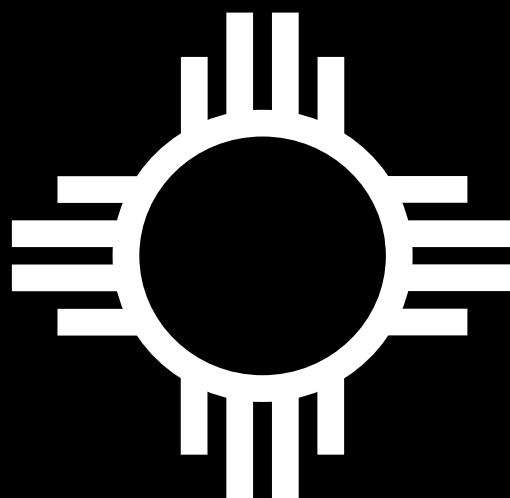


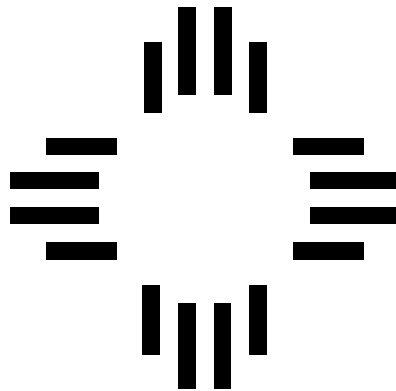
**NEW
MEXICO
REGISTER**



Volume XV
Issue Number 22
November 30, 2004

New Mexico Register

Volume XV, Issue Number 22
November 30, 2004



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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Administrative Law Division
Santa Fe, New Mexico
2004

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New Mexico Register

Volume XV, Number 22

November 30, 2004

Table of Contents

Chiropractic Examiners, Board of	
Public Rule Hearing and Regular Board Meeting	1025
Finance and Administration, Department of	
Local Government Division	
Notice of Meeting and Proposed Rulemaking	1025
Game Commission	
State Game Commission Public Meeting and Rulemaking Notice	1025
Livestock Board	
Notice of Rulemaking and Adoption of Rule Hearing and Regular Board Meeting	1026
Manufactured Housing Committee	
Legal Notice; Public Hearing Notice	1026
Optometry, Board of Examiners in	
Public Rule Hearing and Regular Board Meeting	1026
Public Records, Commission of	
Notice of Regular Meeting and Notice of Rulemaking	1026
Public Regulation Commission	
Utility Division	
Notice of Proposed Rulemaking (<i>Amendments to Rules 560 and 650</i>)	1027
Notice of Proposed Rulemaking (<i>Rule 591</i>)	1028
Notice of Proposed Rulemaking (<i>Rule 594</i>)	1028
Regulation and Licensing Department	
Construction Industries Division	
Notice of Public Hearing	1029
Taxation and Revenue Department	
Notice of Hearing and Proposed Rules	1029
Workers' Compensation Administration	
Notice of Public Hearing	1032

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Environmental Improvement Board			
20.2.71 NMAC	A	Operating Permit Emissions Fees	1033
Fair Commission, State			
SF-79-1	R	Premium Book, 1979	1034
SF-79-2	R	Conditions and Stakes, 1979	1034
SF-80-1	R	(Regulation 78-1) A Regulation Defining Technical and Professional Services	1034
Rule 82-1	R	Deadly Weapons Prohibited	1034
Rule 82-2	R	Alcoholic Beverages	1034
4 NMAC 3.1	R	Subpart 1, Due Process and Disciplinary Action - General Requirements and Subpart 2, Meetings by Telephone	1034
4 NMAC 3.2	R	Due Process and Disciplinary Action - Residue Avoidance Program	1034
4 NMAC 3.3	R	Due Process and Disciplinary Action - Junior Division General Requirements	1034
4 NMAC 3.5	R	Participant Requirements - State Fair Parade	1034
4 NMAC 3.6	R	Due Process and Disciplinary Action - Horse Division Requirements	1034
4 NMAC 3.7	R	Due Process and Disciplinary Action - Livestock Division Requirements	1034
4 NMAC 3.8	R	Participant Requirements - Agriculture and Floriculture Division	1034
4 NMAC 3.9	R	Participant Requirements - Home Arts and Creative Arts Division	1034
4 NMAC 3.10	R	Participant Requirements - Concessions and Commercial Exhibits	1034

4.3.1 NMAC	N	State Fair - General Provisions	1035
4.3.3 NMAC	N	Participant Requirements - Junior Division	1037
4.3.5 NMAC	N	Participant Requirements - State Fair Parade and Grand Entry	1038
4.3.6 NMAC	N	Participant Requirements - Horse Division	1039
4.3.7 NMAC	N	Participant Requirements - Livestock Division	1039
4.3.8 NMAC	N	Participant Requirements - Agriculture and Floriculture Division	1040
4.3.9 NMAC	N	Participant Requirements - Home Arts and Creative Arts Division	1041
4.3.10 NMAC	N	Participant Requirements - Concessions and Commercial Exhibits	1042
Game and Fish, Department of			
19.31.4 NMAC	A / E	Fisheries	1043
Human Services Department			
Medical Assistance Division			
8.200.400 NMAC	A	General Medicaid Eligibility	1043
8.232.400 NMAC	A	Recipient Policies	1044
8.312.3 NMAC	A	Cost Related Reimbursement of Nursing Facilities	1044
8.324.5 NMAC	A	Durable Medical Equipment and Medical Supplies	1046
Pharmacy, Board of			
16.19.4 NMAC	A	Pharmacist	1047
16.19.24 NMAC	A	Emergency Medical Services Dangerous Drugs	1048
Transportation, Department of			
18 NMAC 28.3	R	Selection Committee for Qualifications Based Proposals	1049
18.28.3 NMAC	N	Selection Committee for Qualifications Based Proposals	1049
Workers' Compensation Administration			
11.4.3 NMAC	A / E	Payment of Claims and Conduct of Parties	1050
11.4.2 NMAC	Rn & A	Data Reporting and Safety Requirements	1050
11.4.3 NMAC	Rn & A	Payment of Claims and Conduct of Parties	1053

Other Material Related to Administrative Law

Workers' Compensation Administration			
Director's Response to Public Comment - Extra Hazardous Employers			1055
Director's Response to Public Comment - Employer Conduct Rules			1055

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

Public Rule Hearing and Regular Board Meeting

Notice is hereby given that the New Mexico Board of Chiropractic Examiners will convene a public rule hearing at 9:00 a.m. on Friday, January 14, 2005, followed by a regular business meeting during which action will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters. The hearing and meeting will be held at the Toney Anaya Building, 2550 Cerrillos Rd., West Capitol Complex, Santa Fe, NM.

The purpose of the rule hearing is to consider adoption of proposed amendments to the following Board Rules and Regulations in 16.4 NMAC: Part 18 Practice Procedures.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4613 after December 14, 2004. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than December 31, 2004. Persons wishing to present their comments at the hearing will need (9) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4613 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION LOCAL GOVERNMENT DIVISION

NOTICE OF MEETING AND PROPOSED RULEMAKING

Local Government Division, Department of Finance and Administration, Suite 203, Bataan Memorial Building, Santa Fe, New Mexico 87501, Contact: Paul E. Romero,

Project Manager (505-827-4797).

NOTICE OF MEETING

The New Mexico Individual Development Account Act Advisory Committee has scheduled a regular meeting for Tuesday, November 30, 2004, at 10:00 A.M. The meeting will be held at the **State Capitol Building, Corner of Paseo de Perelta & Old Santa Fe Trail, Third Floor - Room 305, Santa Fe, NM 87503** which is an accessible facility. A final copy of the agenda will be available 24 hours before the meeting.

NOTICE OF PROPOSED RULEMAKING

Local Government Division will hold a public rules hearing on Tuesday, November 30, 2004 from 11:00 a.m. to 12:30 p.m. at the **State Capitol Building, Corner of Paseo de Perelta & Old Santa Fe Trail, Third Floor - Room 305, Santa Fe, NM 87503**.

The purpose of the public hearing is to receive public comment on the proposed Individual Development Account Rules (Title 2 - Public Finance, Chapter 79 - Individual Development Accounts, Part 1 - General Provisions). This is a new rule required under the Individual Development Account Act, Section 58-30-1 through 12 NMSA 1978 (2003).

Copies of the proposed rules can be obtained at the Department of Finance and Administration, Local Government Division web site at: www.state.nm.us/clients/dfa/files/lgd. Copies may also be obtained via US Postal Service by making a request to Paul E. Romero at 505-827-4797. **Interested individuals may testify at the public rules hearing and/or may submit written comments no later than 4:00 p.m., November 26, 2004**, to Local Government Division, Room 203, Bataan Memorial Building, Santa Fe, New Mexico 87501, or email to paul.romero@state.nm.us. All written and oral testimony will be considered prior to issuance of the final Individual Development Account. A final copy of the agenda will be available 24 hours before the meeting.

Accommodations: If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or services to attend or participate in the hearing or meeting, please **contact Paul E. Romero, Local Government Division at 505-827-4797**. The Department of Finance and Administration requests at least ten (10) working days

advance notice to provide requested alternative formats and/or special accommodations. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Wednesday, December 15, 2004, beginning at 9:00 a.m. at the Indian Pueblo Cultural Center, 2401 12TH St., NW, Albuquerque, NM 87104, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Mutual Interests with Soil and Water Conservation Commission; Update on Memorandum of Understanding (MOU) for Mexican Wolves; Draft Recovery Plan for Zuni Bluehead Sucker Listed as Endangered Under the Wildlife Conservation Act (Section 17-2-40.1, NMSA 1978); Draft Recovery and Conservation Plan for Four (4) Invertebrate Species (*Noel's Amphipod*, *Pecos Assimineia*, *Koster's Springsnail*, and *Roswell Springsnail*) Listed as Endangered Under the Wildlife Conservation Act (Section 17-2-40.1, NMSA 1978); and High Elevation Rocky Mountain Bighorn Sheep Population Management. There will also be a closed Executive Session to discuss personnel, litigation and land acquisitions as per 10-15-1 NMSA.

