19.10.15.23 NMAC - N, 00/00/2017]

19.10.15.24 EXHIBITS:

A. Any person offering an exhibit at hearing shall provide at least an original and 12 copies for the commission, and a sufficient number of copies for persons attending the hearing.

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 or she 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.

[19.10.15.24 NMAC - N, 00/00/2017]

19.10.15.25 TRANSCRIPT OF PROCEEDINGS: Unless specified by the commission or hearing officer, an audio recording and index shall be made of the hearing. If the hearing officer allows verbatim stenographic transcripts, the petitioner shall bear the cost of the original verbatim transcript of the proceeding and of providing a copy for each commission member and commission counsel.

[19.10.15.25 NMAC - N, 00/00/2017]

19.10.15.26 POST-HEARING SUBMISSIONS: The hearing officer may allow the record to remain open for a reasonable time following the hearing's conclusion for written submission of additional evidence, comments and arguments and proposed statements of reasons. The hearing officer's determination shall be announced at the hearing's conclusion. 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.

[19.10.15.26 NMAC - N, 00/00/2017]

19.10.15.27 HEARING OFFICER'S REPORT: If the commission 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 commission, and shall be filed with the commission administrator within the time specified by the commission. The commission 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.
[19.10.15.27 NMAC - N, 00/00/2017]

19.10.15.28 DELIBERATION AND DECISION:

A. If a quorum of the commission attended at the hearing, and if the hearing notice indicated that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and decide on the proposed rule.

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

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

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

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

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

[19.10.15.28 NMAC - N, 00/00/2017]

19.10.15.29 NOTICE OF COMMISSION ACTION: The commission administrator shall provide notice of the commission's action to each of the parties, and to all other persons who have made a written request to the commission for notification of the action taken.

[19.10.15.29 NMAC - N, 00/00/2017]

19.10.15.30 APPEALS AND STAYS - APPEAL OF RULES:

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

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

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

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

[19.10.15.30 NMAC - N, 00/00/2017]

HISTORY: [RESERVED]

**GUIDELINES FOR RULEMAKING
NEW MEXICO MINING COMMISSION**

PART I

GENERAL PROVISIONS

101. SCOPE. These guidelines generally govern the procedures to be followed by the Commission in connection with all rulemaking hearings.

102. PURPOSE. The purposes of these guidelines are:

- A. to encourage participation in the hearings conducted by the Commission for the promulgation of rules;
- B. to make possible the effective presentation of the evidence and points of view of parties and members of the general public;
- C. to allow all interested participants a reasonable opportunity to submit data, views, and arguments; and
- D. to assure that Commission hearings are conducted in a fair and equitable manner.

103. DEFINITIONS. As used in these guidelines:

- A. "clerk" means the Division employee designated by the Director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department to provide staff support to the Commission;
- B. "Commission" means the New Mexico Mining Commission;
- C. "Division" means the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department;
- D. "exhibit" means any document or tangible item submitted for inclusion in the hearing record;
- E. "general public" includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;
- F. "hearing officer" means the person designated by the Commission to conduct a hearing under these guidelines;
- G. "hearing record" means:
 - 1. the transcript of proceedings; and
 - 2. the record proper;
- H. "participant" means any person who participates in a rulemaking proceeding before the Commission;



I. "person" means an individual or any entity, including federal, state, and local government entities, however organized;

J. "petitioner" means the person who petitions the Commission for the regulatory change that is the subject of the hearing;

K. "record proper" means all documents related to the hearing and received or generated by the Commission prior to the beginning, or after the conclusion, of the hearing, including but not limited to:

1. the petition for regulatory change and any response thereto;
2. the minutes, or an appropriate extract of the minutes, of the meeting at which the petition for regulatory change 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. notices of intent to present technical testimony;
6. written statements submitted for inclusion in the record proper;
7. the hearing officer's report, if any;
8. post-hearing submissions, if allowed; and
9. the Commission's decision and the reasons therefore.

