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Submitted via email to rmd@cpr@state.nm.us

September 27, 2020

Rick Hendricks, PhD
State Records Administrator
New Mexico State Records and Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

RE: New Mexico Environment Department Comments on Proposed Amendments to 1.24.10 NMAC

Dear Dr. Hendricks;

The New Mexico Environment Department (“NMED”) applauds your efforts to make rule filings easier and more efficient for state agencies by supporting the use of electronic and digital technology. NMED respectfully submits the following comments to be included in the administrative record of the public hearing scheduled September 30, 2020 regarding the State Records Center and Archives (SRAC) proposed amendments to 1.24.10 NMAC. The current public health emergency has highlighted the need for rule-based processes allowing electronic rule signing and filing. In addition, as state agencies increasingly integrate electronic processes into their work serving the people of New Mexico, it is important that the peoples’ business be as streamlined, efficient, and cost effective as possible. These comments help accomplish that.

The comments and proposed language offered here by NMED are aimed at ensuring that the Administrative Law Division is authorized to accept electronic rule filings without the need of “wet signatures” or paper copy submittals, and that fully-electronic rule filings will be accepted as in full compliance with 1.24.10 NMAC. In addition to comments on 1.24.10.15(F) NMAC, NMED respectfully proposes three other amendments (attached as NMED Exhibit 1).

First, NMED proposes amending 1.24.10.15(A) and 1.24.10.16(A) NMAC to eliminate the requirement to submit a paper copy of the transmittal form when an agency instead chooses to submit an electronic filing. Subsections 15(A) and 16(A) both contain language that require a paper-copy submittal of all transmittal forms. It is the position of NMED that the requirement for paper copies along with an electronic filing is unnecessary and duplicative. NMED has experienced several demands from SRAC Administrative Law Division staff this year for paper copy filings with wet ink signatures (even during the pandemic and on-going Public Health Orders), so NMED suggests making the rules very clear that these are not required. Our letters of April 17, 2020 and August 19, and your letters of April 20, 2020 and August 20, 2020 granting to NMED exceptions allowing the agency to file electronically with electronic signatures are attached to these comments (NMED Exhibits 2, 3, 4, and 5).

Next, NMED proposes adding two definitions to 1.24.10.7 NMAC: “electronic”¹ and “electronic signature,”² that would clarify the signature requirements for electronic filings. These definitions are the same as used the Uniform Electronic Transactions Act (“UETA”), NMSA 1978, §§ 14-16-1 to -21. NMED’s position is that the definition of “electronic signature” from the UETA eliminates the need for two terms (“electronic” and “digital”), and removes any confusion about what a “digital signature” constitutes and whether any proprietary software (such as DocuSign or Adobe Acrobat) is required by the Administrative Law Division. The UTEA-based definition of electronic signature encompasses and allows any type of electronic authentication, and rightly makes signee’s intent that the particular technology selected be used as the signee’s signature in lieu of a wet ink signature. The signee’s intent - and not the particular software used – should be the legal basis for authenticating the signature. This definition would allow a variety of methods of electronic authentication, eliminate confusion regarding what type or brand of authentication software is acceptable, and bring 1.24.10 NMAC into harmony with the UETA.

SRAC staff have cited discrepancies between 1.24.10.15(A) and (F) NMAC as the reason for continuing to require wet ink signatures and hard copy filings. For this reason, NMED urges you to revise both subsections of 1.24.10.15 and 1.24.10.16(A) NMAC for consistency. Clarifying your regulations and clearly allowing electronic signatures and filings should eliminate any alleged conflict or discrepancy. This will significantly ease the burden on all state agencies filing with SRAC.

Again, thank you for your efforts to provide electronic options for filing and signing documents at SRAC. Our experience at NMED is that using electronic options reduces the use of paper (and therefore produces less waste in landfills), reduces costs (of paper, postage, and staff delivery of filings), and increases efficiency. We appreciate the opportunity to provide comments, and look forward to more modern and cost-effective processes being adopted throughout New Mexico state government.

Sincerely,

Jennifer Pruett
Deputy Secretary

Cc: Matt Garcia, General Counsel, Office of the Governor
Tania Maestas, Chief Deputy Attorney General
Sally Malavé, Open Meetings Division, Office of the Attorney General
Jennifer L. Hower, General Counsel, New Mexico Environment Department

Attachments

NMED Proposed Changes to 1.24.10 NMAC (NMED Exhibit 1)
April 17, 2020 Letter Pruett to Hendricks (NMED Exhibit 2)
April 20, 2020 Letter Hendricks to Pruett (NMED Exhibit 3)
August 19, 2020 Letter Pruett to Hendricks (NMED Exhibit 4)
August 20, 2020 Letter Hendricks to Pruett (NMED Exhibit 5)

¹ **NMSA 1978, § 14-16-2(5):** "electronic" means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities.

² **NMSA 1978, § 14-16-2(8):** "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.