The Commission will open the following rules for amendment or adoption:

Amend the Private Land Elk License Allocation Rule 19.30.5, NMAC as follows: Change 19.30.5.9 and 19.30.5.10 on agreements from a 2-year agreement to a single year agreement. A review of the entire Private Land Elk License Allocation System is currently underway. Multi-year agreements would restrict the Commission's ability to make changes in this system that may result from the current review. Amend 19.30.5.8, Paragraph M, NMAC, by changing the Bag Limit for "default" authorizations in GMU 4 from MB-A to "APRE" to reflect Bag Limit changes in the Big Game and Turkey Rule adopted by the Commission in September, 2004. Amend 19.30.5.8, Paragraph H, Section 3, NMAC, to change the deadline for submittal of ranch management plans and harvest reports for "Ranch Only" ranches engaged in a 10,000-acre agreement with the Department from April 1 annually to February 1, annually; and

Implementing Regulations for Gaining Access into Nature (GAIN), The Commission will consider adopting new regulations (19.34.3.3, 19.34.3.7, and 19.34.3.11, NMAC) to implement the Gaining Access Into Nature (G.A.I.N.) Program.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's web site at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

NEW MEXICO LIVESTOCK BOARD

NOTICE OF RULE MAKING AND ADOPTION OF RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a rules hearing and regular board meeting will be held on Thursday, December 2, 2004, at the Albuquerque Hilton, 1901 University Blvd, NE, Albuquerque, New Mexico, at 9:00 a.m. The Board will initiate rule changes regarding intrastate individual identification for sheep and goats, which is consistent with the Federal Scrapie Eradication Program; initiate and adopt rules regarding meat inspection licenses and other matters of general business.

Copies of the agenda can be obtained by contacting Daniel Manzanares, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

NEW MEXICO MANUFACTURED HOUSING COMMITTEE

LEGAL NOTICE

PUBLIC HEARING NOTICE

The Manufactured Housing Committee has re-scheduled the Public Hearing from November 22, 2004 to January 24, 2005 for the purpose of Rulemaking, at 9:00 a.m., at the Regulation and Licensing Department, 5200 Oakland Avenue NE, Albuquerque, New Mexico. The regular bi-monthly committee meeting will still be held on November 22, 2004 at 9:00 a.m., at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, New Mexico.

The public is invited to attend and comment on the Division's proposed Rules and Regulation (rules), specifically, New Mexico Administrative Code, Sections 14.12.2. The Committee will receive recommendations and written comments on all Sections of 14.12.2 NMAC. Written recommendations, including draft language should be addressed to the Manufactured Housing Committee at the address listed below. These recommendations must be submitted no later than January 12, 2005, to be considered for inclusion in the proposed rule. Written and oral comments will be received on the proposed rule at the Public Hearing. Immediately following the Public Hearing, the State of New Mexico Manufactured Housing Committee will hold its Bimonthly Committee Meeting, and the adoption of the proposed rule changes will be on the agenda for that meeting. At the meeting, the Committee will vote to approve or disapprove the recommended rule changes. The meeting will be held pursuant to the Open Meetings Act.

Copies of the AGENDA may be obtained by making a written or faxed request to the Manufactured Housing Division (MHD), 2550 Cerrillos Rd, P.O. Box 25101, Santa Fe, New Mexico 87504, Phone: (505) 476-4770 or Fax: (505) 476-4702.

Pursuant to the Americans with Disabilities Act, participants with special needs should contact the Manufactured Housing Division no later than January 12, 2005.

John Alejandro Sr., Director
Manufactured Housing Division
PO Box 25101- Santa Fe, New Mexico
87504

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

Notice is hereby given that the New Mexico Board of Examiners in Optometry will convene a public rule hearing at 10:00 a.m. on Sunday, January 9, 2005, followed by a regular business meeting hearing during which action will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters. The hearing and meeting will be held at the Santa Fe Community Housing Trust office located at 500 West San Francisco in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider for adoption proposed amendments to the following Board Rules and Regulations in 16.16 NMAC: PART 5, "Examination for Optometric Licensure"; PART 13, "Continuing Education"; and PART 19, "Contact Lenses".

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4660, 476-4624, or access them in the "News" link on the Board's Website at www.rld.state.nm.us/b&c/optometry after December 9, 2004. All written comments, mailed to the Board office or e-mailed to Optometrybd@state.nm.us or Carmen.payne@state.nm.us, must be received no later than Friday, December 24, 2004, in order for the Board members to receive the comments in their meeting packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need nine (9) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4660 or 476-4624 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has

scheduled a regular meeting for Tuesday, December 7, 2004, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM 87507. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Ruben Rivera at 476-7902 by November 29, 2004. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendment

- 1.15.2 NMAC GRRDS, General Administrative Records
- 1.15.3 NMAC GRRDS, General Administrative Records (for use by local government and educational institutions)

Repeal

- 1.18.305 NMAC ERRDS, Office of the Attorney General
- 1.18.369 NMAC ERRDS, State Records Center and Archives
- 1.18.927 NMAC ERRDS, School for the Deaf

New-Replacement

- 1.18.305 NMAC ERRDS, Office of the Attorney General
- 1.18.369 NMAC ERRDS, Commission of Public Records
- 1.18.927 NMAC ERRDS, School for the Deaf

**NEW MEXICO PUBLIC REGULATION
COMMISSION
UTILITY DIVISION**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE AMENDMENT)
OF NMPRC RULES 560 and 650 REGARDING)
INTEREST ON CUSTOMER DEPOSITS AND)
METER TESTING FACILITIES, UTILITY DIVISION)
STAFF OF THE PUBLIC REGULATION COMMISSION,)
Petitioner)
NOTICE OF PROPOSED RULEMAKING)

**Utility Case
No.04-00201-UT**

NOTICE is hereby given that the New Mexico Public Regulation Commission (“NMPRC” or the “Commission”) is commencing a rulemaking proceeding for the purpose of addressing proposed amendments to NMPRC Rules 560.19(b)1 [17.9.560.12.B.(2)(a) NMAC] and 650.19(b)1 [17.10.650.11.B.(2)(a) NMAC] pertaining to interest on customer deposits, and Rule 560.42 [17.9.560.14.I NMAC] pertaining to meter testing facilities. The proposed rule amendments would be adopted under authority granted to the Commission by the Legislature pursuant to NMSA 1978 Sections 8-8-4(B)(10) 1999, and 8-8-15 (2001).

On June 21, 2004, Commission Utility Division Staff filed a Petition for Rulemaking. The Petitioners requested that the Commission commence a rulemaking proceeding to adopt certain amendments to NMPRC Rules 560.19(b)1 and 650.19(b)1 pertaining to interest on customer deposits, and Rule 560.42 pertaining to Commission approval of meter testing facilities. The proposed changes to Rules 560.19(b)1 and 650.19(b)1 involve bringing these Rules into compliance with NMSA 1978, Section 62-13-13 (2003 Cum. Supp.), with respect to the interest rate to be paid on customer deposits by electric, gas, and electric cooperative utilities. The proposed changes to Rule 560.42 involve clarification of the Commission’s inspection and approval authority over facilities, equipment and methods for meter testing by electric utilities. Staff’s proposed changes, and certain additional changes, to these rules are shown in legislative format in Exhibits 1 and 2 attached to this Notice.

Any person wishing to comment on the proposed amendments to Rule 560.19(b)1

[17.9.560.12.B.(2)(a) NMAC] and Rule 650.19(b)1 [17.10.650.11.B.(2)(a) NMAC] pertaining to interest on customer deposits, and Rule 560.42 [17.9.560.14.I NMAC] pertaining to meter testing facilities, may do so by submitting written comments no later than December 15, 2004. Any person wishing to respond to comments may do so by submitting written response comments no later than January 7, 2005. Comments suggesting changes to the rule amendments, as proposed, shall state and discuss the particular reasons for the suggested changes, and shall include all specific language necessary or appropriate to effectuate the changes being suggested.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Comments on the proposed rule amendments, shall be sent to:

Ron X. Montoya, Records
Manager
NMPRC-Utility Division
Marian Hall
224 East Palace Avenue
Santa Fe, New Mexico 87501
Telephone: (505) 827-6940

A public hearing will begin at 9:30 a.m. on January 13, 2005 in the 4th Floor Hearing Room at the offices of the Public Regulation Commission, P.E.R.A Building, 1120 Paseo de Peralta, corner of Old Santa Fe Trail and Paseo de Peralta, Santa Fe, New Mexico, to receive oral comment and to clarify or supplement the written comments. No testimony or other evidence will be taken at the hearing, as this is a rulemaking proceeding.

Copies of any Final Order adopting the proposed rule modification will be sent, along with copies of the subpart of the rule amended, to all affected utilities, commenters in the case, and individuals requesting such copies.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 2nd day of November 2004.

NEW MEXICO PUBLIC REGULATION COMMISSION

HERB H. HUGHES, CHAIRMAN

DAVID W. KING, VICE CHAIRMAN

JEROME D. BLOCK, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
UTILITY DIVISION**

BEFORE THE NEW MEXICO PUBLIC
REGULATION COMMISSION

IN THE MATTER OF THE
PETITION OF THE
UTILITY DIVISION STAFF
OF THE PUBLIC REGULATION
COMMISSION FOR
RULEMAKING,
ADOPTING NMPRC
RULE 591, REGARDING
STANDARD OFFER SERVICE
OFFERED BY PUBLIC
UTILITIES AND
DISTRIBUTION
COOPERATIVE UTILITIES
UNDER THE RESTRUCTURING
ACT,

Utility Case
No. 3109

UTILITY DIVISION STAFF OF THE
PUBLIC REGULATION COMMISSION,

Petitioner.

