

## NOTICE OF RULE MAKING AND PUBLIC RULE HEARING

**Notice of Rulemaking:** The State Ethics Commission [the commission] will hold a public hearing on the proposed amendment of certain rules, as detailed below. These amendments are proposed pursuant to Sections 10-16-11 and 11.1, NMSA 1978; Subsection C of Section 10-15-1, NMSA 1978; Section 10-16G-8, NMSA 1978; and Paragraph 4 of Subsection B of Section 10-16G-5, NMSA 1978. No technical scientific information was consulted in drafting these proposed amendments.

Copies of all the proposed amendments may be found at the Commission's website, <https://www.sec.state.nm.us>, or at the commission's main office in Albuquerque: the State Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

**Notice of Public Rule Hearing:** The public rule hearing is currently scheduled to occur on Friday, August 13, 2021 at 9:00 am in UNM's Science and Technology Park's Executive Board Room, 851 University SE, Suite 200, Albuquerque, NM 87106. It is possible that, pursuant to the Public Health Emergency declared by Governor Michelle Lujan Grisham in Executive Order 2020-004, as extended, and in light of the current pandemic, the Commission will decide to conduct this meeting remotely at that time and date rather than in person. In that case, instructions for public participation will be posted on the Commission's website, <https://www.sec.state.nm.us>. Members of the public are advised to check this website before the meeting to confirm whether it will be held in person or over the internet. The public hearing will be conducted in a fair and equitable manner by the commission and shall be recorded. Any interested member of the public may attend the hearing, in person or remotely, and will be provided a reasonable opportunity to offer public comment, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Sonny.Haquani@state.nm.us. The commission will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least five calendar days before the scheduled hearing.

**Notice of Acceptance of Written Public Comment:** Written public comments, including presentation of data, views, or arguments about the proposed amendments, from any interested member of the public will be accepted until 5:00 p.m. on Wednesday, August 11, 2021, by submitting them via email to [ethics.commission@state.nm.us](mailto:ethics.commission@state.nm.us) with the subject line "SEC Rulemaking R21-01," or via first class mail or by hand delivery to the commission's Albuquerque office: New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

**Description of Proposed Amendments:** In compliance with Section 14-4-5.2 NMSA 1978, this notice includes the following summary of the proposed amendment, a short explanation of the purpose of the amendment, and specific legal authority authorizing the amendment and proposed new rule. The method and manner of public comment and notice of public hearing on the proposed rules are listed above.

**The proposed amendments are as follows: amendments to 1.8.1 NMAC, Sections 9 & 13; amendments to 1.8.3 NMAC, Sections 1, 7, 9, 10, 11, 12, 13, 14, 15, 16.**

**1.8.1.9 NMAC ("Advisory opinions and informal advisory opinions"); proposed amendments:** The proposed amendments to 1.8.1.9 NMAC (i) add a new paragraph to Subsection A of Section 1.8.1.9 that permits a member of the commission to request an advisory opinion based on a legal determination issued by the director, the general counsel, or a hearing officer; and (ii) add a new paragraph to Subsection B of Section 1.8.1.9 giving the director discretion to decide whether to issue an informal advisory opinion or request that the commission issue a formal advisory opinion in response to a request that does not specify whether an informal or formal advisory opinion is sought.

**1.8.1.13 NMAC ("Address for filing documents"); proposed amendments:** This section currently provides an address for the filing of documents with the commission. The proposed amendments to 1.8.1.13 NMAC change the section title to "Address" and deleting "for filing documents." The commission has created an electronic filing system for filings related to administrative complaints and maintains an email address for receipt of other submissions. The amendment removes the reference to "for filing documents" because the commission discourages

physical submission of materials. The proposed amendments to 1.8.1.13 also amend the commission's address to the current, correct address.

**1.8.3 NMAC (“Administrative hearings”); proposed amendments:** Part 3 governs the initiation, investigation, and adjudication of ethics complaints. The proposed amendments add definitions of important terms to account for changes to the complaint filing process. The proposed amendments streamline and improve the processes governing the investigation of complaints, the issuance and enforcement of subpoenas, and the conduct of hearings on complaints. The proposed amendments to 1.8.3 NMAC:

- conform the commission's administrative rules with Laws 2021, Chapter 109 (House Bill 244, as amended), which amends the State Ethics Commission Act to delete the notarization requirement for administrative complaints;
- conform the commission's administrative rules with the commission's electronic case management and filing system;
- improve the efficient and fair administration of the commission's administrative cases by resolving several gaps and ambiguities that staff have noted in the past sixteen months, by (among other things) allowing complainants to amend their complaints, limiting complainants in the number of complaints they may file in a calendar year (to prevent vexatious litigants), enabling the executive director to make jurisdictional determinations more efficiently, enabling the general counsel to make probable cause determinations more efficiently, formalizing the process by which the commission may initiate administrative complaints, and clarifying the commission's subpoena powers.