

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that pursuant to Subsection A of 1.24.25.9 and 1.24.25.11 NMAC, the State of New Mexico Department of Finance and Administration (hereinafter “DFA”) will hold a rulemaking hearing on Friday, January 15, 2021 at 10:00 AM. The meeting will be held virtually via Webex. Members of the public may attend the Webex meeting on a computer, mobile device, or telephone. The videoconference’s Meeting ID and Password, video link, and telephone numbers are as follows:

Webex meeting scheduled: Department of Finance and Administration Rulemaking Hearing - Virtual  
<https://protect-us.mimecast.com/s/YpjJCJ62pVTyMzxPHVZIIk?domain=nmdfa.webex.com>

Meeting number (access code): 146 809 4756  
Meeting password: 3y7CVxs5rxD

Friday, January 15, 2021  
10:00 am | (UTC-07:00) Mountain Time (US & Canada) | 5 hrs

Start meeting

Tap to join from a mobile device (attendees only)  
+1-415-655-0001,,1468094756## US Toll

Join by phone  
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Global call-in numbers

Join from a video system or application  
Dial 1468094756@nmdfa.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

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If you are a host, click here to view host information.

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If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Andrew Baranowski at (505) 670-2285 by January 1, 2020, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. A copy of the agenda is also available on the DFA website and at the office of the DFA located at 180 Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501. The agenda is subject to change up to 72 hours prior to the meeting.

**Synopsis:**

DFA will hold a hearing to repeal and replace 2.20.2 NMAC, Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments. Pursuant to Subsection E of 9-1-5 and 9-6-5 NMSA 1978, DFA promulgates these rules to administer the duties of the Department and its divisions. Further legal authority for this rulemaking can be found in the State Rules Act, Section 14-4-1 *et seq.* NMSA 1978. Due to the age of 2.20.2 NMAC, the entire rule must be repealed and replaced in order to amend it.

Due to the Governor's declaration of a public health emergency, DFA issued an emergency amendment effective August 25, 2020 allowing for certain documents being submitted to DFA to be digitally, rather than just manually, signed. The emergency amendment also made associated changes to the form of submission of documents to DFA given the acceptance of digital signatures. The proposed amendment of 2.20.2.7 and 2.20.2.9 NMAC consists of continuing to accept digital signatures and the associated document submission requirements by eliminating the public health emergency justification. Additionally, the amendment will update 2.20.2.10 NMAC to better reflect the current composition of state government and will clean up old formatting.

Interested individuals are encouraged to submit comments during the Public Comment Period, which runs from December 15, 2020 through January 14, 2021. Written comments may be submitted to Andrew Baranowski, General Counsel, DFA, via email at [Andrew.Baranowski@state.nm.us](mailto:Andrew.Baranowski@state.nm.us). All written comments will be posted on DFA's website within three days of receipt. Interested persons may also provide data, opinion, or arguments, orally at the virtual public rule hearing on Friday, January 15, 2021 at 10:00 AM, or in writing as provided above.

Copies of the proposed rule may be accessed on the Department's website at <http://www.nmdfa.state.nm.us/> or obtained from Mr. Baranowski by emailing [Andrew.Baranowski@state.nm.us](mailto:Andrew.Baranowski@state.nm.us) or calling (505) 670-2285.

DFA will consider the following items of rulemaking at the hearing:

**Repeal:**

2.20.2 NMAC, New Mexico Administrative Code

**Replace:**

2.20.2 NMAC, New Mexico Administrative Code

Changes to the affected rule are reflected as follows:

**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 10/1/2001; N/E 8/25/2020]

**2.20.2.2 SCOPE:** [RESERVED]  
[Recompiled 10/1/2001; 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 10/1/2001; N/E 8/25/2020]

**2.20.2.4 DURATION:** Permanent.  
[Recompiled 10/1/2001; N/E 8/25/2020]

**2.20.2.5 EFFECTIVE DATE:** February 9, 2021, unless a later date is cited at the end of a section.  
[Recompiled 10/1/2001; 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 10/1/2001; 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; and

(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 10/1/2001; N/E & A/E, 8/25/2020]

**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,~~] 2.20.3 NMAC and [~~87-1 Amendment No. 1,~~] 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 10/1/2001; N/E 8/25/2020]

**2.20.2.9 [ORIGINAL]-SIGNATURES REQUIRED [FACSIMILE SIGNATURES]:**

~~\_\_\_\_\_ A. \_\_\_\_\_~~ The original and at least one copy] 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.