NOTICE OF PROPOSED RULEMAKING

NOTICE is hereby given that the New Mexico Public Regulation Commission ("NMPRC" or the "Commission") is commencing a rulemaking proceeding for the purpose of proposing the repeal of NMPRC Rule 591, which is 17.9.591 NMAC. Rule 591 is the standard offer rule the Commission adopted in its Final Order issued in this case on May 2, 2000. The Commission adopted that rule because of the requirements of the now repealed Electric Utility Industry Restructuring Act of 1999, NMSA 1978, Section 62-3A-1 et seq., Laws 1999, Ch.294. That Act would have substantially deregulated the electric utility industry in New Mexico. In 2003 the Restructuring Act was repealed by Laws 2003, ch. 336 Section 9. In view of the repeal of the Restructuring Act, Rule 591 is no longer needed. Rule 591 would have applied to a restructured electric industry and that restructured industry will not exist in New Mexico.

Any person wishing to comment on the proposed Repeal of Rule 591 may do so by submitting written comments no later than December 15, 2004. Any person wishing to respond to comments may do so by submitting written response comments no later than January 7, 2005. This NOPR should be published in two newspapers of general circulation in the State and in the New Mexico Register.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Comments on the proposed repeal of the rule shall be sent to:

Ron X. Montoya, Records Manager
NMPRC - Utility Division
Marian Hall
224 East Palace Avenue
Santa Fe, NM 87501
Telephone: (505) 827-6940

A public hearing will begin at 9:30 a.m. on January 13, 2005 in the 4th Floor Hearing Room at the offices of the Public Regulation Commission, PERA Building, 1120 Paseo de Peralta, corner of Old Santa Fe Trail and Paseo de Peralta, Santa Fe, New Mexico, to receive oral comment and to clarify or supplement any written comments. No testimony or other evidence will be taken at the hearing, as this is a rulemaking proceeding.

Copies of any Order repealing Rule 591 will be sent to all affected utilities, commenters in the case, and individuals requesting such copies.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 9th day of November 2004.

**NEW MEXICO PUBLIC REGULATION
COMMISSION**

HERB H. HUGHES, CHAIRMAN

DAVID W. KING, VICE CHAIRMAN

JEROME D. BLOCK, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
UTILITY DIVISION**

BEFORE THE NEW MEXICO PUBLIC
REGULATION COMMISSION

IN THE MATTER OF
THE PETITION OF THE
UTILITY DIVISION STAFF
OF THE PUBLIC
REGULATION COMMISSION
FOR RULEMAKING, ADOPTING
NMPRC RULE 591,
ESTABLISHING A CODE
OF CONDUCT FOR
PUBLIC UTILITIES AND
AFFILIATES UNDER

Utility Case
No. 3106

THE RESTRUCTURING ACT,

UTILITY DIVISION STAFF OF THE
PUBLIC REGULATION COMMISSION,

Petitioner.

NOTICE OF PROPOSED RULEMAKING

NOTICE is hereby given that the New Mexico Public Regulation Commission ("NMPRC" or the "Commission") is commencing a rulemaking proceeding for the purpose of proposing the repeal of NMPRC Rule 594, which is 17.9.594 NMAC. Rule 594 is the Code of Conduct rule the Commission adopted in its Final Order issued in this case on April 4, 2000. The Commission adopted that rule because of the requirements of the now repealed Electric Utility Industry Restructuring Act of 1999, NMSA 1978, Section 62-3A-1 et seq., Laws 1999, Ch.294. That Act would have substantially deregulated the electric utility industry in New Mexico. In 2003 the Restructuring Act was repealed by Laws 2003, ch. 336 Section 9. In view of the repeal of the Restructuring Act, Rule 594 is no longer needed. Rule 594 would have applied to a restructured electric industry and that restructured industry will not exist in New Mexico.

Any person wishing to comment on the proposed Repeal of Rule 594 may do so by submitting written comments no later than December 15, 2004. Any person wishing to respond to comments may do so by submitting written response comments no later than January 7, 2005. This NOPR should be published in two newspapers of general circulation in the State and in the New Mexico Register.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Comments on the proposed repeal of the rule shall be sent to:

Ron X. Montoya, Records Manager
NMPRC - Utility Division
Marian Hall
224 East Palace Avenue
Santa Fe, NM 87501
Telephone: (505) 827-6940

A public hearing will begin at 9:30 a.m. on January 13, 2005 in the 4th Floor Hearing Room at the offices of the Public Regulation Commission, PERA Building, 1120 Paseo de Peralta, corner of Old Santa Fe Trail and Paseo de Peralta, Santa Fe, New Mexico, to receive oral comment and to clarify or supplement any written comments. No testimony or other evi-

dence will be taken at the hearing, as this is a rulemaking proceeding.

Copies of any Order repealing Rule 594 will be sent to all affected utilities, commenters in the case, and individuals requesting such copies.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 9th day of November 2004.

NEW MEXICO PUBLIC REGULATION COMMISSION

HERB H. HUGHES, CHAIRMAN

DAVID W. KING, VICE CHAIRMAN

JEROME D. BLOCK, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**STATE OF NEW MEXICO
REGULATION AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

NOTICE OF PUBLIC HEARING

A public meeting for the purpose of receiving comments on adoption of the 2004 NFPA 58 will be held at the following time and place:

January 3, 2005, from 9:00 a.m. to 12:00 Noon
Construction Industries Office
near the intersection of I-25 and Alameda
5200 Oakland NE, Albuquerque, New Mexico 87113

The public is invited to attend and comment on the adoption of the above-referenced proposed rule. If you cannot attend the meeting, you may send comments to Construction Industries Division, ATTENTION: LP Gas Bureau, 5200 Oakland NE, Albuquerque, New Mexico 87113. No comments will be received after 12:00 noon, January 3, 2005.

Copies of the rule will be available at the Construction Industries Division Offices.

If you require special accommodations, please notify the Division of such needs no later than December 27, 2004, by calling Lolita Montoya (505) 222-9808.

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The Department proposes to adopt the following regulations:

3.1.11.19 NMAC Section 7-2-2 NMSA 1978 Tax Administration Act
(Penalty for Failure to Correctly Report Deduction Amount)

3.2.240.7 NMAC Section 7-9-92 NMSA 1978 Gross Receipts and Compensating Tax Act
(Definitions: "Food", "Retail Food Store" and "Home Consumption")

3.2.240.8 NMAC Section 7-9-92 NMSA 1978 Gross Receipts and Compensating Tax Act
(Who is a Retail Food Store)

3.2.240.9 NMAC Section 7-9-92 NMCA 1978 Gross Receipts and Compensating Tax Act
(Equivalence of Food Sales for Food Stamp and Section 7-9-92 NMSA 1978 Purposes)

3.2.240.10 NMAC Section 7-9-92 NMCA 1978 Gross Receipts and Compensating Tax Act
(Receipts Exempt or Deductible Under Other Sections)

3.2.241.7 through 16 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and Compensating Tax Act

(Definitions: "Scope of Practice" Defined)
3.2.241.8 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and Compensating Tax Act
(Receipts Deductible Under Other Sections)

3.2.241.9 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and Compensating Tax Act
(Receipts Not Deductible Under Section 7-9-93 NMSA 1978)

3.2.241.10 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and Compensating Tax Act
(Receipts of Corporate Practice)

3.2.241.11 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and Compensating Tax Act
(Valid Certificate of Compliance Required)

3.2.241.12 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and

Compensating Tax Act
(Self-Insurers May be "Managed Health Care Providers")

3.2.241.13 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and Compensating Tax Act

(Payments from Workers Compensation)
3.2.241.14 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and Compensating Tax Act

(Receipts of Health Care Facilities Not Deductible)

3.2.241.15 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and Compensating Tax Act

(Receipts From "Medigap" Insurance Policies Not Deductible)

3.2.241.16 NMCA Section 7-9-93 NMSA 1978 Gross Receipts and Compensating Tax Act

(Receipts For Administrative Services Not Deductible)

The proposals were placed on file in the Office of the Secretary on November 15, 2004. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about January 31, 2005.

A public hearing will be held on the proposals on Tuesday, January 4, 2005, at 9:30 a.m. in the 1st floor auditorium of the Harold Runnels Bldg., 1190 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before January 4, 2005.

3.1.11.19 PENALTY FOR FAILURE TO CORRECTLY REPORT DEDUCTION AMOUNT:

A. A taxpayer who takes the benefit of the deduction provided by either Section 7-9-92 or 7-9-93 NMSA 1978 and fails to correctly report an amount deductible under those sections is subject to the penalty provided by Section 7-1-71.2, NMSA 1972.

B. A taxpayer fails to correctly report the amount of a deduction provided by Section 7-9-92 or 7-9-93 NMSA 1978 when the taxpayer:

(1) Excludes from both reported gross receipts and reported deductions an amount deductible under those sections and not otherwise exempt.

(2) Example 1: A "big box" store has sales of \$200,000. \$10,000 is from sales

of food in exchange for food stamps and \$20,000 is from other sales of food. The taxpayer reports gross receipts of \$170,000 and zero deductions and pays the appropriate tax on the \$170,000. Although the \$10,000 in food stamp sales is exempt under Section 7-9-18.1 NMSA 1978, the other \$20,000 in food sales is not. Those sales are deductible under Section 7-9-92 NMSA 1978 and must be reported as gross receipts and then deducted properly. The penalty under Section 7-1-71.2 NMSA 1978 applies to the under-reported \$20,000.

(3) Does not report an amount deductible under those sections separately from other deductions in accordance with instructions of the secretary.

(4) Example 2: An osteopath has \$25,000 in receipts. The osteopath sold under contract \$5,000 worth of services to a hospital for re-sale to a patient and has accepted a Type 5 nontaxable transaction certificate in connection with those services. The \$5,000 is deductible under Section 7-9-48 NMSA 1978. The remaining \$20,000 in services are also deductible, but under Section 7-9-93 NMSA 1978. The osteopath reports, contrary to the instructions of the secretary, on a single line \$25,000 in gross receipts and \$25,000 in deductions. The penalty under Section 7-1-71.2 NMSA 1978 applies to this \$20,000 under-reporting of the deductions subject to Section 7-9-93 NMSA 1978.

