

## ARTICLE 4 State Rules

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### 14-4-1. Short title.

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

**History:** 1953 Comp., § 71-7-1, enacted by Laws 1967, ch. 275, § 1; 1995, ch. 110, § 1.

**The 1995 amendment**, effective July 1, 1995, substituted "Chapter 14, Article 4, NMSA 1978" for "This act".

## ANNOTATION

**State corporation commission (now public regulation commission) may promulgate regulations interpreting school bus exemption in Motor Carrier Act without holding hearing** prior to the issuance of the regulation, so long as it complies with State Rules Act, unless and until the legislature were to place the state corporation commission (now public regulation commission) under the Administrative Procedures Act, 12-8-1 NMSA 1978 et seq. 1969 Op. Att'y Gen. No. 69-100.

**This act is inapplicable to interstate agreements.** State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

**Interstate contract is not similar to rules, reports and notices** issued by state agencies. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

**Law reviews.** — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For survey of 1988-89 Administrative Law, see 21 N.M.L. Rev. 481 (1991).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73 C.J.S. Public Administrative Law and Procedure §§ 112, 114.

### **14-4-2. Definitions.**

As used in the State Rules Act [Chapter 14, Article 4 NMSA 1978]:

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 and corporations; and

C. "rule" means any rule, regulation, order, standard, statement of policy, including amendments thereto or repeals thereof issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing such rule or to affect persons not members or employees of such issuing 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. Such term shall not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the Springer Boys' School, the Girls' Welfare Home, of any hospital nor to rules made relating to the management of any particular educational institution, whether elementary or otherwise, nor to rules made relating to admissions, discipline, supervision, expulsion or graduation of students therefrom.

**History:** 1953 Comp., § 71-7-2, enacted by Laws 1967, ch. 275, § 2; 1969, ch. 92, § 1.

**Compiler's notes.** — The New Mexico boys' school at Springer and the girls' welfare home, referred to in the last sentence of Subsection C, were provided for in Chapter 33, Article 4 and Chapter 33, Article 5 NMSA 1978, respectively. Both of those Articles were repealed by Laws 1988, ch. 101, § 51.

### **ANNOTATION**

**"Rules" and "standards".** — The terms "rule" and "standard" include procedural standards, manuals, directives and requirements if they purport to affect one or more agencies besides the issuing agency or persons other than the issuing agencies' members or employees. 1993 Op. Att'y Gen. No. 93-1.

**A standard is a rule,** if the proper procedure has been followed in promulgating it. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

**Orders and decisions excluded by definition from class of rules** to which State Rules Act applies are not subject to the provisions of those sections and, in particular, are not governed by 14-4-3 and 14-4-5 NMSA 1978. Op. Att'y Gen. No. 79-32.

**Law reviews.** — For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

### **14-4-3. Format of rules; filing; distribution.**

Each agency 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. The records center shall note thereon the date and hour of filing. The records center shall maintain the original copy as a permanent record open to public inspection during office hours and shall have the rule published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code. At the time of filing, an agency may submit to the records center an additional paper copy, for annotation with the date and hour of filing, to be returned to the agency.

**History:** 1953 Comp., § 71-7-3, enacted by Laws 1967, ch. 275, § 3; 1969, ch. 92, § 2; 1987, ch. 40, § 1; 1995, ch. 110, § 2.

**Cross references.** — For records of state agencies and databases under Public Records Act, see 14-3-15.1 NMSA 1978.

For electronic authentication and substitution for signature, see 14-3-15.2 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, substituted "deliver one original paper copy and one electronic copy" for "cause seven copies to be delivered" in the first sentence; substituted "maintain the original copy" for "a list of places to file copies" in the third sentence; added the language at the end of the section beginning "and shall have"; and made minor stylistic changes throughout the section.

## ANNOTATION

**Records center may require certificate of compliance.** — Pursuant to its authority under this section to adopt a rule governing the style and format of the rules and regulations to be filed, the records center may require a certificate of compliance as a matter of style or format. While the records center has no authority to look behind a certificate of compliance or to make any determination of actual compliance, failure to incorporate such a certificate of compliance on rules and regulations submitted for filing would constitute a failure to comply with the required style and format. 1978 Op. Att'y Gen. No. 78-7.

