

Instructions for completing the NMAC TRANSMITTAL FORM



Your agency must complete the following:

Volume, Issue and Publication Date. [Example: Volume: XXX , Issue: 10, Publication date: May 28, 2019.](#)

Provide the total number of pages of the paper version of the new rule, amendment, repeal, or emergency document. [Note: Do not include the pages of the transmittal form, billing sheet, PO, etc.](#)

Sequence number is for **ALD use only**.

Issuing agency's name and mailing address.

Agency's 3-digit DFA code. [Example: 123](#)

Contact person's Name, Phone number, E-mail address.

Check type of rule action: **New** (brand new rule or replacement rule), **Amendment**, **Repeal** (repeal and do not replace or repeal and replace), **Emergency**, or **Renumber**. [For a repeal and replacement rule, the agency must provide TWO signed transmittal forms; one for the repeal statement and another for the new \(replacement\) rule.](#)

Most Recent Filing Date of the Part for **ALD use only**.

Identify NMAC Title, Chapter and Part numbers and Title, Chapter and Part names.

[Example:](#)

Title 19 Natural Resources and Wildlife
Chapter 30 Wildlife Administration Aquatic
Part 14 Invasive Species

Description of Amendment: (if amending) [Example: "Amending three sections"](#).

Amendment's NMAC citation: (if amending) [Example: "Sections 9 and 18 of 7.1.13 NMAC"](#).

Are any materials incorporated by reference? [Check: Yes or No. If Yes, please list attachments or provide Internet site.](#)

If incorporated, has copyright permission been granted? [Check Yes or No or check if document is in the public domain.](#)

Concise Explanatory Statement for rulemaking adoption See 1.24.25.14 NMAC:

Provide your agency's specific statutory or other authority authorizing rulemaking: Check with your agency's general counsel office to determine the correct citation(s) authorizing your agency to make rules.

Provide your Notice date(s) ([when notice of rulemaking was published in Register](#)): Hearing date(s) (if agency has board or commission): Rule adoption date: ([see note below](#)) and Rule effective date ([date rulemaking becomes effective](#))

Note:

- There must be at least **30** days between the notice publication date and hearing date.
- Your agency **must file** your rule within **15** days from rule adoption date. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement. Unless your rule is an emergency filing, the rule effective date cannot be any earlier than the publication date in the New Mexico Register.

Findings required for rulemaking adoption. If attaching a separate document as findings or as concise explanatory statement, please indicate as such in findings section.

[Check with your agency's general counsel office regarding substance of any required findings to be filed.](#)

Issuing Authority: Name, Title Date signed and original Signature of issuing authority or their delegate in **black ink**:

[Note: If authority has been delegated, this box must be checked. A letter of delegation must be on file with the State Records Center and Archives, Administrative Law Division.](#)

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: New Amendment Repeal Emergency Renumber (ALD Use Only)
Most recent filing date:

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? Yes No 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:

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.

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

Name:

Check if authority has been delegated

Title:

Signature: (BLACK ink only)

Date signed:

FINAL ADOPTED RULE 12/4/19

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION **CHAPTER 8 STATE ETHICS COMMISSION** **PART 2 RECUSAL AND DISQUALIFICATION OF COMMISSIONERS**

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

1.8.2.2 SCOPE: This part applies to all proceedings, cases, and hearings before the commission and all parties that appear before the commission, unless a more specific statutory or regulatory provision applies to the specific type of hearing being conducted.
[1.8.2.2 NMAC-N, 1-1-2020]

1.8.2.3 STATUTORY AUTHORITY: Subsection H of Section 10-16G-7 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
[1.8.2.3 NMAC-N, 1-1-2020]

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

1.8.2.5 EFFECTIVE DATE: Immediate.
[1.8.2.5 NMAC-N, 1-1-2020]

1.8.2.6 OBJECTIVE: The objective of this part is to ensure that all decisions and actions taken by the state ethics commission are free of undue or unlawful influences of any kind, real or apparent. The rule requires commissioners to evaluate their personal interests and attitudes, and to fairly and honestly consider such issues whether or not raised by parties. When appropriate, commissioners shall withdraw from acting on any matter where a real or apparent conflict of interest could undermine the confidence of the public in the fairness of the commission. The rules adopted in this part shall be interpreted and applied to achieve the purposes and objectives for which the commission has been established.
[1.8.2.6 NMAC-N, 1-1-2020]

1.8.2.7 DEFINITIONS:

A. “Disqualification” means the removal by the commission of a commissioner from involvement in a matter of any kind upon a motion by any party alleging a real or apparent conflict of interest or other cause that reasonably calls into question the commissioner’s ability to act impartially in that matter;

B. “Pecuniary interest” means the stricter applicable definition of “financial interest” in Subsection F of Section 10-16-2, the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or in Section 13-1-57, the Procurement Code, Section 13-1-28 NMSA 1978;