(5) Reports an amount as a deduction under those sections when the amount should be reported as an exemption or deduction under another section of the Gross Receipts and Compensating Tax Act.

(a) Example 3: A grocer sells qualifying food items to a food stamp recipient in exchange for food stamps. The grocer deducts the value of the food stamps received under Section 7-9-92 NMSA 1978. The sale of food items purchased with food stamps is exempt under Section 7-9-18.1 NMSA 1978. The taxpayer has over-reported deductions under Section 7-9-92 NMSA 1978 and the penalty under Section 7-1-71.2 NMSA 1978 applies to the amount of the over-reporting.

(b) Example 4: A physician receives payment from a medicare administrator for health care services provided to a medicare enrollee. The physician deducts the payment from gross receipts under Section 7-9-93 NMSA 1978. Medicare payments to physicians are deductible under Section 7-9-77.1 NMSA 1978. The physician has over-reported the deduction under Section 7-9-93 NMSA 1978 and the penalty under Section 7-1-71.2 NMSA 1978 applies to the over-reporting.

(6) Reports as a deduction under those sections an amount in excess of that permitted by those sections.

C. The penalty provided

by Section 7-1-71.2. NMSA 1978 is in addition to other penalties provided by the Tax Administration Act.

D. Because not claiming a deduction is not a failure to correctly report the amount of a deduction, the penalty will not apply if the taxpayer is entitled to, but does not claim, a deduction under Section 7-9-92 or 7-9-93 NMSA 1978.

[3.1.11.19 NMAC - N, XXX]

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES

PART 240 DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF SALE OF FOOD AT RETAIL FOOD STORE

3.2.240.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.2.240.1 NMAC - N, XXX]

3.2.240.2 **SCOPE:** This part applies to each person engaging in business in New Mexico.

[3.2.240.2 NMAC - N, XXX]

3.2.240.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.

[3.2.240.3 NMAC - N, XXX]

3.2.240.4 **DURATION:** Permanent.

[3.2.240.4 NMAC - N, XXX]

3.2.240.5 **EFFECTIVE DATE:** XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.240.5 NMAC - N, XXX]

3.2.240.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.240.6 NMAC - N, XXX]

3.2.240.7 **DEFINITIONS:** "FOOD", "RETAIL FOOD STORE" AND "HOME CONSUMPTION": For purposes of Section 7-9-92 NMSA 1978, the definitions of "food", "food retail store" and "home consumption" are the definitions set forth in the federal Food Stamp Act of 1964, codified at 7 USC 2011 *et seq.*, as amended or renumbered and any regulations, rules and administrative materials promulgated thereunder, as they may be amended or renumbered.

[3.2.240.7 NMAC - N, XXX]

3.2.240.8 **WHO IS A RETAIL FOOD STORE:**

A. A taxpayer that is authorized to accept food stamps under the federal Food Stamp Act is presumed to be a retail food store for the purpose of Section 7-9-92 NMSA 1978 for tax periods during which the taxpayer is authorized to accept food stamps. A taxpayer that meets the definition of "retail food store" but does not participate in the federal food stamp program may qualify as a retail food store for the purpose of Section 7-9-92 NMSA 1978 if the secretary certifies that the taxpayer is a retail food store. A taxpayer seeking certification as a "retail food store" shall apply for certification in the manner and on forms as the secretary shall prescribe.

B. A taxpayer who is not authorized under the federal Food Stamp Act to accept food stamps, and who has not been certified as a food retail store by the secretary, is presumed not to be a food retail store.

[3.2.240.8 NMAC - N, XXX]

3.2.240.9 **EQUIVALENCE OF FOOD SALES FOR FOOD STAMP AND SECTION 7-9-92 NMSA 1978**

PURPOSES: Receipts from the sale of food for which a taxpayer could have accepted food stamps are receipts from the sale of food for purposes of Section 7-9-92 NMSA 1978.

[3.2.240.9 NMAC - N, XXX]

3.2.240.10 **RECEIPTS EXEMPT OR DEDUCTIBLE UNDER OTHER SECTIONS:**

Taxpayers may not deduct under Section 7-9-92 NMSA receipts that may be exempted or deducted under other sections of the Gross Receipts and Compensating Tax Act, including:

A. receipts of a government exempted from the gross receipts tax by Section 7-9-13 NMSA 1978;

B. receipts subject to the stadium surcharge but exempted from the gross receipts tax by Section 7-9-13.3 NMSA 1978;

C. receipts of a nonprofit entity from running facilities accommodating retired elderly persons exempted from the gross receipts tax by Section 7-9-16 NMSA 1978;

D. receipts from selling livestock and receipts of growers, producers, trappers and nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, pelts and hides exempted from the gross receipts tax by Section 7-9-18 NMSA 1978;

E. receipts from the lawful acceptance of food stamps exempted from the gross receipts tax by Section 7-9-18.1 NMSA 1978;

F. receipts of 501(c)(3)

and 501(c)(6) organizations exempted by Section 7-9-29 NMSA 1978;

G. receipts of nonprofit organizations from registration fees exempted by Section 7-9-39 NMSA;

H. receipts from selling food to manufacturers that may be deducted under Section 7-9-46 NMSA 1978;

I. receipts from selling food for re-sale that may be deducted under Section 7-9-47 NMSA 1978;

J. receipts from selling food to governments that may be deducted under Section 7-9-54 NMSA 1978;

K. receipts from selling food in interstate commerce that may be deducted under Section 7-9-55 NMSA 1978;

L. receipts from selling food to 501(c)(3) organizations that may be deducted under Section 7-9-60 NMSA 1978;

M. receipts from selling food to credit unions that may be deducted under Section 7-9-61.2 NMSA 1978; and

N. receipts from selling food to an accredited foreign mission or accredited member of a foreign mission that may be deducted under Section 7-9-89 NMSA 1978.

[3.2.240.10 NMAC - N, XXX]

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 241 DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF HEALTH CARE PRACTITIONERS

3.2.241.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.2.241.1 NMAC - N, XXX]

3.2.241.2 **SCOPE:** This part applies to each person engaging in business in New Mexico.

[3.2.241.2 NMAC - N, XXX]

3.2.241.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.

[3.2.241.3 NMAC - N, XXX]

3.2.241.4 **DURATION:** Permanent.

[3.2.241.4 NMAC - N, XXX]

3.2.241.5 **EFFECTIVE DATE:** XX/YY/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.241.5 NMAC - N, XXX]

3.2.241.6 **OBJECTIVE:** The

objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.241.6 NMAC - N, XXX]

3.2.241.7 **DEFINITIONS:** **"SCOPE OF PRACTICE" DEFINED:**

As used in Section 7-9-93 NMSA 1978, the term "scope of practice" means the health care activities authorized to be conducted by, or at the direction of, the health care practitioner under a license granted to the health care practitioner by the appropriate body under any of the acts specified under Paragraph (3) of Subsection B of Section 7-9-93 NMSA 1978.

[3.2.241.10 NMAC - N, XXX]

3.2.241.8 **RECEIPTS DEDUCTIBLE UNDER OTHER SECTIONS:** Health care practitioners may not deduct under Section 7-9-93 NMSA 1978 receipts that are deductible under other sections of the Gross Receipts and Compensating Tax Act. Receipts deductible under other sections include:

A. receipts from the United States or an agent thereof under Part B of Medicare (Title 18 of the federal Social Security Act); these receipts are deductible under Section 7-9-77.1 NMSA 1978;

B. receipts from a third party administrator of the federal TRICARE program; these receipts are deductible under Section 7-9-77.1 NMSA 1978; and

C. receipts from health care services sold to a hospital or other person for re-sale with respect to which the practitioner has accepted a Type 5 nontaxable transaction certificate executed by the buyer; these receipts are deductible under Section 7-9-48 NMSA 1978.

[3.2.241.8 NMAC - N, XXX]

3.2.241.9 **RECEIPTS NOT DEDUCTIBLE UNDER SECTION 7-9-93 NMSA 1978:** Receipts of a health care practitioner other than from payments by a managed health care provider or health care insurer for commercial contract services or Medicare Part C services provided by the health care practitioner are not deductible under Section 7-9-93 NMSA 1978. Receipts of health care practitioners not deductible under Section 7-9-93 NMSA 1978 include:

A. receipts from any payment, such as a co-payment, that is the responsibility of the patient under the managed health care plan or health insurance;

B. receipts on a fee-for-service basis; "fee-for-service" means a traditional method of paying for health care services under which health care practitioners are paid for each service rendered, as opposed to paying in accordance with a schedule of fees in a contract the health care

provider has entered into with a third party;

C. receipts from providing services to Medicaid patients; and

D. receipts from selling tangible personal property, such as nonprescription medicines.

[3.2.241.9 NMAC - N, XXX]

3.2.241.10 **RECEIPTS OF CORPORATE PRACTICE:** A professional corporation or unincorporated business association may deduct under Section 7-9-93 NMSA 1978 its receipts from managed health care providers or health care insurers for commercial contract services or Medicare Part C services provided on its behalf by health care practitioners who own or are employed by the professional corporation or unincorporated business association if:

A. the professional corporation or unincorporated business association is owned exclusively by licensed health care practitioners described in Section 7-9-93 NMSA 1978; or at least eighty percent of the ownership interest of a corporation other than a professional corporation or an unincorporated business association is owned by licensed health care professional described in Section 7-9-93 NMSA 1978; and

B. the professional corporation or unincorporated business association is not an organization described by Subsection A of Section 7-9-29 NMSA 1978 or a hospital, hospice, nursing home, outpatient facility or intermediate care facility licensed under the Public Health Act.

[3.2.241.10 NMAC - N, XXX]

3.2.241.11 **VALID CERTIFICATE OF COMPLIANCE REQUIRED:**

A person is not a "health care insurer" as defined by Section 7-9-93 NMSA 1978 if the person does not have a valid certificate of compliance issued by the Public Regulation Commission under the New Mexico Insurance Code to act as an insurer, health maintenance organization, nonprofit health care plan or prepaid dental plan. Receipts of health care practitioners from persons without such a valid certificate of compliance are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.11 NMAC - N, XXX]

3.2.241.12 **SELF-INSURERS MAY BE "MANAGED HEALTH CARE PROVIDERS":**

If a person provides for the delivery of comprehensive basic health care services and medically necessary services to the person's employees enrolled in a self-insurance plan through contracting with selected or participating health care practitioners, that person is a "managed health care provider". Example: New Mexico state government's self-insured plan under the Group Benefits Act.

