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Volume: XXXI **Issue:** 17 **Publication date:** 9/15/2020 **Number of pages:** 1 **(ALD Use Only) Sequence No.**

Issuing agency name and address: Department of Finance and Administration

Agency DFA code: 341

Contact person's name: Andrew Baranowski

Phone number: (505) 670-2285

E-mail address: andrew.baranowski@state.nm.us

Type of rule action:

New ☐ **Amendment** ☐ **Repeal** ☑ **Emergency** ☑ **Renumber** ☐

(ALD Use Only) Most recent filing date:

Title number: 2 **Title name:** Public Finance

Chapter number: 20 **Chapter name:** Accounting by Governmental Entities

Part number: 2 **Part name:** Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments

Amendment description (If filing an amendment): Amending two sections

Amendment's NMAC citation (If filing an amendment): Sections 7 and 9 of 2.20.2 NMAC

Are there any materials incorporated by reference?

Yes ☐ **No** X

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:

Sections 9-1-5(E); 9-6-5(E); and 14-4-5.6, NMSA 1978

Notice date(s): N/A

Hearing date(s): N/A

Rule adoption date: 8/25/2020

Rule effective date: 8/25/2020

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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) Deborah K. Romero

Date signed: 8/25/2020

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The New Mexico Department of Finance and Administration approved the emergency repeal of its rule 2 NMAC 20.2 - Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments (Recompiled 10/1/2001) and replaced it with 2.20.2 NMAC - Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments (adopted on 8/25/2020), and effective 8/25/2020.