C. “Personal bias or prejudice” of a commissioner means a predisposition toward or against a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner’s functions impartially;

D. “Recusal” means the withdrawal of a commissioner from a commission matter of any kind on the grounds that it is inappropriate for the commissioner to participate because of an actual or apparent conflict of interest or lack of impartiality in that matter;

E. Other words and phrases used in this part have the same meaning as found in 1.8.1.7 and 1.8.3.7 NMAC.

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

1.8.2.8 RECUSAL AND DISQUALIFICATION OF COMMISSIONERS:

A. GROUNDS FOR RECUSAL: A commissioner shall recuse from a matter in which the commissioner is unable to make a fair and impartial decision, or in which there is reasonable doubt over whether the commissioner can make a fair and impartial decision, because the commissioner:

(1) has, or appears to have, a personal bias or prejudice concerning a party to the matter;

(2) has prejudged a disputed evidentiary fact involved in the matter;
(3) has a pecuniary interest in the outcome of the matter;
(4) has previously served as an attorney, advisor, consultant or witness in the matter in controversy;
(5) has served as a hearing officer in the matter pursuant to Subsection A of 1.8.3.13 NMAC;
or
(6) believes it is inappropriate to participate in the matter because of an actual or apparent conflict of interest or lack of impartiality in the matter.

B. NOTICE OF RECUSAL: The commissioner shall send notice in writing to the director of a decision to recuse on a matter. That decision shall be communicated to the other commissioners and be publicly disclosed in accordance with the disclosure provisions that apply to commission proceedings.

C. PROCEDURE FOR REQUESTING RECUSAL OR DISQUALIFICATION: When a commissioner subject to recusal under subpart A of this rule does not recuse on his or her own initiative:

(1) a party may request that the commissioner be disqualified, in a motion setting forth the grounds for the request;
(2) such a motion shall be filed with the director, not less than 10 days prior to a hearing in which the commissioner may participate, unless the party did not or could not reasonably have known of the alleged grounds for the request at that time;
(3) the director shall immediately notify the subject commissioner of the motion and ascertain whether the commissioner intends to recuse;
(4) if the commissioner does not recuse, the commissioner shall provide and make available to the public a full written explanation of the refusal to recuse.

D. APPEAL FROM REFUSAL TO RECUSE:

(1) The party requesting recusal may appeal to the full commission the decision by the commissioner not to recuse.
(2) The rest of the commissioners shall, by majority vote, decide whether to disqualify the commissioner who is the subject of the disqualification motion.
[1.8.2.8 NMAC-N, 1-1-2020]

1.8.2.9 LIMITATIONS ON PARTICIPATION BY A COMMISSIONER WHO HAS RECUSED OR BEEN DISQUALIFIED:

A. A commissioner who has recused or been disqualified on a matter:
(1) shall not participate further in any proceedings relating to the matter;
(2) shall be excused from the meeting for any part of the proceedings relating to the matter.
B. The minutes of the commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.
[1.8.2.9 NMAC-N, 1-1-2020]

1.8.2.10 APPOINTMENT OF TEMPORARY COMMISSIONERS WHEN SEVERAL COMMISSIONERS RECUSE OR ARE DISQUALIFIED

A. Upon recusal or disqualification of two or more commissioners from a proceeding, the remaining commissioners shall, by a majority vote, appoint temporary commissioners to participate in that proceeding.
B. Temporary commissioners shall be appointed in accordance with the political affiliation, geographical representation, cultural diversity and other qualifications set forth in the State Ethics Commission Act.
[1.8.2.10 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 1.8.2 (NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

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

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1. Citation to authority authorizing rule: Subsection H of Section 10-16G-7 of the 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 all decisions and actions taken by the state ethics commission are free of undue or unlawful influences of any kind, real or apparent. The rule requires commissioners to evaluate their personal interests and attitudes, and to fairly and honestly consider such issues whether or not raised by parties. When appropriate, commissioners shall withdraw from acting on any matter where a real or apparent conflict of interest could undermine the confidence of the public in the fairness of the commission.
 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 1.8.2 (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 1.8.2.1 through 1.8.2.7

No changes.

Section 1.8.2.8

1.8.2.8(C)(4): Adds “and make available to the public”

Rationale: This amendment provides that, where a commissioner who is subject to recusal under 1.8.2.8(A) elects not to recuse in a particular matter, then that commission not only has to provide a full written explanation of refusal to recuse, but also that this written explanation will be made available to the public.

Section 1.8.2.10

1.8.2.10(A): Adds “recusal or”, so that sentence provides: “Upon recusal or disqualification of two or more commissioners from a proceeding, the remaining commissioners shall, by a majority vote, appoint temporary commissioners to participate in that proceeding.”

Rationale: For completion. Temporary commissioners should preside where a commissioner is either disqualified by the commission or voluntarily recuses.



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CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.2
(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 1.8.2.1 through 1.8.2.10

No comments were received.