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**James C. Kenney**  
Cabinet Secretary

**Jennifer J. Pruett**  
Deputy Secretary

August 19, 2020

**Via Electronic Mail**

Rick Hendricks, PhD  
State Records Administrator  
New Mexico State Records and Archives  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87507  
[rick.hendricks@state.nm.us](mailto:rick.hendricks@state.nm.us)

**RE: Request for Allowing Digital Signatures on Rule Transmittal Forms**

Dear Dr. Hendricks:

Due to the current public health emergency, the New Mexico Environment Department (“NMED”) and the New Mexico Occupational Health and Safety Bureau (“OHSB”) respectfully request that, pursuant to your authority under 1.24.10.23 NMAC,<sup>1</sup> the filing requirements for transmittal forms be waived for OHSB’s emergency amendment to 11.5.1.16 NMAC, *Recordkeeping and Reporting Occupational Injuries, Illnesses and Fatalities*.

According to the Administrative Law Division Director, State Records Center and Archives (“SRCA”) is currently accepting electronic and digital signatures on transmittal forms in lieu of requiring an original wet signature. However, if the filing agency uses a digital signature, a hard copy of the transmittal form with an original, wet signature, must also be filed after-the-fact. If the filing agency uses an electronic signature on the transmittal form, an original, wet signature is not required. The Administrative Law Division Director defines digital signatures to be a digital image that can be overlaid on the document (e.g. Adobe Acrobat signatures) while an electronic signature is a link-based password protected signature (e.g. DocuSign).

On April 17, 2020, I emailed you a letter making a similar request for an emergency amendment to 20.6.4, *Standards for Interstate and Intrastate Surface Waters*. On April 20, 2020 you granted my request and allowed NMED to file the transmittal form using a digital signature without having to file a hard copy with an original, wet signature after-the-fact. This letter is a similar request.

On August 5, 2020, NMED filed its emergency amendment along with a digitally signed transmittal form. NMED met all requirements to adopt the emergency amendment, but according to SRCA’s policy on digital signatures, must also file a hard copy of the transmittal form with an original, wet signature after-the-fact. SRCA has been asking filing agencies to file the hard copy transmittal form with original, wet

<sup>1</sup> **1.24.10.24 NMAC:** “Exceptions to any provision of 1.24.10 NMAC shall be requested in writing to the state records administrator and may be approved by the state records administrator on a filing-by-filing basis.”

signature by the time their final rule or emergency rule is published in the New Mexico Register. Since NMED's emergency amendment will be published in Issue 16, NMED is required to file the hard copy transmittal form by August 25, 2020. NMED hereby requests that the digitally signed transmittal form which was filed with SRCA on August 5, 2020 be the only transmittal form that NMED must file to complete the emergency rulemaking.

On March 11, 2020, the Governor issued Executive Order 2020-004 ("Emergency Order"), declaring a public health emergency in response to the first reported cases of COVID-19 in New Mexico. Pursuant to the Public Health Emergency Response Act, NMSA 1978, 12-10A-1 through -19 (2003), the Emergency Order applies to all political subdivisions to the extent permitted by law. On March 23, 2020, the New Mexico Department of Health ("DOH") issued a Public Health Order temporarily closing all non-essential businesses and limiting mass gatherings. The Order applies to all public and private employers and requires that social distancing be practiced.

After an emergency rule is adopted by the Secretary of NMED, NMED manages and executes the administrative filing of the rule with the Administrative Law Division of State Records and Archives. As an executive department, NMED is currently required to implement teleworking for all staff. This is critical and necessary. NMED has a large and diverse staff, many of whom are considered high-risk candidates for serious or fatal infections. The original signature requirement in 1.24.10.15(F) NMAC<sup>2</sup> will force NMED staff to unnecessarily violate the social distancing requirements under the Emergency Order. Obtaining an original signature will require NMED staff to meet in person at the Harold Runnels Building in order to obtain an original wet signature; staff would then be required to use copy/scan machines in the building to duplicate and digitize the signed document. As a reminder, as NMED shares the Harold Runnels Building with DOH, the same agency that is conducting all of the contact tracing and inspecting all congregate living facilities in New Mexico, NMED has directed staff to spend as little time in the building as possible in order to avoid contact with DOH staff. Requiring an original signature (and then having to scan the document for record-keeping and sending) is an unnecessary risk for all involved; under the current circumstances, waiving the original signature requirement is reasonable.

NMED is making this request because the Administrative Law Division is still requiring an original wet signature on a paper transmittal form in certain instances. Matt Ortiz of the Administrative Law Division has informed NMED staff that they will be able to adopt an emergency rule using a digitally signed transmittal form but must also file a hard copy transmittal form using a wet signature after-the-fact. The continued requirement for a signed paper copy is based on an apparent conflict between subsections (A) and (F) of 1.24.10.15 NMAC. Subsection (A) permits a transmittal form in either "hard copy with an original signature in black ink or with a valid digital signature," while subsection (F) states that a "rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form." The Administrative Law Division has informed NMED that the conflict between subsections (A) and (F) has been resolved in favor of subsection (F) because it is considered more specific.

NMED encourages SRAC and the Division to consider adopting some emergency rules to address this situation, or to permanently clarify the perceived signature conflict in the rules. This pandemic does not appear to be going away any time soon, and many state agencies are taking the opportunity to

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<sup>2</sup> **1.24.10.15(F) NMAC:** "Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form. If authority is delegated, the box shall be checked."

modernize their rules and procedures to allow more flexibility for the use of digital signatures. Our current request is driven by the Emergency Order and the need to maintain social distancing, we encourage you to consider allowing digital signatures permanently.

In addition to your authority under 1.24.10.23 NMAC, valid digital signatures are authorized by 1.24.10.15(A),<sup>3</sup> and by Section 7 of the Uniform Electronic Transactions Act, NMSA 1978, 14-16-1 through -21 (2001), which states that “[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form . . . [and] [i]f a law requires a signature, an electronic signature satisfies the law.” It is our view that the original signature requirement can lawfully be waived, providing for the efficient administration of public affairs, while maintaining social distancing.

During this public health emergency, virtually all subdivisions of state government have implemented accommodations to minimize in-person contact and the spread of the virus: The Supreme Court has issued Order No. 20-850-02, authorizing telephonic/video proceedings for court cases statewide, and the Legislature has closed the State Capitol until further notice. In a series of executive Orders, the Governor has closed all public schools (Order 2020-012), released certain incarcerated persons (Order 2020-021), and required a quarantine for all persons arriving in the state by air travel (Order 2020-013). Closer to the request in this letter, the Governor has also issued Order 2020-015, waiving the in-person requirements for notarization of documents. These actions taken by all three branches of state government make it clear that reasonable accommodations that facilitate the administration of public affairs while maintaining social distancing is the standard preferred practice under the Emergency Order.

NMED respectfully requests that the emergency amendment to 11.5.1.16 NMAC, *Recordkeeping and Reporting Occupational Injuries, Illnesses and Fatalities*, filed with SRCA on August 5, 2020, be the only required filing needed to complete NMED’s emergency rulemaking, without requiring NMED to also provide a hard copy of the transmittal form with an original wet signature.

Thank you,

 Digitally signed by Jennifer Pruet  
Date: 2020.08.19 14:24:58 -06'00'

Jennifer J. Pruet  
Deputy Secretary

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

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<sup>3</sup> **1.24.10.15(A) NMAC:** “Each rule filing delivered to the records center shall be accompanied by a completed NMAC transmittal form in hard copy with an original signature in black ink or with a valid digital signature.”