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NMAC Transmittal Form

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renummer (ALD Use Only) Most recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

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Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Current NMAC 2.20.2.7 defines "signed" to mean an individual's manual signature, and NMAC 2.20.2.9 requires agencies to submit the original, signed version and a copy of every contract, voucher, travel voucher, purchase order or other financial commitment required to be submitted to the Department of Finance and Administration ("Department"). The Department has determined that these requirements are unduly burdensome to state agencies, particularly in light of the ongoing COVID-19 pandemic and work-from home environment of most state employees. The emergency amendments change the definition of "signed" to include digital signatures and change the submission requirements to address digital signatures.

The time required to comply with the rulemaking procedures of the State Rules Act would cause an imminent peril to the public health, safety, and welfare. Since most state employees are currently working from home, it is exceedingly difficult to obtain original, manual signatures on the documents submitted to the Department. For contracts that require multiple signatures, it can take weeks to complete a process that could be done in days if digital signatures were permitted. It is in the best interest of state finances, and accordingly of the public welfare, that the Department make this rule change as soon as possible. Given the expenditures required for numerous state agencies to respond to COVID-19, complying with the ordinary rulemaking procedures of the State Rules Act would also threaten public health and safety.

Additionally, the requirement to submit original, manually signed documents increases the number of potential contacts between state employees, which could result in the increased transmission of COVID-19 among individuals. Allowing agencies to submit electronic documents with digital signatures, and doing so as soon as possible, is necessary to keep this level of person-to-person contact to a minimum, thereby enforcing social distancing standards and better protecting public health.

This emergency rule is temporary, pursuant to the provisions of NMSA 1978, section 14-4-5.6, unless and until the Department enacts a permanent rule under the normal rulemaking process. Given the emergency nature of this rule, the Department is not accepting substantive arguments made through public comment at this time. The entire rule was repealed and replaced, consistent with Subsection C of 1.24.11.9 NMAC.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Deborah K. Romero

Check if authority has been delegated

Title:

Acting Cabinet Secretary

Signature: (BLACK ink only)

Date signed:



8/25/2020

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TITLE 2 PUBLIC FINANCE
CHAPTER 20 ACCOUNTING BY GOVERNMENTAL ENTITIES
PART 2 EXECUTION OF CONTRACTS, VOUCHERS, PURCHASE ORDERS AND OTHER FINANCIAL COMMITMENTS

2.20.2.1 ISSUING AGENCY: Department of Finance and Administration.
[Recompiled 10/1/01; N/E 8/25/2020]

2.20.2.2 SCOPE: [RESERVED]
[Recompiled 10/1/01; N/E 8/25/2020]

2.20.2.3 STATUTORY AUTHORITY: In order to ascertain the authority and legality of contracts, purchase orders, vouchers, travel vouchers and other financial commitments for departments and other state agencies, pursuant to Section 6-5-3 NMSA 1978, it is necessary to determine whether the person executing the contract has been properly delegated the authority to bind the department or state agency. In many instances there is no clear statutory power granted to an officer to sign on behalf of an agency. Generally the person who is ultimately responsible for the administration of the law has the implied power to execute legal documents for a state agency. Generally the power to execute may be delegated; however, some laws may require specific officers to execute contracts and vouchers on behalf of the agency. In such cases, no delegation is allowed by law.
[Recompiled 10/1/01; N/E 8/25/2020]

2.20.2.4 DURATION: Permanent.
[Recompiled 10/1/01; N/E 8/25/2020]

2.20.2.5 EFFECTIVE DATE: August 25, 2020
[Recompiled 10/1/01; N/E 8/25/2020]

2.20.2.6 OBJECTIVE: The various acts creating departments pursuant to the Executive Reorganization Acts generally provide that the secretary of the department is responsible to the governor for the operation of the department and shall delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto. It is the purpose of this rule to set forth those individuals who may legally bind state agencies which must submit their contracts or vouchers to the department of finance and administration.
[Recompiled 10/1/01; N/E 8/25/2020]

2.20.2.7 DEFINITIONS: As used in this rule:

A. "authorized officer" means a public officer or employee who is required or permitted by law or by lawful delegation of authority pursuant to this rule to sign contracts, vouchers, purchase orders or other financial commitments on behalf of a state agency;

B. "contracts officer" means an employee of the department of finance and administration designated as contracts officer by the secretary of finance and administration;

C. "facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of the authorized officer;

D. "signed" or "executed" means affixed with any of the following:
(1) the manual signature of an individual;
(2) the facsimile signature of an individual;
(3) the electronic signature of an individual procured through a third-party document-signing service; or

(4) the name of an individual, typewritten on the signature line of a document using word processing software and accompanied with another writing confirming that individual's approval of such document, including without limitation an e-mail to that effect.

E. "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions required to submit contracts or vouchers to the department of finance and administration for approval.

[Recompiled 10/1/01; N/E & A/E, 8/25/2020]

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2.20.2.8 EXECUTION OF CONTRACTS, VOUCHERS AND PURCHASE ORDERS - AUTHORIZED SIGNATURES:

A. The department of finance and administration will not approve any contract, voucher, travel voucher, purchase order or other financial commitment of any state agency required pursuant to DFA rule 78-6 Amendment No. 1, [now 2.20.3 NMAC] and 87-1 Amendment No. 1 [now 2.40.2 NMAC], to submit its voucher or contract to the department for approval unless the contract, voucher, travel voucher, purchase order or other financial commitment has been executed by an authorized officer of the agency.

