

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".

State corporation 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 under the Administrative Procedures Act, 12-8-1 NMSA 1978 et seq. 1969 Op. Atty 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,

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| BEFORE THE | |
| OIL CONSERVATION COMMISSION | |
| Santa Fe, New Mexico | |
| Case No. 11451 | Index No. B |
| Entered by OOD | |
| Month/Day 1/13/96 | |

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such records center shall no longer file such class of documents with the state library unless such rejection is rescinded in writing and sent to such agency or agencies.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

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 [this article]:

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.

"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.

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.

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 [this article]. 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.

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.

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 cen-