**Orders and decisions excluded by definition from class of rules** to which this article and 13-3-24 and 13-3-25 NMSA 1978 apply are not subject to the provisions of those sections and, in particular, are not governed by this section and 14-4-5 NMSA 1978. Op. Att'y Gen. No. 79-32.

**Law reviews.** — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

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

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.

**History:** 1953 Comp., § 71-7-5, enacted by Laws 1967, ch. 275, § 5; 1969, ch. 92, § 3; 1995, ch. 110, § 3.

The 1995 amendment, effective July 1, 1995, added the section heading.

## ANNOTATION

**What and with whom matters to be filed.** — Formerly, all official reports, pamphlets, publications, regulations, rules, codes of fair competition, proclamations and orders issued, prescribed or promulgated by the state corporation commission of general application were to be filed, in accordance with statute, with the supreme court librarian of the state of New Mexico, with the exception of any rule or regulation or order or other document of the corporation commission, wherein it is exercising its duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telephone, telegraph, sleeping car or similar company and common carrier within the state. 1953-54 Op. Att'y Gen. No. 5814.

**Actual notice of rule does not dispel necessity of compliance** with State Rules Act. *State v. Joyce*, 94 N.M. 618, 614 P.2d 30 (Ct. App. 1980).

**Law reviews.** — For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

### 14-4-5. Filing and compliance required for validity.

No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register. Emergency regulations may go into effect immediately upon filing with the records center, but shall be effective no more than thirty days unless they are published in the New Mexico register.

**History:** 1953 Comp., § 71-7-6, enacted by Laws 1967, ch. 275, § 6; 1969, ch. 92, § 4; 1995, ch. 110, § 4.

The 1995 amendment, effective July 1, 1995, added the section heading, substituted the language at the end of the first sentence beginning "filed with" for "so filed and shall only be valid and enforceable upon such filing and compliance with any other law", and added the last two sentences.

## ANNOTATION

**What and with whom matters to be filed.** — Formerly, all official reports, pamphlets, publications, regulations, rules, codes of fair competition, proclamations and orders issued, prescribed or promulgated by the state corporation commission (now public regulation commission) of general application were to be filed, in accordance with statute, with the supreme court librarian of the state of New Mexico, with the exception of any rule or regulation or order or other document of the corporation commission (now public regulation commission), wherein it is exercising its duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telephone, telegraph, sleeping car or similar company and common carrier within the state. 1953-54 Op. Att'y Gen. No. 5814.

**Policies that affect other agencies.** — If a policy manual or directive contains statements of policy purporting to affect one or more agencies besides the agency issuing the manual or to affect persons not members or employees of the issuing agency, it must be filed in accordance with the State Rules Act. 1993 Op. Att'y Gen. No. 93-1.

**When rule becomes valid or enforceable.** — The language of this section is categorical: a rule is not valid or enforceable until it is filed. There is no implicit exception that makes the rule effective before filing with respect to those with actual notice of the rule. *Pineda v. Grande Drilling Corp.*, 111 N.M. 536, 807 P.2d 234 (Ct. App. 1991).

**Statute does not authorize center to investigate validity of rules.** — The statute makes no provision for a preliminary investigation by the records center with respect to the compliance of the submitting agency to any notice and hearing requirements. As an administrative body, the records center can only act within the scope of the authority delegated by statute, and any independent investigation into the validity of the rules and regulations submitted for filing does not come within the records center's authority; therefore the records center has no power to make a determination as to whether, in fact, the promulgating agency has complied with notice and hearing requirements. 1978 Op. Att'y Gen. No. 78-7.

**Orders and decisions excluded by definition from class of rules** to which State Rules Act applies are not subject to the provisions of those sections and, in particular, are not governed by 14-4-3 NMSA 1978 and this section. Op. Att'y Gen. No. 79-32.