B. The authority to execute contracts, vouchers, purchase orders, travel vouchers or other financial commitments may be delegated unless provided otherwise by law to any officer or employee of the state agency, but such delegation shall:

- (1) be in writing;
- (2) state whether the delegated power may be subdelegated to another officer or employee of the state agency;
- (3) automatically terminate on whichever date occurs earliest;
 - (a) the date the term of office of the delegating secretary or other chief financial officer ends; or
 - (b) annually on June 30; and
- (4) be on file with the contracts officer of the department of finance and administration (for contracts); and
- (5) be on file with the financial control division of the department of finance and administration.

C. A written delegation of authority to execute contracts, vouchers, travel vouchers, purchase orders or other financial commitments may contain such limitations or conditions as the delegating authorized officer may deem appropriate.

D. No authorized officer shall delegate to any other person authority to sign the authorized officer's signature.

E. Nothing in this rule shall prevent the use of facsimile, printed or typed signature of the secretary or chief financial officer on a copy of a contract, voucher, travel voucher, purchase order or other financial commitment.

[Recompiled 10/1/01; N/E 8/25/2020]

2.20.2.9 SIGNATURES REQUIRED: The two copies of every contract, voucher, travel voucher, purchase order or other financial commitment required to be submitted to the department shall be signed by an authorized officer. The department will retain at least one signed copy of every contract, voucher, travel voucher, purchase order or other financial commitment. Alternatively, agencies may submit a single electronic version, in portable document format (PDF) or a comparable format and in such a manner as the department may direct, of an executed contract, voucher, travel voucher, purchase order or other financial commitment required to be submitted to the department.

[Recompiled 10/1/01; N/E & A/E 8/25/2020]

2.20.2.10 AUTHORIZED OFFICERS - DELEGATION:

A. The following public officers are authorized to execute contracts, vouchers, purchase orders and other financial commitments on behalf of the state agency under their control or supervision. Signatures must be on file at the financial control division of the department of finance and administration.

STATE AGENCY	OFFICER AUTHORIZED
office of the governor	governor
office of the lieutenant governor	lieutenant governor
office of the attorney general	attorney general
secretary of state	secretary of state
state auditor	state auditor
state corporation commission	commission
[public regulation commission]	superintendent of insurance
insurance department	state fire marshal
state fire marshal	director
transportation department	land commissioner
state land office	

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state treasurer	state treasurer
department of agriculture	secretary of department
N.M. livestock board	executive director
peanut commission	commission
corrections department	secretary of department
[children, youth and families dept.	secretary of department]
public defender department	director
juvenile parole board	board
adult parole board	board
economic development & tourism department	secretary of department
research and development Institute	director
state fair commission	commission
state racing commission	commission
energy, minerals and natural resources dept.	secretary of department
state game commission	commission
department of game and fish	director
public service commission	commission
department of finance and administration	secretary of department
commission on higher education	commission
office of cultural affairs	cultural affairs officer
committee on concerns of the	director
handicapped	
general services department	secretary of department
state personnel board	director
health & environment department	secretary of department
[health department]	
[environment department]	
state highway & transportation department	secretary of department
human services department	secretary of department
commission on the status of women	commission
state agency on aging	director
office of Indian affairs	commission on Indian affairs
department of labor	secretary of department
department of public safety	secretary of department
taxation and revenue department	secretary of department
commission for the blind	commission
crime stoppers commission	commission
crime victims reparation commission	commission
state department of public education	superintendent
division of vocational rehabilitation	director
state investment council	state investment officer
department of military affairs	adjutant general
state commission of public records	state records administrator
regulation and licensing department	superintendent
interstate stream commission	commission
office of the state engineer	state engineer
NM veteran service commission	commission
institutions of higher education	boards of regents or controllers
miners hospital	board
all boards	board
youth authority [children, youth and families dept.]	secretary of department
LEGISLATIVE BRANCH	
legislative council service	director
legislative finance committee	committee
legislative school study committee	chairman of committee
all other vouchers	director

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JUDICIAL BRANCH

supreme court
compilation commission
building commission
director, administrative office of courts
court of appeals
district courts
magistrate courts
district attorneys
judicial standards commission
judicial council

chief justice
secretary of commission
commission
supreme court
chief Judge
presiding judge
director, administrative office of the courts
district attorney
executive director
council

B. If the authorized officer set forth in Subsection A of this section is a board or commission, the power to execute contracts, vouchers, purchase orders or other financial commitments may be delegated by a majority of a quorum of the board or commission acting in accordance with the provisions of law.
[Recompiled 10/1/01; 8/25/2020]

HISTORY OF 2.20.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

DFA 78-5 Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments, 6/30/78.

DFA 78-5, Amendment No. 1, 12/20/89.

History of Repealed Material: 2.20.2 NMAC, Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments, repealed to amend as emergency Sections 7 and 9, effective August 25, 2020.