[3.2.241.12 NMAC - N, XXX]

3.2.241.13 PAYMENTS FROM WORKERS COMPENSATION:

Receipts of a health care practitioner from the state of New Mexico pursuant to the Workers Compensation Act are not receipts from a managed health care provider or health care insurer and are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.13 NMAC - N, XXX]

3.2.241.14 RECEIPTS OF HEALTH CARE FACILITIES NOT DEDUCTIBLE:

An organization, whether or not owned exclusively by health care practitioners, licensed as a hospital, hospice, nursing home, outpatient facility or intermediate care facility under the Public Health Act is not a "health care practitioner" as defined by Section 7-9-93 NMSA 1978. Receipts of such an organization are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.14 NMAC - N, XXX]

3.2.241.15 RECEIPTS FROM "MEDIGAP" INSURANCE POLICIES NOT DEDUCTIBLE:

Payments from an insurer in accordance with a Medigap policy supplementing Medicare coverage are not deductible under Section 7-9-93 NMSA 1978. Medigap policies are not paying for "commercial contract services" as defined by Section 7-9-93 NMSA 1978.

[3.2.241.15 NMAC - N, XXX]

3.2.241.16 RECEIPTS FOR ADMINISTRATIVE SERVICES NOT DEDUCTIBLE:

Receipts of a third party for administering a health insurance or medical plan are not deductible under Section 7-9-93 NMA 1978.

[3.2.241.16 NMAC - N, XXX]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Notice is hereby given that on Tuesday, December 7, 2004, commencing at 1:30 p.m., the New Mexico Workers' Compensation Administration will conduct a public hearing on the emergency rule change concerning mileage benefits contained in Part 3 of the Workers' Compensation Rules. The hearing will be conducted at the Workers' Compensation Administration, 2410 Centre Avenue S.E., Albuquerque, NM. Videoconferencing may also be made available in the WCA Field

Offices. Please contact Renee Blechner at (505) 841-6083 by December 1, 2004, to reserve videoconferencing. Proposed rule changes will be available on November 15, 2004.

Comments made in writing and at the public hearing will be taken into consideration. Written comments pertaining to these issues will be accepted until the close of business on Tuesday, December 14, 2004.

For further information call (505) 841-6000. Please inquire at the WCA Clerk's Office, 2410 Centre Avenue S.E., Albuquerque, NM, 87106, (505) 841-6000, for copies of the proposed rule change. If you intend to request a copy by mail, please inquire at the WCA Clerk's Office about the postage cost and envelope size needed to accommodate your request. Plan on including a post-paid, self-addressed envelope with your request.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact Renee Blechner at (505) 841-6083. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.71 NMAC, Sections 5, 7, 110, 111, 112 and 113 effective on 12/15/04.

20.2.71.5 EFFECTIVE DATE: November 30, 1995, unless a later date is cited at the end of a section. [11/30/95; 20.2.71.5 NMAC - Rn, 20 NMAC 2.71.104 10/31/02; A, 12/15/04] [The latest effective date of any section in this part is 12/15/04.]

20.2.71.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part:

A. "allowable emission rate" means the maximum emission allowed by the more stringent emission limitation applicable to the source contained in:

(1) any New Mexico air quality control regulation;

(2) any federal standard of performance, emission limitation, or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412; or

(3) any condition within a construction or operating permit issued by the department;

B. "emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any fee pollutant;

~~[C. "Existing stationary source"~~ means a stationary source which commenced operation on or before October 1, 1993.]

~~[D]C. "fee pollutant"~~ means: (1) sulfur dioxide, nitrogen dioxide, carbon monoxide, total suspended particulate matter, and volatile organic compounds; and

(2) any hazardous air pollutant that is subject to any standard promulgated pursuant to section 112 of the federal act;

~~[E]D. "fugitive emissions"~~ means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening;

~~[F]E. "hazardous air pollutant"~~ means an air contaminant that has been classified as a hazardous air pollutant pursuant to section 112 of the federal act;

~~[G. "New stationary source"~~ means a stationary source which commenced operation subsequent to October 1, 1993.]

~~[H]E. "operator"~~ means the person or persons responsible for the overall operation of a facility;

~~[F]G. "owner"~~ means the person or persons who own a facility or part of a facility;

~~[J]H. "part"~~ means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board;

~~[K. "Potential to emit"~~ means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.]

~~[L. "Standby equipment"~~ means an emissions unit which on a temporary basis replaces equipment used in normal operation, and which either has an allowable emission rate or potential to emit for each fee pollutant that is equal to or less than the equipment replaced, or which does not operate for a period exceeding 500 hours per calendar year.]

~~[M]I. "stationary source"~~ means any building, structure, facility, or installation that emits or may emit any air pollutant.

[11/30/95; 20.2.71.7 NMAC - Rn, 20 NMAC 2.71.107 10/31/02; A, 12/15/04]

20.2.71.110 FEE REQUIREMENT[±]

A. An annual operating permit emission fee shall be paid to the department by each owner or operator subject to this part.

B. The fee shall be assessed:

(1) for a major source as defined in 20.2.70 NMAC (Operating Permits), for all emissions units; ~~and~~

(2) for all other stationary sources, for emissions units which cause the source to be subject to 20.2.70 NMAC; and

(3) for emissions above annual allowable emission limits for the source categories in Paragraphs (1) and (2) of Subsection B of Section 20.2.71.110 NMAC.

C. The fee shall be calculated in conformance with 20.2.71.111 NMAC.

[11/30/95; 20.2.71.110 NMAC - Rn, 20 NMAC 2.71.110 10/31/02; A, 12/15/04]

20.2.71.111 FEE DETERMINATION[±]

A. Fee calculation.

(1) The annual fee shall be calculated by taking the product of the allowable emission rate for each fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC. ~~[In cases where an allowable emission rate does not exist, the fee shall be calculated using the potential to emit.]~~

(2) The allowable emission rate~~;~~ ~~or potential to emit;~~ which shall be used in the fee calculation is:

(a) ~~[for an existing stationary source, the allowable emission rate or potential to emit which exists on October 1, 1993 for the first annual fee, and]~~ the allowable emission rate ~~[or potential to emit]~~ which exists on December 31 for each ~~[subsequent annual fee]~~ year; and

(b) ~~[for a new stationary source, beginning with the first calendar year the source commences operation, the allowable emission rate or potential to emit which exists on December 31 of the first calendar year operation commenced.]~~ the failure of an owner or operator to include the correct information in a permit application, resulting in incorrect allowable emissions in a permit issued under 20.2.70 NMAC, 20.2.72 NMAC, or 20.2.74 NMAC, shall not preclude the department from requiring payment for the correct emissions from the time payment would have been first due.

(3) Allowable emission rates ~~[or potential to emit]~~ shall be calculated to the tenth of a ton for each emission unit and then summed to determine the tons per year for the facility. Total facility tons per year quantities shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.

(4) Emissions from those operations determined to be insignificant activities by the department under 20.2.70 NMAC shall not be included in the fee calculation.

(5) Fugitive emissions which have an allowable emission rate shall be included in the fee calculation.

~~[(6) Emissions from standby equipment shall not be included in the fee calculation.]~~

~~[(7)6]~~ Any quantity of a pollutant which is assessed a fee because it is a hazardous air pollutant shall not be assessed additional fees.

~~[(8)7]~~ A maximum of six thousand tons per year of any one fee pollutant shall be used in the fee calculation.

B. Source shutdown.

(1) The annual fee shall not be reduced due to lack of operation of any emissions unit, except when:

(a) the discontinued operation is accounted for in an allowable emission rate contained within a construction or operating permit issued by the department;

(b) a construction or operating permit issued by the department has been discontinued or terminated and the source ceased operation; or

~~(c) with respect to equipment for which the potential to emit is used as the basis for fee calculation, the equipment has been removed from the stationary source and the owner or operator provided written notification to the Department prior to December 31 of the year it was removed; or]~~

~~(d)~~(c) the emissions unit is located at a stationary source which meets the criteria of Paragraph (2) of Subsection B of 20.2.71.111 NMAC.

(2) The annual fee shall be reduced when all operations at a stationary source have been shutdown for a period greater than 60 consecutive days within a calendar year. In this case, the fee calculation shall be adjusted by reducing the annualized allowable emission rate, or potential to emit if applicable, for each day the stationary source was shutdown.

C. Fee for emissions above annual allowable emission limits.

(1) The fee for emissions above annual allowable emission limits shall be based on all emissions above annual allowable emission limits of fee pollutants reported or required to be reported by a stationary source through December 31 in accordance with Subsection E of 20.2.70.302 NMAC. The fee shall be calculated by taking the product of the emissions above annual allowable emission limits for each fee pollutant above and beyond the allowable annual emissions limit per unit expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC.

(2) Total facility tons per year quantities of emissions above annual allowable emission limits shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.

(3) Any quantity of a pollutant which is assessed a fee pursuant to this section because it is a hazardous air pollutant shall not be assessed additional fees pursuant to this section.

(4) A maximum of six thousand tons per year of any one fee pollutant shall be used in the fee calculation for this section.

[11/30/95; 20.2.71.111 NMAC - Rn, 20 NMAC 2.71.111 10/31/02; A, 12/15/04]

20.2.71.112 EMISSION FEE[±]

A. The fee for each fee pollutant shall be ~~[\$10.25]~~ \$12.00 per ton on an annual basis, except as provided for in

Subsection B of 20.2.70.112 NMAC. This fee shall increase to \$14.00 per ton on an annual basis for fees due June 1, 2006; to \$16.00 per ton on an annual basis for fees due June 1, 2007; and to \$18.00 per ton on an annual basis for fees due June 1, 2008 and thereafter.

