

**This is an amendment to 1.24.10 NMAC, Sections 3, 10, 11, 15 through 17, effective 7/1/2017.**

These changes are to align the following rule to the 2017 statutory amendments to the State Rules Act, Section 14-4-1 et seq.

**1.24.10.3 STATUTORY AUTHORITY:** Section 14-4-7.2 NMSA 1978 directs the state records administrator to create and publish a New Mexico administrative code, and to adopt regulations setting forth procedures for compiling the code and prescribing the format and structure of the code. Section 14-4-3 NMSA 1978 directs that [~~“...each agency of the executive branch of state government promulgating any rule shall place the rule in the format and style required by rule of the records center and shall deliver one original paper copy and one electronic copy to the records center.”~~] promulgated rules shall be in style and format required by and delivered to the state records administrator together with a concise explanatory statement to be filed noting the date and hour of filing.

[1.24.10.3 NMAC - Rp 1 NMAC 3.3.10.3, 2/29/2000; A, 7/1/2017]

**1.24.10.10 ISSUING AUTHORITY:**

**A.** The issuing authority is responsible for ensuring compliance with the requirements set forth in this part.

**B.** Where delegation is authorized, the agency may, by rule or formal appointment, specify an issuing authority other than that named in statute. The agency shall forward, in writing, the title, name and signature of the designee to the state records administrator. The agency shall notify, in writing, the state records administrator of any change in the designation. Designation shall only be made by the issuing authority. Formally appointed designees are not allowed to appoint other designees.

**C.** The administrative law division shall not accept a rule filing or a concise explanatory statement signed by other than the issuing authority, or a formally appointed designee.

[1.24.10.10 NMAC - Rp 1 NMAC 3.3.10.9, 2/29/2000; A, 6/30/2004; A, 11/30/2015; A, 7/1/2017]

**1.24.10.11 WHAT CONSTITUTES A RULE:**

~~— **A.** Agency directives that affect persons outside the agency or have significant indirect affect upon such persons are rules.~~

~~— **B.** Manuals of procedure may contain material that affects other state agencies, the public or agency clients. Such material shall be filed as a rule. If it cannot be separated from other material, the entire manual shall be filed. Agencies are encouraged to separate rule material even if it is later included in a manual of procedure.~~

~~— **C.** Procedures for public hearings and open meetings shall be filed as a rule.~~

~~— **D.** Contracts, requests for proposals (RFPs) or requests for information (RFIs), including form contracts, are not rules; however, agencies may issue rules that require contractual terms.~~

~~— **E.** Materials specifically exempted by statute from the State Rules Act are not rules.~~

~~— **F.** Computations of annual assessments based on rule or statute are not rules— i.e., tax tables.~~

~~— **G.** Minutes of meetings are not rules.]~~ “Rule” and “proposed rule” have been defined and set forth within statute (See Section 14-4-2 NMSA 1978).

[1.24.10.11 NMAC - N, 2/29/2000; A, 6/30/2004; A, 7/1/2017]

**1.24.10.15 NMAC TRANSMITTAL FORM:**

**A.** Each rule filing delivered to the records center shall be accompanied by a completed NMAC transmittal form in hard copy with an original signature in black ink or with a valid digital signature.

**B.** The administrative law division shall provide agencies with blank NMAC transmittal forms in electronic format.

**C.** The filing agency shall complete the NMAC transmittal form and submit to the administrative law division for review and approval prior to [filing] adoption of any rule making.

**D.** The NMAC transmittal form shall not be handwritten and shall be suitable for reproduction.

**E.** The following shall appear on the NMAC transmittal form:

- (1) issuing agency name and address;
- (2) three digit DFA account code for the agency (if applicable);
- (3) ~~[issuing agency mailing address]~~ volume, issue, publication date in register for rule filing;
- (4) contact person's name, phone number, and e-mail address;
- (5) type of filing - i.e., new, amendment, renumber, repeal, repeal/replace or emergency

filing;

