

NEW MEXICO



Commission of Public Records

at the State Records Center and Archives

Your Access to Public Information

AIMING FOR CONSISTENCY IN THE RULEMAKING PROCESS

Economic and Rural Development Committee

July 14, 2015

Introduction

Linda Trujillo– State Records Administrator

Matt Ortiz – Administrative Law Division Director

What are State Rules?

- Promulgated by state agencies to support, clarify or implement statutes enacted by the legislature
- Include many different subject areas
- Subordinate to statutes and must work within the framework established by statute
- A defining aspect of rules is that they affect persons or other agencies outside the agency that issues them

Who Issues State Rules?

- Executive branch agencies may issue rules only after being authorized by the Legislature in statute to do so
- A few entities receive the authority to make rules from the Constitution

What is a Rule?

A rule is

- ▣ Any rule or regulation, order, standard, statement of policy, amendments or repeals

That

- Affects one or more agencies besides the issuing agency or
- Affects persons not members or employees of the issuing agency

- Defined by Section 14-4-2 NMSA 1978
- Attorney General Opinion No. 93-1

State Rules Act - 1967

- Chapter 14, Article 4 NMSA 1978
- Establishes the basic requirements for the rulemaking process
- Does not cover all steps necessary for rulemaking
- Does not cover adjudication
- State Records Administrator implements

New Mexico Administrative Procedures Act - 1969

- Chapter 12, Article 8 NMSA 1978
- Based on the 1961 Model State Administrative Procedure Act
- Sets out the basics for rulemaking and adjudication in New Mexico
- State agencies are exempt from the provisions of the APA

Additional Requirements

Agencies have additional rulemaking requirements from
Other statutes

- Uniform Licensing Act

- Executive Reorganization Act

- Specific Organic Acts [Enabling Statutes]

Rules

- Rules on rules

- Agency's own rules

Rulemaking Is Not Uniform

- Because NM Administrative Procedures Act does not apply to agencies:
 - ▣ Inconsistent requirements to notice and adopt rules
 - ▣ Lack of specific guidelines for rule hearings/public comment
- This makes it difficult for the public to participate in the rulemaking process

Uniform Law Commission

- Created in 1892
- Every state has representation – but the appointment process and number differ
- Must be active member of State Bar
- Study which areas of state law should be uniform
- Draft and adopt acts that state legislatures can use
- New Mexico has 12 representatives
 - Chapter 2, Article 4 NMSA 1978

Model State Administrative Procedure Act

- First issued by ULC in 1946
- Updated in 1961 and 1981
- Most states adopted some version of the 1961 act
- Sets out basic rulemaking and adjudication
- It is a model act and not a uniform act

Revision to the MSAPA

- ❑ Began in 2004
- ❑ Update for new technology
- ❑ Align with new case law
- ❑ More modular so states can use pieces
- ❑ Shorter than 1981 version by 25%
- ❑ Final read and approval July 2010
- ❑ Final text released in October 2010

Other States

- There is not one uniform Administrative Procedure Act in use among the states
- Although they are based on model acts (with most based on the 1961 model), every state is different
 - ▣ Some acts are strong, others are weak
 - ▣ Some acts include most agencies, others do not
- Some states have more than one act
 - ▣ Utah has 2 acts

Task Force

- SJM 7 never made it out of the Senate in 2010
- Lt. Governor Diane Denish used the text of SJM 7 to convene a task force
- Over 20 members, diverse interests
- Senator Keller, Representative Miera, Senator Ryan
- First met on May 6, 2010
- Met regularly from May through November 2010

Consensus of Task Force

- Address rulemaking first
 - Deal with adjudication at a later time (that time has not come yet)
- More transparency
- Earlier involvement by a wider variety of stakeholders
- Greater uniformity, but complete uniformity is not possible
- Not too costly or burdensome for agencies or legislature

2011

- Senate Bill 30 - Rulemaking Requirements
 - Sponsors: Senator Timothy Keller and Representative Thomas Taylor
 - Died on Senate floor
- House Bill 360 - Requirements for Altering State Rules Act
 - Sponsors: Representative Brian Egolf and Senator Timothy Keller
 - (Identical to SB 30)
 - Do pass from HBIC, not heard by next committee

2012

- House Bill 34 - Rulemaking Requirements
 - Sponsors: Representative Nate Gentry and Senator Timothy Keller
 - Passed House, do pass from SRC, not heard by next committee

2015

Senate Bill 194 –

REQUIREMENTS FOR PROPOSING & CHANGING
RULES

Sponsor: Senator Ivey-Soto

- ▣ Passed Senate (unanimously)
- ▣ One committee assignment, not heard by House Judiciary

Senate Bill 194 – Requirement for Proposing & Changing Rules

- ❑ All agencies will have set period for public comment, public hearing process, record of rulemaking
- ❑ Streamlines and brings regularity to rulemaking process for all agencies
- ❑ Eliminates rulemaking that could conflict with state statute
- ❑ Process for filing “emergency” rules is clarified
- ❑ Attorney General is charged with developing default procedural rules for notice and rulemaking process that agencies can follow

Future Action – State Rules Act

The rulemaking process should be more uniform.

Public should have greater transparency into rulemaking process.

Regularity of notice and rulemaking process should improve efficiency thereby decreasing government cost.

Future Action – State Rules Act

Periodic review of rules could reduce regulatory redundancy

- Majority of states have either legislative or executive branch oversight for agency rulemaking

- Approximately 12 states have defined time period for rules to go through review process

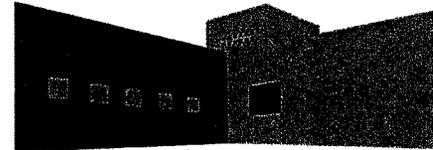
Electronic filing of rules could expedite agency functions.

Questions?

Linda Trujillo
505-476-7911
Linda.Trujillo@state.nm.us

Matt Ortiz
505-476-7941
Matt.Ortiz@state.nm.us

Commission of Public Records
State Records Center & Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507



NEW MEXICO
Commission of Public Records
at the State Records Center and Archives
Your Access to Public Information