B. The fee for each hazardous air pollutant shall be ~~[\$150.00]~~ \$165.00 per ton on an annual basis for any stationary source which is only major as defined in 20.2.70 NMAC for any hazardous air pollutant.

C. The fee per ton of emissions above annual allowable emission limits shall be identical to the fee per ton of allowable emissions.

D. Beginning on January 1, 2009, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[11/30/95; 20.2.71.112 NMAC - Rn, 20 NMAC 2.71.112 10/31/02; A, 12/15/04]

20.2.71.113 FEE PAYMENT[±]

A. Schedule.

~~(1) The first annual fee shall be paid as follows:~~

~~(a) for each existing stationary source, fifty percent (50%) of the total fee shall be due on or before January 1, 1994, and the remaining fifty percent (50%) of the total fee shall be due on or before June 1, 1994; and~~

~~(b) for each new stationary source which commences operation prior to January 1, 1994, the annual fee shall be due by June 1, 1994 for the preceding calendar year.]~~

~~(2) [Beginning with the year 1995,] The department shall by April 1 of each year provide to each owner or operator subject to this part notification, which shall contain:~~

~~(a) the [annual] emissions fee based on the requirements of this part which is currently due; and~~

~~(b) a summary of the basis for the required fee.~~

~~(3) Upon discovery of an error in any past notification of emissions fees due, the department shall promptly notify the owner or operator and provide credit for overcharges or require payment for undercharges.~~

~~(4) [Beginning with the year 1995,] Each owner or operator shall pay by June 1 the [annual] emissions fee contained in the department's notification required under Paragraph ~~(2)~~(1) of Subsection A of Section 20.2.71.113 NMAC.~~

(4) Each owner or operator shall pay invoices based on notices of errors in past notifications within 60 days of the

invoice date.

(5) The department shall commence invoicing for fees for emissions above annual allowable emission limits reported by the method specified by the department in calendar year 2007.

B. Payment.

(1) Fees shall be remitted in the form of a certified check or money order made payable to the environment department and submitted to the air quality bureau at the address specified in the notice.

(2) Upon receipt of the check or money order, it shall be deposited in the state air quality permit fund.

C. Nonpayment. Failure to remit the full fee required by the due date specified in this section is a violation of this part and may subject the owner or operator to:

(1) civil penalties for each day of noncompliance as provided for in the New Mexico Air Quality Control Act, section 74-2-12.1, NMSA 1978;

(2) the enforcement provisions of the New Mexico Air Quality Control Act, section 74-2-12, NMSA 1978, which includes suspension or revocation of any permit.

[11/30/95; 20.2.71.113 NMAC - Rn, 20 NMAC 2.71.113 10/31/02; A, 12/15/04]

NEW MEXICO STATE FAIR COMMISSION

The following rules are repealed effective 11/30/2004:

SF-79-1, Premium Book 1979 (filed 7/27/79);

SF-79-2, Conditions and Stakes, 1979 (filed 7/27/79);

SF 80-1, (Regulation 78-1) A Regulation Defining Technical and Professional Services (filed 5/28/80);

Rule 82-1, Deadly Weapons Prohibited (filed 9/27/82);

Rule 82-2, Alcoholic Beverage (filed 9/27/82);

4 NMAC 3.1.1, Due Process and Disciplinary Action - General Requirements (filed 8/19/96);

4 NMAC 3.1.2, Meetings by Telephone (filed 12/1/98);

4 NMAC 3.2, Due Process and Disciplinary Action - Residue Avoidance Program (filed 03/18/96);

4 NMAC 3.3, Due Process and Disciplinary Action - Junior Division General Requirements (filed 08/19/96);

4 NMAC 3.5, Participant Requirements - State Fair Parade (filed 08/19/96);

4 NMAC 3.6, Due Process and Disciplinary Action - Horse Division Requirements (filed 08/19/96);

4 NMAC 3.7, Due Process and Disciplinary Action - Livestock Division Requirements

(filed 08/19/96);
 4 NMAC 3.8, Participant Requirements - Agriculture and Floriculture Division (filed 08/19/96);
 4 NMAC 3.9, Participant Requirements - Home Arts and Creative Arts Division (filed 08/19/96);
 4 NMAC 3.10, Participant Requirements - Concessions and Commercial Exhibits (filed 08/19/96)

NEW MEXICO STATE FAIR COMMISSION

**TITLE 4 C U L T U R A L RESOURCES
 CHAPTER 3 STATE FAIR
 PART 1 GENERAL PROVISIONS**

4.3.1.1 ISSUING AGENCY:
 New Mexico State Fair Commission.
 [4.3.1.1 NMAC - Rp, 4 NMAC 3.1.1.1 NMAC, 11/30/2004]

4.3.1.2 SCOPE:
 A. Exhibitors and general public.
 B. Members of the commission.
 [4.3.1.2 NMAC - Rp, 4 NMAC 3.1.1.2 NMAC, 11/30/2004]

4.3.1.3 STATUTORY AUTHORITY:
 A. Subsection B of 16.6.4 NMSA 1978.
 B. 10.15.1 NMSA 1978.
 [4.3.1.3 NMAC - Rp, 4 NMAC 3.1.1.3 NMAC, 11/30/2004]

4.3.1.4 DURATION:
 Permanent.
 [4.3.1.4 NMAC - Rp, 4 NMAC 3.1.1.4 NMAC, 11/30/2004]

4.3.1.5 EFFECTIVE DATE:
 November 30, 2004 unless a later date is cited at the end of a section.
 [4.3.1.5 NMAC - Rp, 4 NMAC 3.1.1.5 NMAC, 11/30/2004]

4.3.1.6 OBJECTIVE:
 A. The objective of 4.3.1 NMAC is to inform the exhibitors, concessionaires and general public of rules, guidelines and disciplinary actions, if applicable, of the New Mexico state fair.
 B. The objective of 4.3.1.16 NMAC is to provide a means by which the members of the New Mexico state fair commission can participate in commission meetings by telephone conference.
 [4.3.1.6 NMAC - Rp, 4 NMAC 3.1.1.6 NMAC, 11/30/2004]

4.3.1.7 DEFINITIONS:

A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the state fair.

B. "Concessionaire" means a person who sells products or services on location, accepts orders, or sets up future business opportunities for potential monetary gain.

C. "Contemplated action" means the events that may occur for violation of the general rules and information contained in the *New Mexico state fair premium book*.

D. "Exhibitor" means one who displays something or who competes at the New Mexico state fair.

E. "General manager" means the general manager of the New Mexico state fair, or his/ her designee.

F. "General public" means the people that attend the New Mexico state fair other than exhibitors or concessionaires.

G. "General fees" means charges for services that apply to everyone.

H. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

I. "Professional services" means vocations and occupations that require advanced training in a liberal art or science. If such advanced learning or training is a requisite of a service, the service is technical or professional, and therefore exempt from provisions of the Public Purchases Act. Services performed under the direction of a licensed professional are technical or professional services.

J. "Respondent" means the person against whom the commission contemplates taking action for violations of the New Mexico state fair's rules and regulations.

K. "Technical services" means those having to do with the practical, industrial, or mechanical arts of the applied sciences. They must involve a specialized skill.

[4.3.1.7 NMAC - Rp, 4 NMAC 3.1.1.7 NMAC, 11/30/2004]

4.3.1.8 NOTICE OF CONTEMPLATED ACTION: When the commission contemplates taking action against an exhibitor at the fair, including but not limited to: revoking a prize, honor, or cash award; barring participation in an event; or preventing an exhibitor from participating in future events, for alleged violation(s) of the general rules and policies of the *New*

Mexico state fair premium book or the policies of the commission, the commission shall serve upon the respondent a written notice that contains:

A. a statement that the commission has sufficient evidence that, if not rebutted or explained, shall justify the commission in taking the contemplated action;

B. an indication of the general nature of the evidence;

C. notice that the commission shall take the contemplated action unless the respondent, within fifteen days after service of the notice, requests a hearing by depositing in the mail a certified return receipt requested letter addressed to the New Mexico State Fair at P.O. Box 8546, Albuquerque, NM 87198, and,

D. notice of the respondent's rights as follows:

- (1) the right to be represented by counsel at the respondent's expense;
- (2) the right to examine all evidence to be presented against the respondent;

- (3) the right to present a defense;
- (4) the right to call witnesses;
- (5) the right to cross-examine witnesses.

[4.3.1.8 NMAC - Rp, 4 NMAC 3.1.1.8 NMAC, 11/30/2004]

4.3.1.9 METHOD OF SERVICE:

Any notice or decision may be served either personally or by certified mail, return receipt requested, directed to the respondent's last known address. If the notice or decision is served personally, service shall be made in the same manner as is provided for service by the rules of civil procedure for the district courts. If the notice or decision is served by certified mail, service is effectuated on the date borne by the return receipt showing delivery or the last attempted delivery to respondent, or refusal of the respondent to accept delivery.

[4.3.1.9 NMAC - Rp, 4 NMAC 3.1.1.9 NMAC, 11/30/2004]

4.3.1.10 HEARING REQUEST REQUIRED:

If the respondent mails a request for hearing as required by this section, the commission shall set a hearing date no later than thirty days after receipt of the timely request for hearing. Notice of the hearing shall be served on the respondent not less than seven working days prior to the hearing date. Notice shall include the date, time and location of the hearing, as well as the identities of the hearing officers.

[4.3.1.10 NMAC - Rp, 4 NMAC 3.1.1.10 NMAC, 11/30/2004]

4.3.1.11 VENUE OF HEAR-

ING: Hearings held under these provisions shall be conducted at the New Mexico state fair offices in Albuquerque, New Mexico, or at the election of the hearing officers, in any county in which the act(s) complained of occurred. The respondent and the hearing officers may agree to hold the hearing in some other county.

