

New Mexico Rulemaking Process Overview

Although New Mexico does not have an effective Administrative Procedures Act, that does not mean there are no administrative procedures in the state. The State Rules Act (Chapter 14, Article 4 NMSA 1978) and other statutes set up some basic requirements for rulemaking. The following will explain the basic steps that agencies must take when making rules in New Mexico.

Notice of Rulemaking

Before each rulemaking process begins, most state agencies publish notices in the New Mexico Register as well as in a paper of general circulation. The notice typically:

- includes explanation of the proposed new rule or amendment or repeal of an existing rule;
- describes the way(s) the public can comment on the rules or changes; and
- announces the public hearing (if one is being held).

Filing with the Administrative Law Division and Publication in the New Mexico Register

In New Mexico, the State Rules Act mandates that all rules must be filed with the Administrative Law Division at the State Records Center and Archives. All adopted rules must be published in the New Mexico Register before they can become effective (with the exception of emergency rules). Emergency rules must still be filed with the Administrative Law Division; however, they do not need to be published in the New Mexico Register before taking effect.

Additional Agency-specific Requirements

In addition to filing with the Administrative Law Division and publishing in the New Mexico Register, agencies usually have their own requirements that must be satisfied before a rule can take effect.

Types of Rule Filing

There are four types of rulemaking in New Mexico:

- new rule;
- amendment;
- repeal; and
- repeal and replace.

New Rule

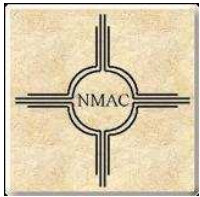
The NMAC has a hierarchical structure, with a rule or “part” being the third level down. A new rule filing adds a new part or a new rule to the New Mexico Administrative Code.

The basic process for making new rules in New Mexico applies to all agencies making rules. However, agencies will have additional steps to the rulemaking process and these steps will be different from agency to agency.

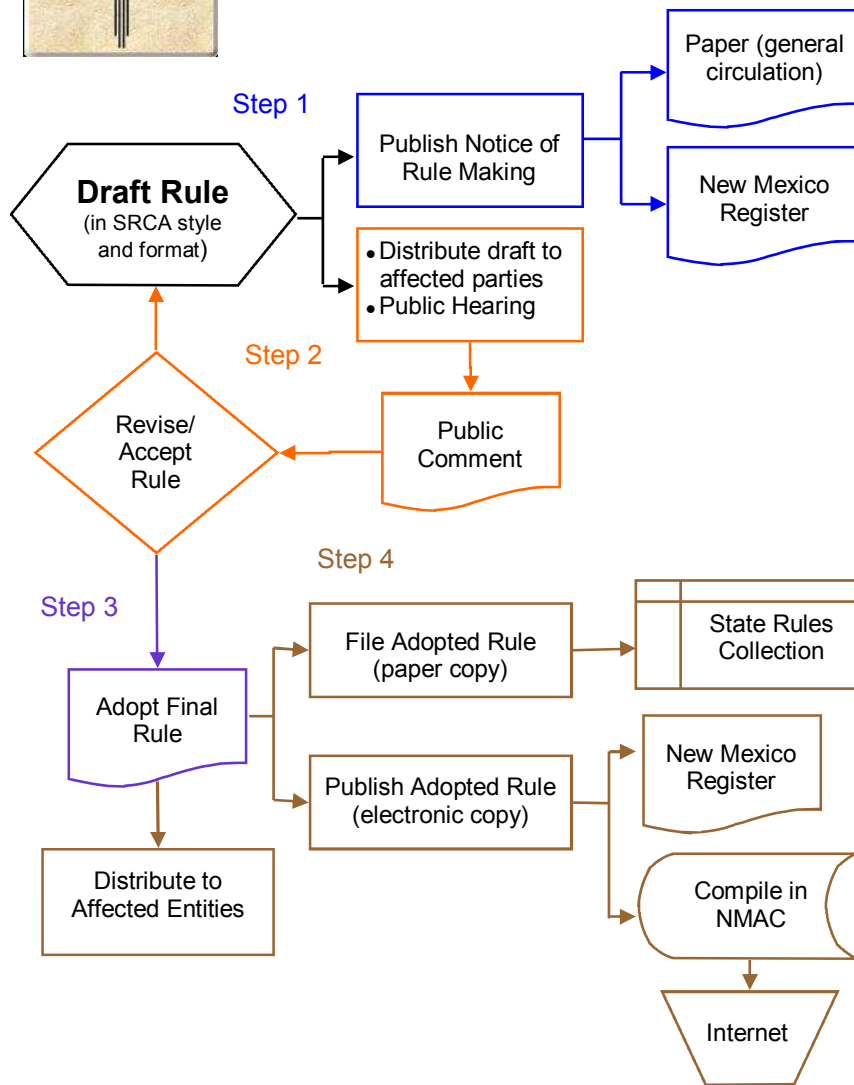
Once an agency drafts a new rule, the first step is to formally invite the public to participate in the rulemaking process by publishing a notice in a paper of general circulation and the New Mexico Register. The notice will include a general description of the rule, an announcement of a public hearing (if one is held) and instructions on how the public can comment on the proposed rule.