L. "rule" means any rule, regulation, or standard promulgated by the Commission and affecting one or more persons besides the Commission and Division personnel, 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;

M. "regulatory change" means the adoption, amendment or repeal of a rule;

N. "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

O. "transcript of proceedings" means the verbatim record (audio tape or stenographic) of the hearing, including testimony and argument together with all exhibits proffered at the hearing, whether or not admitted into evidence.

104. POWERS AND DUTIES OF COMMISSION AND HEARING OFFICER.

A. COMMISSION. The Commission shall exercise all powers and duties prescribed under these guidelines and not otherwise delegated to the hearing officer or the clerk.

B. HEARING OFFICER. The Commission may designate a hearing officer for any hearing who shall exercise all powers and duties prescribed or delegated under these guidelines. The hearing officer may be a member of the Commission. The hearing officer shall conduct a fair and impartial hearing, 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 hearings governed by these guidelines including, but not limited to:

1. conducting hearings under these guidelines;
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; and
4. if requested by the Commission, preparing and filing a report of the hearing, with recommendations for action.

PART II

DOCUMENT REQUIREMENTS

201. FILING AND SERVICE OF DOCUMENTS.

A. The filing of any document as required by these guidelines shall be accomplished by delivering the document to the clerk.

B. Any person filing any document shall: 3

1. provide the clerk with the original and twelve (12) copies of the document; and

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.

C. Whenever these guidelines require service of a document, service shall be made by delivering a copy of the document to the person to be served or by mailing it to that person. If a person is represented by an attorney, then service of the document on the person shall be accomplished by service on his attorney. Service by mail is complete upon mailing the document.

202. 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 Commission. Such documents shall be made available by the clerk, as appropriate.

B. COST OF DUPLICATION. The cost of duplicating documents shall be borne by the person seeking copies of such documents.

PART III

PREHEARING PROCEDURES

301. PETITION FOR REGULATORY CHANGE.

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

B. The petition shall be in writing and shall include a statement of the reasons for the regulatory change. A copy of the proposed regulatory change, indicating any language proposed to be added or deleted, shall be included in the petition.

C. The Commission shall determine at a public meeting not less than ten (10) and not more than sixty (60) days after the date of submission of a petition for regulatory change whether to hold a hearing. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting. If the Commission determines not to hold a hearing, the determination shall be subject to review under Section 69-36-16 NMSA 1978.

D. If the Commission determines to hold a hearing on the petition, it may issue such orders specifying procedures for the conduct of the hearing, in addition to those provided by these guidelines, as may be necessary and appropriate to fully inform the Commission of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include, but not be limited to, requirements for giving additional public notice, filing direct testimony in writing prior to the hearing, or limiting testimony and cross-examination.

302. NOTICE OF HEARINGS.

A. The Commission shall give public notice of the hearing which shall include at a minimum:

1. publication at least sixty (60) days prior to the hearing date in at least one newspaper of general circulation in the state and in other regularly published newspapers that, in combination, distribute copies to every New Mexico county;

2. publication at least forty-five (45) days prior to the hearing date in the *New Mexico Register*,

3. mailing a copy of the notice at least sixty (60) days prior to the hearing date to all persons who have made a written request to the Commission for advance notice of hearings. Requests for such notice should be addressed to the clerk and should designate those areas of Commission activity which are of interest; and

4. other means of notice required by law or directed by the Commission for a specific rulemaking.

B. Public notice of the hearing shall state:

1. the subject, including a description of the proposed regulatory change, time, and place of the hearing;

2. the manner in which persons may present their views or evidence to the Commission; all interested persons will be allowed a reasonable opportunity to submit arguments and to examine witnesses testifying at the hearing;

3. the method by which copies of the proposed regulatory change may be obtained; and

4. if applicable, that the Commission may make a decision on the proposed regulatory change at the conclusion of the hearing.

303. TECHNICAL TESTIMONY.

A. Any person including the petitioner, who intends to present technical testimony at the hearing shall, no later than ten (10) working days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

1. identify the person for whom the witnesses) will testify;

2. identify each technical witness the person intends to present and state the qualifications of that witness including a description of the technical witness's education and experience;

3. summarize, or include a copy of, the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

4. include the text of any recommended modifications to the proposed regulatory change; and

5. list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

B. The hearing officer may enforce the provisions of this guideline through such action as he 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 proper open after the hearing to allow responses to such testimony.

