

NMAC**Transmittal Form**

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address:

Agency DFA code:

Contact person's name:

Phone number:

E-mail address:

Type of rule action:

(ALD Use Only)

Most recent filing date:

New ☒ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐

Title number:

Title name:

Chapter number:

Chapter name:

Part number:

Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Please list attachments or Internet sites if applicable.

Yes ☐ No ☒

If materials are attached, has copyright permission been received?

Yes

No

Public domain

Specific statutory or other authority authorizing rulemaking:

Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

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.

See attachment: CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.1

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

New Mexico State Ethics Commission

Check if authority has been delegated

☐

Title:

Executive Director

Signature: (BLACK ink only)

Date signed:



12/5/2019

FINAL ADOPTED RULE 12/4/19

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8 STATE ETHICS COMMISSION
PART I GENERAL PROVISIONS

1.8.1.1 ISSUING AGENCY: State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.
[1.8.1.1 NMAC-N, 1-1-2020]

1.8.1.2 SCOPE: The rules of Chapter 8 provide for and govern the organization and administration of the state ethics commission.
[1.8.1.2 NMAC-N, 1-1-2020]

1.8.1.3 STATUTORY AUTHORITY: Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
[1.8.1.3 NMAC-N, 1-1-2020]

1.8.1.4 DURATION: Permanent.
[1.8.1.4 NMAC-N, 1-1-2020]

1.8.1.5 EFFECTIVE DATE: January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[1.8.1.5 NMAC-N, 1-1-2020]

1.8.1.6 OBJECTIVE: The rules of Chapter 8 are promulgated to ensure that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission's jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and effective. The rules adopted in Chapter 8 shall be interpreted and applied to achieve the purposes and objectives for which the commission has been established.
[1.8.1.6 NMAC-N, 1-1-2020]

1.8.1.7 DEFINITIONS:

A. "Advisory opinions" are opinions written by the commission responding to questions presented by persons authorized under Paragraph 1 of Subsection A of Section 10-16G-8 NMSA 1978 about how ethics laws apply to specific fact situations.

B. "Interagency agreement" means an agreement between the commission and another state or federal agency, including memoranda of understanding, joint powers agreements, and services agreements.

C. "Joint powers agreement" as used in this part, has the same meaning as it does in the Joint Powers Agreements Act, Section 1-11-1 NMSA 1978.

D. Other words and phrases used in this part have the same meaning as found in 1.8.3.7 NMAC.
[1.8.1.7 NMAC-N, 1-1-2020]

1.8.1.8 DUTIES AND POWERS OF THE DIRECTOR: Without limiting the duties and powers conferred by statute, the director shall have the power to:

A. review complaints filed with the commission for jurisdiction;

B. refer complaints over which the commission has jurisdiction to the general counsel for investigation and possible filing of a complaint;

C. refer complaints, or parts thereof, to other state or federal agencies with jurisdiction over such complaints, pursuant to the terms of any joint powers agreements or other interagency agreements with any such agency;

D. enter into contracts on behalf of the commission, including, with the commission's approval, joint powers agreements;

E. with the approval of the commission and at the direction of the commission's chair, petition courts for the issuance and enforcement of subpoenas in relation to:

- (1) the general counsel's investigations to determine probable cause in connection with a complaint filed with the commission;
- (2) the adjudication of complaints filed with the commission; and
- (3) an investigation related to the commission's determination whether to file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;

F. with the approval of the commission, file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;

G. select and hire staff, including a general counsel;

H. select and contract with hearing officers and other contractors;

I. recommend to the commission adoption of draft rules, forms or legislative changes;

J. prepare annual budgets and appropriation requests for commission approval;

K. authorize the general counsel to administer oaths and take depositions;

L. during a period of vacancy or extended absence in the office of the general counsel, assign any duties assigned to the general counsel by statute or rule to a qualified attorney who is either on the commission's staff or on contract with the commission;

M. draft advisory opinions for the commission's approval;

N. notify parties and the public of commission actions, including dismissals or referrals of complaints;

O. provide for the confidentiality of all records designated as confidential by law;

P. with commission approval, delay notification of a complaint to protect the integrity of a criminal investigation;

Q. perform such other duties as may be assigned from time to time by the commission;

R. issue standing orders to the extent authorized by the commission; and

S. delegate the responsibilities as set forth in this section to appropriate commission staff members.

[1.8.1.8 NMAC-N, 1-1-2020]

1.8.1.9 REFERENCE TO OTHER DOCUMENTS: When a rule issued by the commission refers to another rule, regulation or statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute or document.