The second step is to receive public comments and feedback by distributing the draft to affected parties and holding a public hearing. Based on the comments received, the agency may revise the draft. If the changes were significant, the agency would go through this cycle again in order to solicit feedback on the changes. If there were no changes or the changes were minor, the agency would continue on to ensure the style and format meets the SRCA standards and adopt the final rule (step 3).

The final (4th) step is to file the rule with the Administrative Law Division (ALD). A paper copy and electronic version must both be brought to the ALD. If the rule passes the ALD's review for style and format, the paper copy is stamped and brought into the Official State Rules Collection. The electronic version is then used to produce the New Mexico Register and the NMAC on the Internet. It is recommended that the agency filing the rule also distribute it to affected entities.



New Rule Process



New Rule Process Checklist

- Draft rule (in SRCA required style and format)
- Publish notice of rulemaking (in a paper of general circulation and the New Mexico Register)
- Receive public comments (by distributing draft to affected parties and holding a public hearing)
- Revise/accept rule
- Adopt final rule
- Submit the final rule to ALD for review and approval
- Recommended to distribute rule to affected entities
- ALD will file adopted rule into State Rules Collection
- ALD will publish adopted rule in New Mexico Register and compile in NMAC

(Basic requirements in making a new rule in New Mexico.)

Amendment

An amendment changes an existing rule or part. The fourth level in the NMAC (beneath the part) is called a section. In an amendment, only the sections affected by the amendment are filed and published (not the entire rule). An amendment includes full section replacement, deletion, or addition to an existing rule.

The first sentence on the first page of the amendment must state, “This is an amendment to (insert appropriate title number, chapter number, part number) NMAC, Sections (insert the section number of the amended sections), effective (insert appropriate effective date).”

For clarity, agencies may include an explanatory paragraph before the text of an amendment to be published in the New Mexico Register (but will not be part of the rule).

To amend a rule, agencies must use legislative markup as defined in the Legislative Drafting Manual. To make a change, the text proposed to be deleted needs to be bracketed and struck through and the new material underlined.

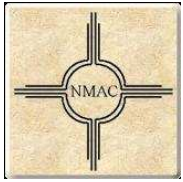
~~[bracket and strikethrough the original text]~~ and underline the new or replacement text

The basic process for amending rules in New Mexico is very similar to making new ones. Each agency may have its own additional requirements or steps for amending rules (i.e. specific notifications, etc) but the following diagram describes the typical process.