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 exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony and is filed in accordance with Section 201, above.

B. A member of the general public who wishes to submit a written statement for the record proper, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

C. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

305. LOCATION OF THE HEARING.

The Commission shall hold hearings on proposed regulatory changes of statewide application in Santa Fe.

PART IV

HEARING PROCEDURES

401. 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 and without 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 person 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. the hearing officer may allow a brief closing argument by any person who wishes to make one;

6. 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; and

7. at the close of the hearing, the hearing officer shall determine whether to keep the record proper open for written submittals in accordance with Section 405, *infra*. If the record proper is kept open, the hearing officer shall determine and announce the subject(s) on which such submittals will be allowed and the deadline for filing the submittals.

402. 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.

C. Any person who testifies at the hearing is subject to cross-examination on the subject matter of his direct testimony. Any person who presents technical testimony may also be cross-examined on matters related to his or her background and qualifications. 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.

403. EXHIBITS.

A. Any person offering an exhibit shall provide at least an original and twelve (12) copies, plus a reasonable number of additional copies as determined by the hearing officer, for persons attending the hearing.

B. All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.

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 hearing record.

404. TRANSCRIPT OF PROCEEDING.

A. A verbatim record, by audio tape or stenographic, shall be made of the hearing. The cost of the original transcript of proceeding, if needed, and of providing a copy for each Commission member and the Commission counsel shall be borne by the petitioner.

B. Any person may obtain a copy of the transcript of proceeding. It shall be obtained directly from the court reporter or, if no reporter was employed, the clerk. The person requesting the copy shall pay the court reporter or clerk for the cost of the transcript.

405. POST HEARING SUBMISSIONS.

The hearing officer may allow the record proper to remain open for a reasonable period of time following the conclusion of the hearing for written submission of comments, arguments, and proposed statements of reasons supporting the proposed Commission decision. For good cause, the hearing officer may allow the post-hearing submission of additional evidence, and shall allow a response to any such evidence. The hearing officer's determination shall be announced at the conclusion of the hearing. In considering whether the record proper 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.

406. HEARING OFFICER'S REPORT.

If the Commission directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, summarize the testimony and make a recommendation for Commission action and shall be filed with the clerk within the time specified by the Commission. The clerk shall promptly notify each participant that the hearing officer's report has been filed and shall provide a copy of the report upon request and payment to cover cost of copy.

407. DELIBERATION AND DECISION.

A. If a quorum of the Commission attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the Commission may

immediately deliberate and make a decision on the proposed regulatory change based on a motion that includes reasons for the decision.

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

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

D. The Commission shall issue a written decision on the proposed regulatory change and shall include reasons for the action taken.

E. The Commission's written decision is the official Commission action and the reasons for that action. Other written or oral statements by Commission members are not recognized as part of the Commission's official decision or reasons.

408. NOTICE OF COMMISSION ACTION.

The clerk shall provide notice of the Commission's action, including a copy of the written decision and any regulatory change, to each of the participants and to all other persons who have made a written request to the Commission for notification of the action taken.

409. FILING

Any rule or regulatory change adopted by the Commission shall be filed and published in accordance with the State Rules Act.

PART V

APPEALS

501. APPEAL OF REGULATIONS.

A. Appeal of any regulatory change of the Commission may be taken by filing a notice of appeal with the Court of Appeals within thirty (30) days from the filing date of the regulation with the state records center.

B. The appellant shall serve a copy of the Notice of Appeal on the Commission and on each participant.

C. The appellant shall be responsible for preparation of a sufficient number of copies of the Hearing Record at the expense of appellant.

502. STAY OF COMMISSION REGULATIONS.

A. The Commission may grant a stay pending appeal of any regulatory change promulgated by the Commission. The Commission may only grant a stay if a motion is filed, a hearing is held and good cause is shown.