**Prisoner disciplinary rules not covered by act.** — Disciplinary rules promulgated by the secretary of corrections, governing the conduct of prisoners confined within a penitentiary, were not required to be filed with the state's record center in the manner required under State Rules Act. *Johnson v. Francke*, 105 N.M. 564, 734 P.2d 804 (Ct. App. 1987).

**No fundamental right to notice and hearing.** — There is no fundamental right to notice and hearing before the adoption of a rule. Such a right is statutory only. *Livingston v. Ewing*, 98 N.M. 685, 652 P.2d 235 (1982).

**Actual notice of rule does not dispel necessity of compliance** with State Rules Act. *State v. Joyce*, 94 N.M. 618, 614 P.2d 30 (Ct. App. 1980).

**Effect of failure to comply with statutory requirements.** — Where the board of cosmetology failed to (1) comply with the repeal procedure of 12-8-4A NMSA 1978, in failing to give notice to interested parties and to hold a hearing prior to taking action, and (2) failed to file the record of its regulatory proceedings with the state records administrator as required by this section, the action of the board in repealing a licensing reciprocity regulation was contrary to law and the repeal was invalid. *Rivas v. Board of Cosmetologists*, 101 N.M. 592, 686 P.2d 934 (1984).

**Effect of unfiled rules and regulations.** — Former statutes (4-10-13 to 4-10-19, 1953 Comp.) did not provide that all unfiled rules and regulations were ineffective, but merely provided that such rules and regulations would not be valid as against any person who did not have actual knowledge of their contents. *Maestas v. Christmas*, 63 N.M. 447, 321 P.2d 631 (1958).

**Effect of departure from procedures and regulations prescribed.** — Local board's failure to give timely notice constituted a substantial departure from the procedures and regulations prescribed by the state board, and state board's finding that teacher was not prejudiced by this departure was prejudicial. *Tate v. New Mexico State Bd. of Educ.*, 81 N.M. 323, 466 P.2d 889 (Ct. App. 1970).

Where teacher with tenure rights was only given two days' notice - excluding the date of service - before the end of the school year and under the regulations prescribed by the state board, she was entitled to no less than 14 days' notice before the end of the school year, the conduct of the local board in failing to follow the regulation amounted to unfairness, an issue which may properly be raised in a proceeding of this nature, and although teacher may have known her principal was going to recommend to the local board that she not be reemployed, this placed no burden upon her to employ an attorney, or to otherwise begin the preparation of her defense, in anticipation of the ruling of the local board. She was entitled, insofar as statute and rule permitted, to a timely notice, pursuant to the requirements of the rule. *Brinstool v. New Mexico State Bd. of Educ.*, 81 N.M. 319, 466 P.2d 885 (Ct. App. 1970).

**Amendment has no effect on validity of previous resolution.** — The subsequent adoption of an amended resolution has no effect on the validity of a previous resolution. *Livingston v. Ewing*, 98 N.M.

685, 652 P.2d 235 (1982).

**Criminal trespass charges not a means to enforce rule until filing.** — Criminal trespass charges under 30-20-13 NMSA 1978 are not a means to enforce a rule available to the state until the rule is properly filed in compliance with State Rules Act. *State v. Joyce*, 94 N.M. 618, 614 P.2d 30 (Ct. App. 1980).

**Law reviews.** — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

#### **14-4-5.1. Temporary provision; savings provision.**

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.

**History:** Laws 1995, ch. 110, § 10.

#### **14-4-6. [Trade, sale and exchange of agency rules, publications and reports by records center.]**

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.

**History:** 1953 Comp., § 71-7-7, enacted by Laws 1967, ch. 275, § 7.

### **ANNOTATION**

**Law reviews.** — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

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

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 [Chapter 14, Article 4 NMSA 1978] 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 [Chapter 14, Article 4 NMSA 1978] by June 30, 1991 are repealed.

**History:** 1953 Comp., § 71-7-8, enacted by Laws 1967, ch. 275, § 10; 1969, ch. 92, § 5; 1991, ch. 221, § 1.

**The 1991 amendment,** effective June 14, 1991, added the section heading; designated the formerly undesignated provisions as Subsections A to C; deleted the former last sentence of the section which read: "The librarian of the supreme court shall not be required to retain more than the original or one copy thereof"; added Subsection D; and made minor stylistic changes throughout the section.