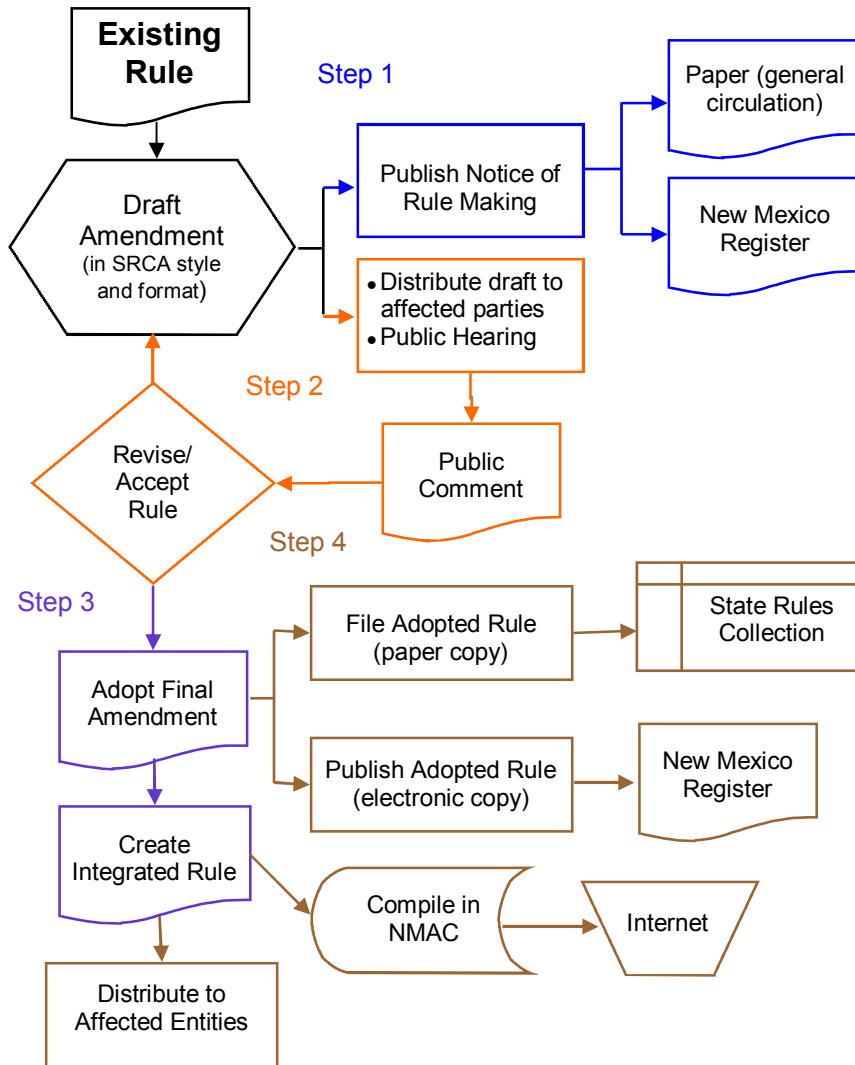
After an agency drafts an amendment to an existing rule (containing just those sections being affected), the first step is to formally invite the public to participate in the rulemaking process by publishing a notice in a paper of general circulation and the New Mexico Register. The notice may include a general description of the changes, an announcement of a public hearing (if one is held) and instructions on how the public can comment on the proposed amendment.

The second step is to receive public comments and feedback by distributing the draft to affected parties and holding a public hearing. Based on the comments received, the agency may revise the draft. If the changes were significant, the agency would go through this cycle again in order to solicit feedback on the changes. If there were no changes or the changes were minor, the agency would adopt the final amendment (step 3). The agency would also create an electronic version of the integrated rule showing what the rule will become with the changes.

The final (4th) step is to file the amendment with the Administrative Law Division (ALD). A paper copy and electronic version must both be brought to the ALD. If the rule passes the ALD's review for style and format, the paper copy is stamped and brought into the Official State Rules Collection and the electronic version used to create the New Mexico Register. The electronic copy of the integrated rule created by the filing agency is used for updating the NMAC the month following the effective date of the amendment. It is recommended that the agency filing the amendment also distribute it to affected entities.



Amendment Process



(Basic requirements that most agencies must follow to amend a rule in New Mexico.)

Amendment Process Checklist

- Draft amendment from existing rule (in SRCA required style and format)
- Publish notice of rulemaking (in a paper of general circulation and the New Mexico Register)
- Receive public comments (by distributing draft to affected parties and holding a public hearing)
- Revise/accept amendment
- Adopt final amendment
- Create integrated rule
- Submit the final amendment to ALD for review and approval
- Recommended to distribute integrated rule to affected entities
- ALD will file adopted rule into State Rules Collection
- ALD will publish adopted rule in New Mexico Register
- ALD will compile integrated rule into NMAC

Repeal

A repeal removes an entire part (or rule) from the NMAC. Any deletion from the rule lower than the part (or rule) level is considered an amendment. Only the repealer language is filed and published. An example of a repeal is,

“Commission of Public Records repeals its rule entitled Management of Electronic Records 1.13.3 NMAC effective 10/28/2008.”

The above repealer language is all that is needed to be published and filed for the entire rule to be eliminated. If other rules are affected by the repeal, they will be amended as needed.

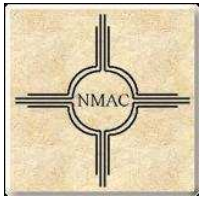
In addition to the basic process of a repeal, agencies may have their own additional steps. From an existing rule, an agency drafts a repealer. To invite the public to participate, a notice is published in a paper of general circulation and in the New Mexico Register (step 1). Public comment is received through a public hearing and any other means deemed appropriate by an agency. Based on the public feedback, the repeal may be revised or accepted as written (step 2).