- (6) total number or pages;
- (7) date(s) of any public hearing(s) on the proposed rule or amendment;
- (8) effective date of the rule filing [~~cannot precede publication in the New Mexico register unless it is an emergency rule~~];
- (9) NMAC title, chapter and part name and number;
- (10) description of amendment (for amendment filing only, i.e. “amending two sections”);
- (11) amendment’s NMAC citation (i.e. 1.24.10.15 and 16 NMAC);
- (12) sequence number and most recent filing date of the part (if applicable and designated for administrative law division use only);
- (13) declaration of incorporated material;
- (14) if reference materials are attached and are protected by copyright:
  - (a) indication if copyright permission was obtained;
  - (b) the proof of permission; or
  - (c) material is within the definition of public domain;
- (14) ~~[legal citation(s) that grants]~~ specific statutory or other authority authorizing the rulemaking by the issuing agency [the authority] to promulgate rules [on the subject area; and];
- (15) ~~[legal citation(s) that specifies who can authorize the rule in the agency]~~ any findings required by a provision of law for adoption of the rule;
- (16) rule adoption date; and
- (17) rule effective date.

**F.** Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form. If authority is delegated, the box shall be checked.

**G.** Those portions of the transmittal form that are completed by the issuing agency under the concise explanatory statement heading shall be considered sufficient compliance with State Rules Act and shall be provided to the public at the time the issuing agency adopts any rule making.

[1.24.10.15 NMAC - Rp, 1 NMAC 3.3.10.11, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017]

**1.24.10.16 FILING A RULE:**

**A.** At the time of filing the filing agency shall present the following, which has been reviewed and pre-approved by administrative law division:

- (1) one paper version of the completed NMAC transmittal form;
- (2) one electronic version of the text of the rule or amendment;
- (3) one electronic version of the integrated part (if filing an amendment); and
- (4) one electronic version of the billing information sheet.

**B.** Other material to be published in the New Mexico register in conjunction with promulgation of the rule or amendment shall be delivered to the administrative law division at the time of filing. Examples include synopses, short-form publication, conversion tables, any technical information relied upon in formulating the final rule, any comments or other material received by agency during rule hearing, and summaries of public comment.

**C.** At the time of filing, an agency may submit to the administrative law division an additional paper copy, for annotation on the first page of the rule with the date and hour of filing, to be returned to the agency (Section 14-4-3 NMSA 1978).

**D.** If a short-form publication or synopsis is made in accordance with the requirements of 1.24.15 NMAC, the full text of the rule shall be submitted as part of the rule filing. The full text shall be published in the NMAC at no additional cost to the agency.

**E.** No rule shall be valid and enforceable until it is filed with the administrative law division and published in the New Mexico register as provided by the State Rules Act. If properly submitted and not published as a result of error, the rule shall be deemed to have been published three weeks after filing with the records center (Sections 14-4-3 and 14-4-5 NMSA 1978).

**F.** A valid purchase order number must be included on the billing information sheet at the time of filing. A purchase order must be submitted to the records center by paper or electronic version at least one business day prior to the publication date.

[1.24.10.16 NMAC - Rp, 1 NMAC 3.3.10.10, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017]

**1.24.10.17 REJECTED RULE FILINGS:**

**A.** The administrative law division shall refuse to file written material if it is not a rule as defined in ~~[1.24.1.7 NMAC]~~ the State Rules Act or if the materials submitted for rule filing do not conform to the style and

format requirements detailed in 1.24.10 NMAC.

(1) Materials that are not rules may be filed as a publication.

(2) Rule filings that do not conform to style and format requirements shall be returned to the filing agency and shall not be filed or published in the New Mexico register.

(3) Rule filings that do not meet the minimum statutory time periods for notice of proposed rulemaking, public participation, and public comments shall be returned to the filing agency and shall not be filed or published in the New Mexico register.

**B.** The administrative law division shall identify material previously filed as a rule but not conforming to the definition of a rule. The material shall be removed from the rules collection and rule history database with 30 days written notice to the affected agency.

**C.** If an affected agency finds it previously filed material as a rule that does not conform to the definition of a rule, that agency shall notify the administrative law division in writing. If the administrative law division agrees the material does not conform to the definition of a rule, the material shall be removed from the rules collection and the rule history database within 30 days of receiving the notice.

[1.24.10.17 NMAC - N, 2/29/2000; A, 6/30/2004; A 9/15/2014; A, 11/30/2015; A, 7/1/2017]