

WHAT ARE STATE RULES?

Simply put, rules are a special category of law written by state agencies to support, clarify, or implement specific laws enacted by the legislature called statutes. State rules can include building codes, air quality standards, tax codes, public assistance regulations, and public health regulations, to name but a few. They are subordinate to statutes and must work within the framework established by statute. A defining aspect of rules is that they affect people or other agencies outside the agency that writes them. If a process in an agency is strictly an internal one, it does not need to be established by rule. However, while there are some specific exceptions, in general, if the process affects any person or agency outside the issuing agency, it must be established in rule.

Usually statutes written by the legislature are general in nature. They establish something, set bounds of authority, and provide funding, if necessary. For example, by statute the legislature created the publication called the New Mexico Register. In the statute (Section 14-4-7.1 NMSA 1978), the legislature defined what the publication would contain, how frequently it would be produced, who would be responsible for ensuring its timely publication, how the public would purchase it, and who would receive funds from its publication and sale. The statute covers the large issues relating to the New Mexico Register but does not provide specific details on how it is to be produced and sold. Instead the statute pro-

vides that, "the state records administrator shall adopt and promulgate rules necessary for the implementation and administration of this section" (Subsection E of Section 14-4-7.1 NMSA 1978). The legislature authorized the State Records Administrator, the director of the Commission of Public Records - State Records Center and Archives, to make rules on the specifics of the New Mexico Register production. With that authority, the State Records Administrator adopted a rule entitled New Mexico Register (1.24.15 NMAC) to address specific policies, procedures, and fees associated with the publication. The rule describes how material is to be submitted for publication and sets fees for publication charges, annual subscriptions, individual paper copies, and electronic copies.

As mentioned above, rules are to support, clarify, and implement statute. They must be written within the parameters established by statute and cannot be used to expand an agency's authority. Each rule has to go through a promulgation process designed to provide the public with notice of the rule-making activity and the rule as finally adopted. In New Mexico, the promulgation process may differ somewhat from agency to agency, but there are some general requirements that must be followed by all agencies subject to the State Rules Act (the law establishing the foundation for rule-making). First, agencies must publish a notice of rule-making in the New Mexico Register and in a newspaper of general publication. The notice explains generally what new rules or



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amendments to or repeals of existing rules are proposed and provides ways for the public to comment on them. Usually agencies will have a public meeting to discuss the rule. When the public comment period is over, the rule may be revised according to the comments received. Once a rule is finalized by an agency, the rule-issuing authority must approve and sign a transmittal form that must accompany the rule when filed. The rule-issuing authority is the person in an agency, such as the State Records Administrator above, who has the authority from the legislature to make rules. Once signed, the rule is then filed with the Administrative Law Division, which ensures the rule complies with the style and format requirements (such as proper numbering, indentation, font type and size, etc.) established by the Commission of Public Records - State Records Center and Archives (1.24.10 NMAC). If the rule complies with the requirements, it is date- and time-stamped and brought into the state's permanent rule collection. Before a rule can be effective, it must not only be filed with the Commission of Public Records - State Records Center and Archives, but it must also be published in the New Mexico Register. After publication and on its defined effective date, a rule is considered to be administrative law unless it is successfully challenged in court. If there is a situation where a rule must be made effective quickly and cannot wait for the promulgation process to take place, statute provides for the filing of emergency rules. Such rules can be effective immediately on filing with the Administrative Law Division, but only remain in effect for 30 days unless published in the New Mexico Register.

To assist the public in finding current rules, the legislature mandated, in Section 14-4-7.2 NMSA 1978, the creation of the New Mexico Administrative Code (NMAC). The NMAC is a compilation of the current rules organized by subject. Each rule is assigned a unique number so that it can be found easily. The rules follow specific formatting requirements including similar internal organization so that uniform citation methods can be used. In August of 2001, the Commission of Public Records - State Records Center and Archives assumed responsibility for the in-house publication of the New Mexico Register and the NMAC (publication of both had previously been outsourced). In January of 2002, the Commission of Public Records - State Records Center and Archives completed the compilation of the NMAC and placed it on-line at www.nmcpr.state.nm.us/nmac.

In addition to the NMAC website, the New Mexico Register is available on-line at www.nmcpr.state.nm.us/nmregister. Issues since August 15, 2001, are available free on that website.