B. In determining whether good cause is present for the granting of a stay, the Commission shall consider:

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

C. If no action is taken within ninety (90) days after filing of the motion, the Commission shall be deemed to have denied the motion for stay.

PART VI

MISCELLANEOUS PROVISIONS

601. LIBERAL CONSTRUCTION.

These guidelines shall be liberally construed to carry out their purpose.

602. SEVERABILITY.

If any part or application of these guidelines is held invalid, the remainder of these guidelines, or their application to other persons or situations, shall not be affected.

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Article 4. State Rules

N. M. S. A. 1978, Ch. 14, Art. 4, Refs & Annos
Currentness

NMSA 1978, Ch. 14, Art. 4, Refs & Annos, NM ST Ch. 14, Art. 4, Refs & Annos
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N. M. S. A. 1978, § 14-4-1

§ 14-4-1. Short title

Currentness

Chapter 14, Article 4 NMSA 1978 may be cited as the "State Rules Act".

Credits

L. 1967, Ch. 275, § 1; L. 1995, Ch. 110, § 1, eff. July 1, 1995.

Formerly 1953 Comp., § 71-7-1.

NMSA 1978, § 14-4-1, NM ST § 14-4-1

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West's New Mexico Statutes Annotated Chapter 14. Records, Rules, Legal Notices, Oaths Article 4. State Rules (Refs & Annos)

N. M. S. A. 1978, § 14-4-2

§ 14-4-2. Definitions

Effective: July 1, 2017

Currentness

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 distribute rulemaking information by:

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

(2) posting it on the sunshine portal;

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

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

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

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

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

F. “rule” means any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule, nor shall it constitute specific adoption thereof by the agency. “Rule” does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or any hospital; rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from any educational institution; and

G. “rulemaking” means the process for adoption of a new rule or the amendment, readoption or repeal of an existing rule.

Credits

L. 1967, Ch. 275, § 2; L. 1969, Ch. 92, § 1; L. 2017, Ch. 137, § 1, eff. July 1, 2017.

Formerly 1953 Comp., § 71-7-2.

Notes of Decisions (8)

NMSA 1978, § 14-4-2, NM ST § 14-4-2

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N. M. S. A. 1978, § 14-4-3

§ 14-4-3. Format of rules; filing; distribution

Effective: July 1, 2017

Currentness

A. Each agency promulgating any rule shall place the rule in the format and style required by rule of the state records administrator and shall deliver the rule to the state records administrator or the administrator's designee, accompanied by the concise explanatory statement required by the State Rules Act. The state records administrator or the administrator's designee shall note thereon the date and hour of filing.

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

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

D. The state records administrator, after written notification to the filing agency, may make minor, nonsubstantive corrections in spelling, grammar and format in filed rules. The state records administrator shall make a record of the correction and shall deliver the record to the filing agency and issuing authority within ten days of the change. Within thirty days of receiving that state records administrator's record of a correction, the agency shall provide to the public notice of the correction in the same manner as the agency used to give notice of the rulemaking proceeding pursuant to Section 4 of this 2017 act.

Credits

L. 1967, Ch. 275, § 3; L. 1969, Ch. 92, § 2; L. 1987, Ch. 40, § 1; L. 1995, Ch. 110, § 2, eff. July 1, 1995; L. 2017, Ch. 137, § 2, eff. July 1, 2017.

Formerly 1953 Comp., § 71-7-3.

Notes of Decisions (1)

NMSA 1978, § 14-4-3, NM ST § 14-4-3

Current through the end of the First Regular and Special Sessions of the 53rd Legislature (2017).

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N. M. S. A. 1978, § 14-4-4

§ 14-4-4. Publication filing and distribution; official depository

Currentness

Each agency issuing any publication, pamphlet, report, notice, proclamation or similar instrument shall immediately file five copies thereof with the records center. The records center shall deliver three copies to the state library, which shall keep one copy available for public inspection during office hours. All other copies may be circulated. The state library is designated to be an official depository of all such publications, pamphlets, reports, notices, proclamations and similar instruments.