[1.8.1.9 NMAC-N, 1-1-2020]

1.8.1.10 INTERPRETATION OF TERMS: Unless the context otherwise requires:

A. Singular/plural. Words used in the singular include the plural; words used in the plural include the singular.

B. Gender. Words used in the neuter gender include the masculine and feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

C. Permissive/mandatory. May is permissive; shall and must are mandatory.

[1.8.1.10 NMAC-N, 1-1-2020]

1.8.1.11 USE OF PRESCRIBED FORMS: The director may prescribe forms to carry out specified requirements of these rules or the state ethics commission act. Prescribed forms, or their substantial equivalent, must be used when available, unless these rules state otherwise or the director waives this requirement in writing. The director shall accept filings made on legible copies of prescribed forms.

[1.8.1.11 NMAC-N, 1-1-2020]

1.8.1.12 ADDRESS FOR FILING DOCUMENTS:

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.

C. By email: ethics.commission@state.nm.us

[1.8.1.12 NMAC-N, 1-1-2020]

1.8.1.13 COMPUTATION OF TIME: In computing any period of time prescribed or allowed by these rules, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation, unless it is a Saturday, Sunday or a day on which the state observes a legal holiday or emergency closure. In case of any such closure, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday, legal holiday or emergency closure day is excluded from the computation.

[1.8.1.13 NMAC-N, 1-1-2020]

1.8.1.14 SEVERABILITY: If any provision of Chapter 8 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 8 of these rules which can be given effect without the invalidated provisions or applications, and to this end the several provisions of Chapter 8 of these rules are hereby declared severable.

[1.8.1.14 NMAC-N, 1-1-2020]



NEW MEXICO STATE ETHICS COMMISSION

800 Bradbury DR SE, Ste. 217, Albuquerque, New Mexico 87106

Jeremy D. Farris, *Executive Director*, (505) 490-0951

Hon. William F. Lang (*Chair*)
Jeff Baker
Stuart M. Bluestone
Hon. Garrey Carruthers
Ron Solimon
Dr. Judy Villanueva
Frances F. Williams

CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.1 (NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

Submitted to New Mexico State Records Center and Archives: December 5, 2019

1. Citation to authority authorizing rule: Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
2. Effective date of rule: January 1, 2020
3. Date of adoption of rule: December 4, 2019
4. Date of meeting at which agency voted to approve rule: December 4, 2019
5. Reasons for adopting rule: To ensure that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission's jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and effective.
6. Reasons for any change between the published proposed rule and the final rule: See Attachment 1.
7. Reasons for not accepting substantive arguments made through public comment: See Attachment 2.



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CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.1 (NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

Reasons for any change between the initial published rule and final adopted rule

Submitted to New Mexico State Records Center and Archives: December 5, 2019

Section 1.8.1.1 through 1.8.1.6

No changes.

Section 1.8.1.7

1.8.1.7(A): Deletes "authorized" and adds "authorized under Paragraph 1 of Subsection A of Section 10-16G-8 NMSA 1978".

Rationale: This amendment makes clear the limitation on who may request an advisory opinion under NMSA 1978, Section 10-16G-8(A)(1).

Section 1.8.1.8 through 1.8.1.14

No changes.



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CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.1 (NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

Reasons for not accepting substantive arguments made through written pre-filed public comment

Submitted to New Mexico State Records Center and Archives: December 5, 2019

Section 1.8.1.1 through 1.8.1.7

No comments were received.

Section 1.8.1.8

1.8.1.8(D) & (J): Mr. Kenneth Resnick argued that the Director's authority to "enter into contracts on behalf of the commission" and "prepare annual budgets and appropriation requests for commission approval" should be clarified so that the Director may only "enter into contracts on behalf of the Commission to those that fall within the scope of the budget or appropriation that the Commission has already expressly approved." Mr. Resnick also argued that the Director's authority to enter into contracts in extraordinary matters should be limited so that such contracts may not exceed a given amount.

Rationale: This comment is declined for several reasons. First, the proposal arguably conflicts with the Legislature's statutory grant of authority to the Executive Director and, therefore, exceeds the Commission's rulemaking power. Second, and practically, requiring the Director to seek approval from the Commission for every contract arguably falling outside the scope of a previously-approved budget or appropriation would increase the Commission's administrative burden. It also does not effectively check the Director's authority, as there would still be arguments over whether a given contract falls within or outside the scope of a previously-approved budget. The Director always remains accountable to the Commission, which has the authority to remove the Director from office.¹

Section 1.8.1.9 through 1.8.1.14

No comments were received.

¹ See NMSA 1978, § 10-16G-6(A) (2019).