After the repeal is adopted, an electronic and paper version of the repeal must be submitted to the ALD (step 4). The electronic version is used for publication in the New Mexico Register. The paper copy is used to remove the rule from the State Rules Collection, transfer the rule to the State Archives Historical Rules Collection and remove the text from NMAC. A compiler's note stating the repeal date of the rule will remain in the NMAC.

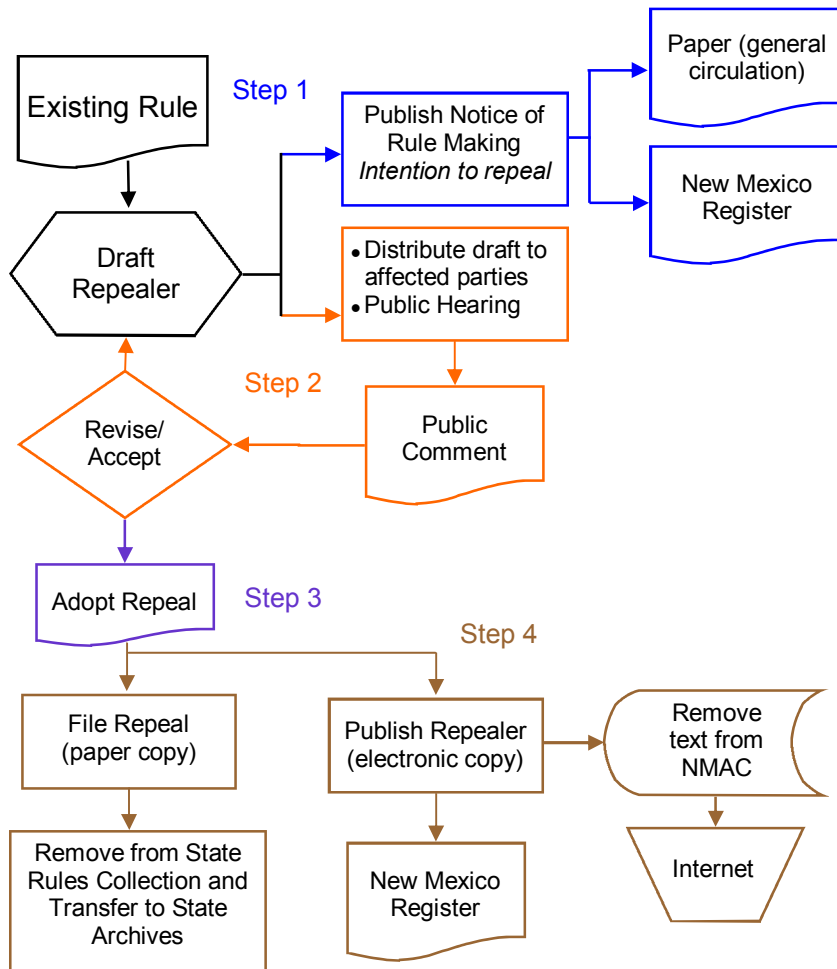
Repeal and Replace

When a rule is still necessary but it must be entirely rewritten, the existing rule may be repealed and a new rule written. This occurs when the topic of the rule is still applicable but the content (or sections) are extensively changed, making a comparison between the original rule and the new rule impossible.

A repeal and replace requires two rule transactions (repeal and new rule) which occur at the same time. The agency will use the repeal process on the existing rule and issue a new rule with the same part number. The history note will reflect the repealing and replacing action. The history of the part will also be updated.



Repeal Process



Basic requirements that most state agencies must follow to repeal a rule in New Mexico.

Repeal Process Checklist

- Draft repeal of existing rule
- Publish notice of intent to repeal (in a paper of general circulation and the New Mexico Register)
- Receive public comments (by distributing repealer to affected parties and holding a public hearing)
- Revise/accept repeal
- Adopt final repeal
- Submit the final repeal to ALD for review and approval
- ALD will remove rule from State Rules Collection, transfer to State Archives and remove text from NMAC

Emergency Rules

When some threat to the public health, safety or welfare requires immediate action, an emergency rule may be filed. Emergency rules must be filed with the ALD but not necessarily published before taking affect. Unless a later effective date is specified, an emergency rule is effective as soon as it is filed with the ALD.

Emergency rules expire in 30 days unless published in the New Mexico Register. If the emergency rule is published in the New Mexico Register, the emergency rule is converted to a regular rule and its duration is as stated in the published rule. Certain agencies have additional restrictions regarding the filing and duration of emergency rules.

Links

New Mexico Register

<http://www.nmcpr.state.nm.us/nmregister>

New Mexico Administrative Code (NMAC)

<http://www.nmcpr.state.nm.us/nmac>