

From: [Chris Mechels](#)
To: [Apodaca, Sheila, DOH](#)
Cc: [Heather Ferguson: New Mexico Foundation for Open Government: Chris Goad](#)
Subject: [EXT] Re: Mechels comment #5 on NMAC 7-1-30 Rules Hearing
Date: Tuesday, July 21, 2020 1:52:39 PM
Attachments: [1.24.25 NMAC Default Procedural Rule for Rulemaking.pdf](#)

Dear Ms. Apodaca,

This is the fifth of a number of comments on this hearing.

It concerns even more procedural violations of the Rules Act, sufficient to cancel the Rules Hearing. Details follow.

It seems that you are now posting comments of both the DOH website and SunshinePortal, as the law requires. However failing to properly post comments until chided on the matter, means you have not met the requirement to post them within 3 days, of both those sites; thus the public involvement is impaired, and the Rules Act violated. The remedy is to cancel and reschedule.

Further problems, as I continue my examination.

- 1) The proposed 7.1.30 is actually "amended" 7.1.30, with the original established via the Emergency Rulemaking in March. The amendments must be explained, per NMSA 14-4-5.2. No such explanation is provided, so the Rules Act is violated. Furthermore the original 7.1.30 was never explained as the law requires. The remedy is to cancel and reschedule.
- 2) Examining other, concluded, DOH Rules Hearings, example 7.9.2, I find that a Concise Explanatory Statement (NMAC [1.24.25.14](#)) was never submitted, thus violating the Rules Act. It seems THAT hearing could be legally challenged. Is the DOH even AWARE of the "Default Procedural Rule for Rulemaking" 4/10/2018. You have not been complying with it, or the Rules Act. We established, in your 6 July email, that DOH does not have a hearing procedure. Thus DOH MUST use the Default Procedural Rule, NMAC [1.24.25.8](#) but, on the record of recent hearings, has not been doing so. This compromises THOSE hearings. Please make a copy of this Default Procedure available as part of the record, and call it to the attention of those participating. I have attached it for your convenience.
- 3) I note that, since Monday, I find the March 2020 DOH Emergency Rulemakings on the Sunshine Portal. My experience is that they weren't there before, though they were required by law. The content of those emergency rulemakings is very strange, with much required information missing, as if they were suddenly created in a rush, to meet my Comment #1. Is that the case? I have copied the current versions, to keep them safe.

In closing, from DOH actions, and failures, in this Rulemaking, and the records of earlier recent rulemakings, it seems that the DOH has never incorporated the 2017 HB58 requirements into your procedures. This had led to many violations of the Rules Act, Rule Hearings, and Emergency Rulemaking, with some attendant legal exposure.

These failures can't be recovered in the time available before Thursday, so I suggest that the Rules Hearing be canceled and rescheduled. The problems I noted in Comment #1 support that conclusion.

Regards,

Chris Mechels
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