

**From:** [Chris Mechels](#)  
**To:** [Apodaca, Sheila, DOH](#)  
**Subject:** [EXT] Mechels comment #1 on NMAC 7-1-30 Rules Hearing  
**Date:** Monday, July 13, 2020 2:33:14 PM  
**Attachments:** [com\\_SSP\\_RuleHearingSearchPublic.pdf](#)  
[comp\\_SSP\\_RuleHearingSearchPublic.pdf](#)

---

Dear Ms. Apodaca,

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

It concerns procedural issues with the hearing, sufficient to cancel the hearing. The attachments serve to support the comments.

1) The Sunshine Portal description of the hearing (comp file) beginning "This emergency rule" is a very serious error, as emergency rules have a very different process.

a) It seems that the information was erroneously copied from an earlier document. It needs to be corrected of course, but that does not seem sufficient as those exposed to the error have false information affecting their participation.

2) The hearing description pointed to at the next Sunshine Portal level (com file) also has serious errors, which compromise the right of the public to be fully informed about the hearing.

a) The description of the hearing, consistent with the earlier file (1), describes the proposed rule as an emergency rule. This is a serious error.

b) Further errors in the document are the following lines; Clearly, the documents "not available" must be available, somewhere, as they are required for a hearing to take place.

Rule Explanatory Statement:

Not available

Related New Mexico Register Publications:

Not available

c) The March emergency rule, which is being replaced in the current hearing, was not properly posted, as required under the rules act, thus would appear to be invalid. This suggests that this whole hearing process, which relies upon the earlier emergency rule, is invalid. Emergency rules must, by law, NMAC 14-4-5.6, "B. The agency shall provide to the public" and "provide to the public" is defined at NMAC 14-4-2 as E. "provide to the public" means for an agency to distribute rulemaking information by:

(1) posting it on the agency website, if any;

(2) posting it on the sunshine portal;

The Sunshine Portal has no evidence of the March emergency rule being posted on the sunshine portal thus it is invalid. The Department of Health did FOUR (4) emergency rulemakings in March, 2020 and NONE of them were posted on the sunshine portal as required by law. This seems a complete lack of compliance with rulemaking requirements, which is present in the current process. A check of the portal shows that other agencies DO post emergency rulemaking on the portal as required.

In summary, I have described three very serious problems with the current rulemaking process, sufficient to terminate the current rulemaking and restart it. The problems with the failure to legally post the emergency rulemaking in March throws that rule into question also.

d) Added to the many procedural failures by the Department of Health, the Sunshine Portal has been "updated" with

result that, since 9 July, the rulesmaking information is no longer available on the portal. I

have advised both Ms. Apodaca, and the portal staff, of this failure. The Rules Act requires 30 days notice to the public, and the portal is a key part of that notice. It seems that the 30 days notice is therefore not met. Thus, on that basis alone, it would seem wise to cancel, and reschedule, this hearing.

I will be submitting further comments on the substance of the hearing procedure proposed in the rulemaking. There are more very serious problems there.

Regards,

Chris Mechels  
505-982-7144