

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF AMENDING RULES PERTAINING)
TO FIRE AND SMOKE DAMPERS PURSUANT TO) Case No. 20-00105-FM
SECTION 59A-52-15.1 OF THE STATE FIRE MARSHAL)
STATUTES)**

ORDER AMENDING WRITTEN COMMENT PERIOD AND RE-OPENING RECORD

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the *Motion to Terminate Rulemaking*, filed by the New Mexico State Fire Marshal Division ("SFMD") on July 30, 2020.

THE COMMISSION FINDS AND CONCLUDES:

1. On June 5 2020, the SFMD filed its *Petition to Open a Rulemaking Docket and for the Issuance of a Notice of Proposed Rulemaking*.

2. The Commission issued its *Order Initiating Proposed Rulemaking and Changing Case Caption and Notice of Proposed Rulemaking* on June 24, 2020.

3. The Notice of Proposed Rulemaking ("NOPR") contained the deadlines for written initial comments on the proposed rule to be filed by August 31, 2020 and written response comments to be filed by September 14, 2020. A public hearing was held on October 21, 2020. The Record closed on November 7, 2020.

4. The NOPR was published in Volume XXXI, Issue 13 of the New Mexico Register on July 14, 2020.

5. Relevant to this matter is NMSA 1978, Section 14-4-5 (amended 1998), of the State Rules Act, which states in part;

14-4-5. Time limit on adoption of a proposed rule; filing and compliance required for validity.

- A. Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico register as provided by the State Rules Act.
- B. An agency shall not adopt a rule until the public comment period has ended. If the agency fails to take action on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the agency takes action to extend the period. The agency may extend the period of time for adopting the proposed rule for an additional period of two years by filing a statement of good cause for the extension in the rulemaking record, but it shall provide for additional public participation, comments and rule hearings prior to adopting the rule.
- C. An agency may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If a rulemaking is terminated pursuant to this section, the agency shall provide notice to the public.

6. Further, NMAC 1.24.25.12 addresses amending the comment period, stating;

1.24.25.12 WRITTEN COMMENT PERIOD:

- A. The public comment period must be at least 30 calendar days, beginning after publication of the notice in the New Mexico register and issuance of the rulemaking notice. The agency shall not adopt a proposed rule before the end of the public comment period.
- B. A person may submit, by mail or electronic form, written comments on a proposed rule, and those comments shall be made part of the record. Written comments may be submitted through the end of the public comment period.
- C. The agency may decide to amend the comment period if it provides to the public, as defined in Section 14-4-2 NMSA 1978, notice of the changes.
- D. The agency shall post all written comments on its website, if one exists, as soon as practicable, and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency

7. The Commission finds that the public interest is served by allowing the comment period to be amended and the record re-opened to allow for additional comments from interested persons regarding concerns raised in comments to date and at the public hearing.

IT IS THEREFORE ORDERED:

A. The Record in this matter is re-opened and the comment period is extended until January 15, 2021. The record will close on January 29, 2021.

B. This Order shall be “provided to the public” as defined in the State Rules Act, 14-4-2 NMSA 1978.

C. This Order is effective immediately.

D. Copies of this Order shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known, and otherwise shall be sent via regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 2nd day of
December, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

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ABSTAINED FROM VOTING

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Valerie Espinoza, electronically signed

VALERIE ESPINOZA, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A COMMISSION RULEMAKING)
AMENDING RULES PERTAINING TO FIRE AND SMOKE) Case No. 20-00105-FM
DAMPERS PURSUANT TO SECTION 59A-52-15.1 OF THE)
STATE FIRE MARSHAL STATUTES)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Amending Written Comment Period and Re-Opening Record** issued on December 2nd, 2020 was sent via email to the parties listed below:

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AND SENT VIA USPS FIRST CLASS MAIL TO:

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 8915 Adams St NE; Suite A
 Albuquerque, NM 87113

THE FOLLOWING PARTIES SUBMITTED WRITTEN COMMENTS IN THIS MATTER WHICH DID NOT INCLUDE AN EMAIL OR PHYSICAL ADDRESS SO THERE WAS NO WAY TO SERVE THEM THE FORGOING:

- Jack Milarch on behalf of NM Homebuilders Association
- Carla Kugler on behalf of Associated Builders and Contractors

DATED this 2nd day of December, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Paralegal

Isaac.sullivan-leshin@state.nm.us

Sullivan-Leshin, Isaac, PRC

From: Sullivan-Leshin, Isaac, PRC
Sent: Wednesday, December 2, 2020 5:47 PM
To: Records, PRC, PRC
Subject: 20-00105-FM; Filing Submission
Attachments: 20-00105-FM, Order Amending Written Comment Period and Re-Opening Record.pdf

IN THE MATTER OF AMENDING RULES PERTAINING TO FIRE AND)
SMOKE DAMPERS PURSUANT TO SECTION 59A-52-15.1 OF THE STATE) Case No. 20-00105-FM
FIRE MARSHAL STATUTES)
_____)

Please file the attached ORDER AMENDING WRITTEN COMMENT PERIOD AND RE-OPENING RECORD into the above captioned case.

Thank you.