Credits

L. 1967, Ch. 275, § 5; L. 1969, Ch. 92, § 3; L. 1995, Ch. 110, § 3, eff. July 1, 1995.

Formerly 1953 Comp., § 71-7-5.

Notes of Decisions (6)

NMSA 1978, § 14-4-4, NM ST § 14-4-4

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N. M. S. A. 1978, § 14-4-5

§ 14-4-5. Time limit on adoption of a proposed rule; filing and compliance required for validity

Effective: July 1, 2017
Currentness

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

B. An agency shall not adopt a rule until the public comment period has ended. If the agency fails to take action 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 agency takes action to extend the period. The agency may extend the period of time for adopting the proposed rule for an additional period of two years by filing a statement of good cause for the extension in the rulemaking record, but it shall provide for additional public participation, comments and rule hearings prior to adopting the rule.

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

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

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

Credits

L. 1967, Ch. 275, § 6; L. 1969, Ch. 92, § 4; L. 1995, Ch. 110, § 4, eff. July 1, 1995; L. 2017, Ch. 137, § 3, eff. July 1, 2017.

Formerly 1953 Comp., § 71-7-6.

Notes of Decisions (15)

NMSA 1978, § 14-4-5, NM ST § 14-4-5

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N. M. S. A. 1978, § 14-4-5.1

§ 14-4-5.1. Temporary provision; savings provision

Currentness

Notwithstanding the provisions of 14-4-5 NMSA 1978, rules filed prior to July 1, 1995 shall continue in effect if such rules were filed with the state records center in accordance with the law applicable at the time of filing, and they have not otherwise been repealed, amended or superseded.

Credits

L. 1995, Ch. 110, § 10, eff. July 1, 1995.

NMSA 1978, § 14-4-5.1, NM ST § 14-4-5.1

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N. M. S. A. 1978, § 14-4-6

§ 14-4-6. Trade, sale and exchange of agency rules, publications and reports by records center

Currentness

The records center is hereby authorized to trade, sell or exchange such rules, pamphlets, reports or similar instruments for rules, pamphlets, reports or similar instruments of similar value and to sell the same at a reasonable price.

Credits

L. 1967, Ch. 275, § 7.

Formerly 1953 Comp., § 71-7-7.

Notes of Decisions (1)

NMSA 1978, § 14-4-6, NM ST § 14-4-6

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N. M. S. A. 1978, § 14-4-7

§ 14-4-7. Current listing of rules; rule repeals

Currentness

A. The state records administrator shall prepare and publish a listing and index of all current rules which are filed with the records center.

B. All pamphlets, reports, proclamations or similar instruments which are filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act and which would, if filed after the effective date of the State Rules Act, be filed with the records center shall be transferred to the records center.

C. The records center shall be furnished a reasonable opportunity to obtain copies of all rules, as defined in the State Rules Act, filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act.

D. All rules filed with the librarian of the supreme court law library that have not been filed with the records center pursuant to the State Rules Act by June 30, 1991 are repealed.

Credits

L. 1967, Ch. 275, § 10; L. 1969, Ch. 92, § 5; L. 1991, Ch. 221, § 1.

Formerly 1953 Comp., § 71-7-8.

Notes of Decisions (1)

NMSA 1978, § 14-4-7, NM ST § 14-4-7

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N. M. S. A. 1978, § 14-4-7.1

§ 14-4-7.1. New Mexico register

Currentness

A. The state records administrator shall provide for publication of a New Mexico register at least twice a month. The New Mexico register shall be published in such a way as to minimize the cost to the state. To accomplish this, the state records administrator is authorized to provide for charges for subscriptions and for publication of notice and other items, including advertising, in the register.

B. The New Mexico register shall be the official publication for all notices of rule makings and filings of adopted rules, including emergency rules, by agencies.

(1) The register shall include the full text of any adopted rules, including emergency rules. Proposed rules may be published in full or in part at the discretion of the issuing agency.