**"Effective date of the State Rules Act".** — The phrase "effective date of the State Rules Act", used three times in this section, means April 14, 1967, the effective date of Laws 1967, Chapter 275.

## ANNOTATION

**Interstate agreement not contemplated within this act.** — Despite the broad language in this section regarding "[a]ll pamphlets, reports, proclamations or similar instruments," an interstate agreement contract is not contemplated within the State Rules Act. *State v. Ellis*, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

**Interstate contract is not instrument similar to rules, reports and notices** issued by state agencies. *State v. Ellis*, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

**Law reviews.** — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

### 14-4-7.1. New Mexico register.

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.

**History:** Laws 1989, ch. 38, § 1; 1995, ch. 110, § 5.

**The 1995 amendment,** effective July 1, 1995, in Subsection A, substituted "for publication" for "if economically feasible, for development and publication" and deleted "after January 1, 1990" following "month"; in Subsection B, redesignated the last two sentences as Paragraph (1) and rewrote the paragraph to make publication of the full text of adopted rules mandatory, and added Paragraph (2); and made minor stylistic changes throughout the section.

## ANNOTATION

**Adequate notice under Open Meetings Act.** — A notice of proposed rulemaking in the New Mexico register probably would not constitute reasonable notice under the Open Meetings Act, 10-15-1 to 10-15-4 NMSA 1978, because the register is not widely circulated and is not readily available to the general public. 1993 Op. Att'y Gen. No. 93-2.

**Notice requirements for legal publication.** — A notice published in the New Mexico register would not fulfill the requirements for legal publication under 14-11-1 to 14-11-8 NMSA 1978 because the register is not a newspaper of general paid circulation. 1993 Op. Att'y Gen. No. 93-2.

**Publication in human services register.** — Publication of a notice, proposed rule, or adopted rule in the New Mexico human services register does not fulfill the human services department's duty to publish materials required by the New Mexico register. 1993 Op. Att'y Gen. No. 93-2.

**Publication requirements under the Administrative Procedures Act.** — The state rules administrator was not required to publish a separate bulletin under former 12-8-6 NMSA 1978 for agencies subject to the Administrative Procedures Act. Specifically, the provisions of this section superseded the requirements in former 12-8-6 NMSA 1978 for issuing a bimonthly publication, for publishing the full text of rules except under the specified conditions and for providing bulletins free of charge to state agencies and political subdivisions upon request. 1993 Op. Att'y Gen. No. 93-3.

**Incorporation by reference.** — An agency may not avoid filing and publishing a rule by incorporating by reference and otherwise properly filed and published rule. However, this section grants the state records administrator and the issuing agency discretion to agree on publication of less than a full text of incorporated materials. 1993 Op. Att'y Gen. No. 93-1.

### 14-4-7.2. New Mexico Administrative Code.

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.

**History:** 1978 Comp., § 14-4-7.2, enacted by Laws 1995, ch. 110, § 6.

**Effective dates.** — Laws 1995, ch. 110, § 12 makes the act effective January 1, 1995.

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

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.

**History:** 1953 Comp., § 71-7-9, enacted by Laws 1967, ch. 275, § 11; 1977, ch. 246, § 47.

#### **14-4-9. [Law governing filing of agency rules, documents and publications.]**

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 [Chapter 14, Article 4 NMSA 1978].

**History:** 1953 Comp., § 71-7-10, enacted by Laws 1967, ch. 275, § 12.

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

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.

**History:** 1953 Comp., § 71-6-23, enacted by Laws 1967, ch. 275, § 8; 1977, ch. 301, § 3; 1978 Comp., § 14-3-24, recompiled as 1978 Comp., § 14-4-10 by Laws 1995, ch. 110, § 9.

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

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.

**History:** 1953 Comp., § 71-6-24, enacted by Laws 1967, ch. 275, § 9; 1978 Comp., § 14-3-25, recompiled as 1978 Comp., § 14-4-11 by Laws 1995, ch. 110, § 9.

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