~~\_\_\_\_\_ B. \_\_\_\_\_~~ Except as provided in paragraph A of this section, all duplicate copies of contracts, vouchers, travel vouchers, purchase orders or other financial commitments required to be submitted to the department for approval may be executed with a facsimile signature in lieu of the original signature of the authorized officer.]

[Recompiled 10/1/2001; 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
<del>[state corporation commission</del>	
<del>public regulation commission</del>	commission
<del>[insurance department</del>	<del>superintendent of insurance]</del>
state fire <del>[marshall]</del> <u>marshal</u>	state fire <del>[marshall]</del> <u>marshal</u>
transportation department	director
<del>office of the superintendent of insurance</del>	<del>superintendent of insurance</del>
state land office	land commissioner
state treasurer	state treasurer
department of agriculture	secretary of department
N.M. livestock board	executive director
<del>[peanut commission</del>	<del>commission]</del>
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 <del>[&amp; tourism]</del> department	secretary of department
<del>[research and development Institute</del>	<del>director]</del>
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
<del>[public service commission</del>	<del>commission]</del>
department of finance and administration	secretary of department
<del>[commission on higher education</del>	<del>commission]</del>
<del>[office of cultural affairs</del>	<del>cultural affairs officer]</del>
<del>[committee on concerns of the</del>	<del>director]</del>

<del>Handicapped]</del>	
general services department	secretary of department
state personnel board	director
<u>state personnel office</u>	<u>director</u>
<del>[health &amp; environment department]</del>	<del>secretary of department]</del>
<del>[health] department of health</del>	<del>secretary of department</del>
<del>[environment] department of environment</del>	<del>secretary of department</del>
<del>[state highway &amp;] transportation department</del>	<del>secretary of department</del>
human services department	secretary of department
commission on the status of women	commission
<del>[state agency on aging]</del>	<del>director]</del>
<del>[office of Indian affairs]</del>	<del>commission on Indian affairs]</del>
department of <del>[labor]</del> <u>workforce solutions</u>	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
<del>[state department of]</del> <u>public education department</u>	<del>[superintendent]</del> <u>secretary of department</u>
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
<del>[NM veteran service commission]</del>	<del>commission]</del>
institutions of higher education	boards of regents or controllers
miners hospital	board
<u>department of cultural affairs</u>	<u>secretary of department</u>
<u>office of African American affairs</u>	<u>executive director</u>
<u>tourism department</u>	<u>secretary of department</u>
<u>Indian affairs department</u>	<u>secretary of department</u>
<u>veterans' services department</u>	<u>secretary of department</u>
<u>aging and long-term services department</u>	<u>secretary of department</u>
<u>public education commission</u>	<u>commission</u>
<u>higher education department</u>	<u>secretary of department</u>
<u>department of information technology</u>	<u>secretary of department</u>
<u>homeland security and emergency</u>	
<u>management department</u>	<u>secretary of department</u>
<u>state ethics commission</u>	<u>commission</u>
<u>early childhood education and care department</u>	<u>secretary of department</u>
<u>all executive departments not otherwise listed</u>	<u>secretary of department</u>
<u>all commissions</u>	<u>commission</u>
<u>all boards</u>	<u>board</u>
<u>all other state agencies not otherwise listed</u>	<u>as provided by applicable law, regulation, or governance</u>
<u>documents</u>	
<del>[youth authority children, youth and families dept.]</del>	<del>secretary of department]</del>
LEGISLATIVE BRANCH	
legislative council service	director
legislative finance committee	committee
legislative school study committee	chairman of committee
all other vouchers	director
JUDICIAL BRANCH	
supreme court	chief justice
compilation commission	secretary of commission

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

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 10/1/201; 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, 6/30/1978.  
DFA 78-5, Amendment No. 1, 12/20/1989.

**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.