(2) Upon request of an issuing agency, the state records administrator may determine that publication in the register of the full text of an adopted rule would be unduly cumbersome, expensive or otherwise inexpedient, and may publish instead a synopsis of the adopted rule and a statement that a copy of the rule is available from the issuing agency.

C. The New Mexico register shall be available by subscription and single copy purchase to any person, including agencies of the executive, judicial and legislative branches of state government and its political subdivisions, at a reasonable charge approved by the state records administrator. The administrator may authorize distribution of a certain number of copies of the register without charge to agencies or political subdivisions as deemed economically feasible and appropriate.

D. The New Mexico register may include a summary or the text of any governor's executive order, a summary, listing or the text of any attorney general's opinion, a calendar listing the date, time and place of all or selected agency rule-making hearings, a list of gubernatorial appointments of state officials and board and commission members or other material related to administrative law and practice.

E. The state records administrator shall adopt and promulgate rules necessary for the implementation and administration of this section.

Credits

L. 1989, Ch. 38, § 1; L. 1995, Ch. 110, § 5, eff. July 1, 1995.

Notes of Decisions (2)

NMSA 1978, § 14-4-7.1, NM ST § 14-4-7.1

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N. M. S. A. 1978, § 14-4-7.2

§ 14-4-7.2. New Mexico Administrative Code

Currentness

A. The state records administrator shall create and have published a New Mexico Administrative Code, which shall contain all adopted rules. The administrator shall adopt regulations setting forth procedures for the compilation of the code and prescribing the format and structure of the code, including provisions for at least annual supplementation or revision.

B. All rulemaking agencies shall revise, restate and repromulgate their existing rules as needed to expedite publication of the New Mexico Administrative Code.

Credits

L. 1995, Ch. 110, § 6, eff. July 1, 1995.

NMSA 1978, § 14-4-7.2, NM ST § 14-4-7.2

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N. M. S. A. 1978, § 14-4-8

§ 14-4-8. Documents not required to be filed with state library

Currentness

The state librarian may by appropriate written instructions advise the records center that he no longer desires a particular class of instrument to be filed with the state library and thereafter such records center shall no longer file such class of documents with the state library unless such rejection is rescinded in writing and sent to such agency or agencies.

Credits

L. 1967, Ch. 275, § 11; L. 1977, Ch. 246, § 47.

Formerly 1953 Comp., § 71-7-9.

NMSA 1978, § 14-4-8, NM ST § 14-4-8

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N. M. S. A. 1978, § 14-4-9

§ 14-4-9. Law governing filing of agency rules, documents and publications

Currentness

Wherever any law requires an agency to file a rule, pamphlet, document or publication with the librarian of the supreme court law library such shall be accomplished by the delivery and filing as provided in the State Rules Act.

Credits

L. 1967, Ch. 275, § 12.

Formerly 1953 Comp., § 71-7-10.

Notes of Decisions (1)

NMSA 1978, § 14-4-9, NM ST § 14-4-9

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N. M. S. A. 1978, § 14-4-10

§ 14-4-10. State publications for sale or issue by state agencies; listing by state records administrator

Currentness

The state records administrator shall maintain a file of all state publications which are for sale or issue by agencies of the state. He shall prepare and publish a list of all such publications which are current and effective. The list shall include such documents as books, manuals, pamphlets, bulletins, monographs and periodicals designed to instruct, inform or direct either the general public or public officers and employees. Correspondence and those documents developed by agencies for their own internal administration are excluded.

Credits

L. 1967, Ch. 275, § 8; L. 1977, Ch. 301, § 3; L. 1995, Ch. 110, § 9, eff. July 1, 1995.

Formerly 1953 Comp., § 71-6-23; 1978 Comp., § 14-3-24.

NMSA 1978, § 14-4-10, NM ST § 14-4-10

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N. M. S. A. 1978, § 14-4-11

§ 14-4-11. Personal files, records and documents of elected state
officials; placing in state archives by the state records administrator

Currentness

The state records administrator may accept and place in the state archives the personal files, records and documents of elected state officials or of former elected state officials, subject to any reasonable restrictions, moratoriums and requirements concerning their use by other persons. Such restrictions, moratoriums and requirements made by the donor, however, shall not prevent the archivist of the state records center from having access to the files, records and documents for indexing and cataloguing purposes.

Credits

L. 1967, Ch. 275, § 9; L. 1995, Ch. 110, § 9, eff. July 1, 1995.

Formerly 1953 Comp., § 71-6-24; 1978 Comp., § 14-3-25.

NMSA 1978, § 14-4-11, NM ST § 14-4-11

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West's New Mexico Statutes Annotated
Chapter 69. Mines
Article 36. Mining (Refs & Annos)

N. M. S. A. 1978, § 69-36-7

§ 69-36-7. Commission; duties

Effective: March 7, 2014
Currentness

The commission shall:

A. before June 18, 1994, adopt and file reasonable regulations consistent with the purposes and intent of the New Mexico Mining Act necessary to implement the provisions of the New Mexico Mining Act, including regulations that:

- (1) consider the economic and environmental effects of their implementation;
- (2) require permitting of all new and existing mining operations and exploration; and
- (3) require annual reporting of production information to the commission, which shall be kept confidential if otherwise required by law;

B. adopt regulations for new mining operations that allow the director to select a qualified expert who may:

- (1) review and comment to the director on the adequacy of baseline data gathered prior to submission of the permit application for use in the permit application process;
- (2) recommend to the director additional baseline data that may be necessary in the review of the proposed mining activity;
- (3) recommend to the director methodology guidelines to be followed in the collection of all baseline data; and
- (4) review and comment on the permit application;

C. adopt regulations that require and provide for the issuance and renewal of permits for new and existing mining operations and exploration and that establish schedules to bring existing mining operations into compliance with the requirements of the New Mexico Mining Act; provided that the term of a permit for a new mining operation shall not exceed twenty years and the term of renewals of permits for new mining operations shall not



requirements pursuant to that act for the reclaimed areas if, after an inspection, the director determines that the reclamation measures satisfy the requirements of that act and the substantive requirements for reclamation pursuant to the applicable regulatory standards; and

V. develop and adopt other regulations necessary and appropriate to carry out the purposes and provisions of the New Mexico Mining Act.

Credits

L. 1993, Ch. 315, § 7; L. 1997, Ch. 88, § 2; L. 2014, Ch. 32, § 2, eff. March 7, 2014.

Notes of Decisions (10)

NMSA 1978, § 69-36-7, NM ST § 69-36-7

Current through the end of the First Regular and Special Sessions of the 53rd Legislature (2017).

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Chapter 69. Mines
Article 36. Mining (Refs & Annos)

N. M. S. A. 1978, § 69-36-8

§ 69-36-8. Regulations; adoption process

Currentness

A. No regulation shall be adopted, amended or repealed without a public hearing before the commission or a hearing officer appointed by the commission.

B. Any person may recommend or propose regulations to the commission for adoption, amendment or repeal. The commission shall determine within sixty days of submission of a proposed regulation whether to hold a hearing. If the commission determines not to hold a hearing, the determination shall be subject to review under Section 16 of the New Mexico Mining Act.

C. The public hearing shall be held in Santa Fe, and a verbatim record shall be maintained of all proceedings. Notice of the subject, time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation or amendment may be obtained shall be:

(1) published at least thirty days prior to the hearing date in a newspaper of general circulation in the state and in the New Mexico register, if published; and

(2) mailed at least thirty days prior to the hearing date to all persons who have made a written request to the commission for advance notice of hearings.

D. The commission shall allow all interested persons a reasonable opportunity to submit arguments and to examine witnesses testifying at the hearing.

E. A person appearing or represented at the hearing shall, upon a written request, be given written notice of the commission's action on the proposed adoption, amendment or repeal of regulation.

F. No regulation, its amendment or repeal shall be effective except as provided by the Public Records Act.

Credits

L. 1993, Ch. 315, § 8.

Notes of Decisions (1)

§ 69-36-8. Regulations; adoption process, NM ST § 69-36-8

NMSA 1978, § 69-36-8, NM ST § 69-36-8

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