[4.3.1.11 NMAC - Rp, 4 NMAC 3.1.1.11 NMAC, 11/30/2004]

4.3.1.12 HEARING OFFICERS: All hearings shall be conducted by three New Mexico state fair commissioners designated by the board of commissioners as follows:

A. the chairman of the executive committee or his or her designee;

B. the chairman of the agricultural committee or his or her designee;

C. one member selected by the agreement of the representatives of the executive and agricultural committees, or if no agreement can be reached, a member selected by a majority vote of the commission.

[4.3.1.12 NMAC - Rp, 4 NMAC 3.1.1.12 NMAC, 11/30/2004]

4.3.1.13 PRE-HEARING DISCOVERY:

A. The respondent shall have access to the New Mexico state fair's file concerning the alleged violations for inspection and copying, except those portions made confidential or privileged as a matter of law. Access may be had during normal business hours at the New Mexico state fair offices located in Albuquerque, New Mexico. A reasonable copying fee may be charged.

B. The respondent shall present to the New Mexico state fair and the hearing officers a statement of issues indicating why the notice of contemplated action is disputed.

C. The parties shall disclose to each other and to the hearing officers, orally or in writing, the names of witnesses to be called and the general area of their testimonies. If statements shall be presented to the hearing officers, the names of the persons making the statements and the general nature of the statements shall be disclosed.

D. Upon a written request by a party which sets out reasons that additional discovery is needed, further discovery in the form of production and review of documents and other tangible things, interviews or written interrogatories may be ordered at the hearing officers' discretion.

E. Cost of document copying, mail or delivery service, interviews or written interrogatories, including mileage and per diem, paid in accordance with the

New Mexico Per Diem and Mileage Act, shall be borne by the requesting party.

F. Interviews may be conducted over the telephone or in person.

G. Ex parte communications are prohibited. After the issuance of a notice of contemplated action, no party or representative of a party shall discuss the merits of the case with any board member or hearing officer, or vice versa.

[4.3.1.13 NMAC - Rp, 4 NMAC 3.1.1.13 NMAC, 11/30/2004]

4.3.1.14 POSTPONEMENT OR CONTINUANCE: The hearing officers may, in their discretion, postpone or continue a hearing for good cause shown.

Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the original hearing date.

[4.3.1.14 NMAC - Rp, 4 NMAC 3.1.1.14 NMAC, 11/30/2004]

4.3.1.15 CONDUCT OF THE HEARING:

A. All hearings shall be open to the public, unless a closed hearing is requested and the hearing officers find good cause for a closed hearing.

B. The hearing officers shall have all powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of an accurate and complete record. These powers include, but are not limited to, the following:

(1) administer oaths or affirmations upon request of any party;

(2) schedule continuances;

(3) examine witnesses and direct witnesses to testify;

(4) limit repetitious and cumulative testimony;

(5) set reasonable time limits on individual testimony;

(6) rule upon the admissibility of evidence either when an objection is made or in a later ruling;

(7) receive offers of proof for the record;

(8) dispose of procedural requests or similar matters; and

(9) render and enter findings of fact, conclusions of law, opinions, decisions and recommendations.

C. A complete record shall be made of each hearing that includes all evidence (both physical and testimonial) presented. The record may be transcribed by a court reporter or, at the discretion of the commissioners, by tape recording in a manner authorized by the rules of civil procedure for the district court.

[4.3.1.15 NMAC - Rp, 4 NMAC 3.1.1.15 NMAC, 11/30/2004]

4.3.1.16 DECISIONS AND APPEALS

A. All decisions shall be rendered by a quorum of the commission no more than sixty days after completion of preparation of the record, or upon receiving the hearing officers' report, whichever is later.

B. After a decision has been rendered, the respondent may choose to request the commission to reopen the case to receive additional evidence or for other cause. If no request is made, the decision of the commission is final.

[4.3.1.16 NMAC - N, 11/30/2004]

4.3.1.17 MEETINGS BY TELEPHONE:

A. A member of the commission may participate in a meeting of the commission by means of a conference telephone or other similar communications with the provisions enumerated herein. 10-15-1 NMSA 1978.

B. This rule shall only apply when it is otherwise extremely difficult or impossible for the member to attend the meeting in person.

C. Each member participating by conference telephone shall be identified when speaking.

D. All participants shall be able to hear each other at the same time.

E. Members of the public attending the meeting shall be able to hear any member of the commission who speaks during the meeting.

[4.3.1.17 NMAC - Rp, 4 NMAC 3.1.2, 11/30/2004]

4.3.1.18 ALCOHOLIC BEVERAGES:

A. No person shall enter the New Mexico state fairgrounds bearing or otherwise possessing any alcoholic beverage. Alcohol shall be permitted for consumption only in authorized locations.

B. This regulation shall not apply to those suppliers of the New Mexico state fair concessionaires nor shall it apply to the concessionaire or his employees in carrying out their necessary operation of stocking, selling or moving alcoholic beverages between locations of sale.

C. For the purposes of this regulation, "alcoholic beverages" shall be those beverages as described and regulated by the liquor laws of the state of New Mexico.

D. Any alcoholic beverages shall be consumed solely within authorized locations.

E. Any person bearing such alcoholic beverages outside of the approved areas shall be asked to dispose of alcohol immediately or property shall be confiscated by New Mexico state police or

New Mexico state fair police and the appropriate legal action be taken.

[4.3.1.18 NMAC - Rp, Rule 82-2, 11/30/2004]

4.3.1.19 DEADLY WEAPONS PROHIBITED:

A. No person shall enter the New Mexico state fairgrounds bearing or otherwise possessing any deadly weapon, whether concealed or not. Any person found to be in violation of this regulation shall be immediately removed from the premises by a duly licensed law enforcement officer.

B. This regulation shall not apply to peace officers in the performance of their official duties.

C. The commission or general manager may provide exceptions to this regulation, such as in the case of exhibitions of weapons for demonstration or sale or for ancillary use in livestock. For the purposes of this regulation, "deadly weapon" is defined as "any firearm, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including swordcanes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons; or any other weapons with which dangerous wounds can be inflicted".

[4.3.1.19 NMAC - Rp, Rule 82-1, 11/30/2004]

4.3.1.20 NEW MEXICO STATE FAIR PREMIUM BOOK:

The commission delegates to the general manager authority to annually publish a *New Mexico state fair premium book*, which contains rules that govern certain events and exhibits at the New Mexico state fair. The publication may be either printed or posted electronically on the internet.

[4.3.1.20 NMAC - Rp, SF 79-1, 11/30/2004]

4.3.1.21 LIMITATION OF LIABILITY:

The New Mexico state fair, the commission, the general manager, the New Mexico state fair employees and the state of New Mexico assume no liability for personal injury or loss or damage to any property of concessionaires, exhibitors or the general public due to fire, theft, tornado, weather conditions, *force majeure*, negligent or intentional acts of a third party or other incident.

[4.3.1.21 NMAC - Rp, 4 NMAC 3.10.25 NMAC, 11/30/2004]

HISTORY OF 4.3.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives:

SF 79-3 (Regulation 78-1) A Regulation Defining Technical and Professional Services, filed 4/16/79.

SF 79-4 (Regulation 78-1) A Regulation Defining Technical and Professional Services, filed 8/10/79.

SF 80-1 (Regulation 78-1) A Regulation Defining Technical and Professional Services, filed 5/28/80.

Rule 82-1 Deadly Weapons Prohibited, filed 9/27/82.

Rule 82-2 Alcoholic Beverage, filed 9/27/82.

History of Repealed Material: SF 80-1 (Regulation 78-1) A Regulation Defining Technical and Professional Services (filed 5/28/80); Rule 82-1 Deadly Weapons Prohibited (filed 9/27/82); Rule 82-2 Alcoholic Beverage (filed 9/27/82); 4 NMAC 3.1.1, Due Process and Disciplinary Action - General Requirements, (filed 8-19-96) and 4 NMAC 3.1.2, Meetings by Telephone (filed 12-1-98) repealed effective 11/30/2004.

Other History:

SF 80-1 (Regulation 78-1) A Regulation Defining Technical and Professional Services (filed 5/28/80); Rule 82-1 Deadly Weapons Prohibited (filed 9/27/82); Rule 82-2 Alcoholic Beverage (filed 9/27/82); 4 NMAC 3.1.1, Due Process and Disciplinary Action - General Requirements (filed 8-19-96) and 4 NMAC 3.1.2, Meetings by Telephone (filed 12-1-98) all replaced by 4.3.1 NMAC, General Provisions, effective 11/30/2004.

NEW MEXICO STATE FAIR COMMISSION

TITLE 4 C U L T U R A L RESOURCES CHAPTER 3 STATE FAIR PART 3 PARTICIPANT REQUIREMENTS - JUNIOR DIVISION

4.3.3.1 ISSUING AGENCY: New Mexico State Fair Commission.

4.3.3.2 SCOPE: Junior exhibitors at the New Mexico state fair.
[4.3.3.2 NMAC - Rp, 4 NMAC 3.3.2, 11/30/2004]

4.3.3.3 STATUTORY AUTHORITY: Subsection B of 16.6.4 NMSA 1978.

[4.3.3.3 NMAC - Rp, 4 NMAC 3.3.3, 11/30/2004]

4.3.3.4 D U R A T I O N : Permanent.

[4.3.3.4 NMAC - Rp, 4 NMAC 3.3.4, 11/30/2004]

4.3.3.5 EFFECTIVE DATE: November 30, 2004, unless a later date is cited at the end of a section.

[4.3.3.5 NMAC - Rp, 4 NMAC 3.3.5, 11/30/2004]

4.3.3.6 OBJECTIVE: The objective is to provide junior exhibitors with guidelines for entering in and exhibiting at the New Mexico state fair.

[4.3.3.6 NMAC - Rp, 4 NMAC 3.3.6, 11/30/2004]

4.3.3.7 DEFINITIONS:

A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the state fair.

B. "General manager" means the general manager of the New Mexico state fair, or his/her designee.

C. "Junior exhibitor" means a person, ages 19 and under, who displays something in the junior division, other than horses.

D. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

[4.3.3.7 NMAC - Rp, 4 NMAC 3.3.7, 11/30/2004]

4.3.3.8 JUNIOR DIVISION GENERAL PROVISIONS

A. All entries shall comply with the requirements as set forth in the *New Mexico state fair premium book* including, but not limited to, specified nomination and entry procedures.

B. All exhibitors and their livestock shall comply with local and federal statutes including, but not limited to, the New Mexico livestock rules and regulations as set forth by the New Mexico livestock board.

C. All exhibitors shall operate in conformity with the New Mexico state fair's policy on humane treatment of exhibited animals as set forth in the *New Mexico state fair premium book*.

D. All exhibitors shall be either bona fide 4-H Club members enrolled in the projects that they exhibit, or future farmers of America (FFA) members in New Mexico, certified by the county agent or agricultural education advisor. All exhibitors shall be in good standing unless otherwise stated in the *New Mexico state fair premium book*.

E. All exhibitors shall not utilize unethical practices or give unapproved medication to their animals.

F. All junior exhibitors shall abide by the United States department of agriculture Wholesome Meat Act and sign a certification form attesting to compliance with this act.

G. Non-compliance with the rules contained herein or in the *New Mexico state fair premium book* may result in disciplinary action against the exhibitor, including, but not limited to, expulsion from the competition.

[4.3.3.8 NMAC - Rp, 4 NMAC 3.3.8, 11/30/2004]

[**Annotation:** 4.3.1 NMAC contains rules regarding the due process procedure followed for an exhibitor's alleged violation(s) of New Mexico state fair rules and policies.]

HISTORY OF 4.3.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives: SF 67-1, Premium List, 1967, filed 6/27/67; SF 68-1, Premium List, 1968, filed 6/14/68; SF 69-1, Premium List, 1969, filed 6/18/69; SF 70-1, Premium List, 1970, filed 6/25/70; SF 71-1, Premium List, 1971, filed 7/02/71; SF 72-1, Premium List, 1967, filed 6/26/72; SF 73-1, Premium List, 1973, filed 6/18/73; SF 74-1, Premium List, 1974, filed 6/18/74; SF 75-1, Premium List, 1975, filed 6/16/75; SF 76-1, Premium List, 1976, filed 7/07/76; SF 77-1, Premium List, 1977, filed 6/14/77; SF 78-1, Premium List, 1978, filed 6/21/78; SF 79-1, Premium List, 1979, filed 7/27/79.

History of Repealed Material: Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.3, Due Process and Disciplinary Action - Junior Division General Requirements (filed 8/19/96) repealed effective 11/30/2004.

Other History:

Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.3, Due Process and Disciplinary Action - Junior Division General Requirements (filed 8/19/96) replaced by 4.3.3 NMAC, Participant Requirements - Junior Division, effective 11/30/2004.

NEW MEXICO STATE FAIR COMMISSION

TITLE 4 C U L T U R A L RESOURCES
CHAPTER 3 STATE FAIR
PART 5 PARTICIPANT REQUIREMENTS - STATE FAIR PARADE AND GRAND ENTRY

4.3.5.1 ISSUING AGENCY:
 New Mexico State Fair Commission.
 [4.3.5.1 NMAC - Rp, 4 NMAC 3.5.1, 11/30/2004]

4.3.5.2 SCOPE: Parade exhibitors and participants in the grand entry at the rodeo.
 [4.3.5.2 NMAC - Rp, 4 NMAC 3.5.2, 11/30/2004]

4.3.5.3 S T A T U T O R Y AUTHORITY: Subsection B of 16.6.4, NMSA 1978.
 [4.3.5.3 NMAC - Rp, 4 NMAC 3.5.3, 11/30/2004]

4.3.5.4 D U R A T I O N : Permanent.
 [4.3.5.4 NMAC - Rp, 4 NMAC 3.5.4, 11/30/2004]

4.3.5.5 EFFECTIVE DATE: November 30, 2004, unless a later date is cited at the end of a section.
 [4.3.5.5 NMAC - Rp, 4 NMAC 3.5.5, 11/30/2004]

4.3.5.6 OBJECTIVE: The objective is to establish and provide guidelines for parade exhibitors when entering the New Mexico state fair parade, as well as provide guidelines for participants in the grand entry at the rodeo.
 [4.3.5.6 NMAC - Rp, 4 NMAC 3.5.6, 11/30/2004]

4.3.5.7 DEFINITIONS:
 A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish and enforce all necessary rules for the management of the state fair

B. "General manager" means the general manager of the New Mexico state fair, or his/ her designee.

C. "Grand entry" means the event that commences each rodeo at Tingley during the state fair.

D. "Parade committee" means the representatives of the New Mexico state fair and the Bernalillo county sheriff's posse who organize and direct the New Mexico state fair parade.

E. "Parade exhibitor" means one who participates in or displays something in the state fair parade.
 [4.3.5.7 NMAC - Rp, 4 NMAC 3.5.7, 11/30/2004]

4.3.5.8 PARADE REQUIREMENTS:

A. The general manager reserves the right to promulgate any additional regulations needed to promote the smooth and effective operation of the parade.

B. Entries will be judged by the parade committee. If there is any question as to an entry's parade value, parade exhibitors may be required to submit pictures or undergo an in-person interview with the parade committee.

C. Numbers, kind and description of entry shall be submitted in advance to the parade committee. Any entry misrepresented shall not be allowed on the parade route and may be disqualified from any future entry.

D. No children under eight years old shall be allowed to walk the parade route.

E. Handouts (i.e. balloons, candy, gum, literature) by parade exhibitors shall be permitted only by those exhibitors walking the parade route. No handouts shall be permitted at any time from a moving float. Parade exhibitors who do not comply with this rule may forfeit the opportunity to participate in the state fair parade.
 [4.3.5.8 NMAC - Rp, 4 NMAC 3.5.8, 11/30/2004]

HISTORY OF 4.3.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives: SF 67-1, Premium List, 1967, filed 6/27/67; SF 68-1, Premium List, 1968, filed 6/14/68; SF 69-1, Premium List, 1969, filed 6/18/69; SF 70-1, Premium List, 1970, filed 6/25/70; SF 71-1, Premium List, 1971, filed 7/02/71; SF 72-1, Premium List, 1967, filed 6/26/72; SF 73-1, Premium List, 1973, filed 6/18/73; SF 74-1, Premium List, 1974, filed 6/18/74; SF 75-1, Premium List, 1975, filed 6/16/75; SF 76-1, Premium List, 1976, filed 7/07/76; SF 77-1, Premium List, 1977, filed 6/14/77; SF 78-1, Premium List, 1978, filed 6/21/78; SF 79-1, Premium List, 1979, filed 7/27/79.

History of Repealed Material: Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.5 State Fair - Participant Requirements: State Fair Parade (filed 8/19/96) repealed effective 11/30/2004.

Other History: Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.5 State Fair - Participant Requirements: State Fair Parade (filed 8/19/96) replaced by 4.3.5 NMAC, Participant Requirements - State Fair Parade and Grand Entry, effective 11/30/2004.

NEW MEXICO STATE FAIR COMMISSION

TITLE 4 C U L T U R A L RESOURCES CHAPTER 3 STATE FAIR PART 6 PARTICIPANT REQUIREMENTS - HORSE DIVISION

4.3.6.1 ISSUING AGENCY:
New Mexico State Fair Commission.
[4.3.6.1 NMAC - Rp, 4 NMAC 3.6.1,
11/30/2004]

4.3.6.2 SCOPE: Horse
exhibitors at the New Mexico state fair.
[4.3.6.2 NMAC - Rp, 4 NMAC 3.6.2,
11/30/2004]

**4.3.6.3 S T A T U T O R Y
AUTHORITY:** Subsection B of 16.6.4
NMSA 1978.
[4.3.6.3 NMAC - Rp, 4 NMAC 3.6.3,
11/30/2004]

4.3.6.4 D U R A T I O N :
Permanent.
[4.3.6.4 NMAC - Rp, 4 NMAC 3.6.4,
11/30/2004]

4.3.6.5 E F F E C T I V E D A T E:
November 30, 2004, unless a later date is
cited at the end of a section.
[4.3.6.5 NMAC - Rp, 4 NMAC 3.6.5,
11/30/2004]

4.3.6.6 O B J E C T I V E: The
objective is to establish and provide guide-
lines for horse exhibitors when entering and
showing their animals at the New Mexico
state fair, provided specific breed rules do
not apply.
[4.3.6.6 NMAC - Rp, 4 NMAC 3.6.6,
11/30/2004]

4.3.6.7 D E F I N I T I O N S:
A. "Breed rules" means
guidelines that govern a specific breed or
type of horse.
B. "Commission" means
the regulating body of the New Mexico
state fair that shall prepare, adopt, publish
and enforce all necessary rules for the man-
agement of the state fair.
C. "General manager"
means the general manager of the New
Mexico state fair, or his/her designee.
D. "Horse exhibitor"
means one who owns or shows horses.
E. "*New Mexico state fair
premium book*" means the annual printed or
internet-posted publication of the New
Mexico state fair which contains rules that
govern certain events and exhibits at the
state fair.
[4.3.6.7 NMAC - Rp, 4 NMAC 3.6.7,

11/30/2004]

4.3.6.8 HORSE DIVISION GENERAL PROVISIONS:

A. Failure to follow the
applicable breed rules, if any, in New
Mexico state fair equestrian events shall
result in expulsion from participation the
New Mexico state fair.

B. All entries shall comply
with the requirements as set forth in the
New Mexico state fair premium book.

C. All exhibitors and their
horses shall comply with local and federal
statutes including, but not limited to, the
New Mexico livestock rules and regulations
as set forth by the New Mexico livestock
board.

D. All exhibitors shall
operate in conformity with the New Mexico
state fair's policy on humane treatment of
animals as set forth in the *New Mexico state
fair premium book*.

E. All exhibitors shall not
utilize unethical practices or give unap-
proved medication to their animals.

F. Non-compliance with
the rules contained herein or in the *New
Mexico state fair premium book* may result
in disciplinary action against the exhibitor,
including, but not limited to, expulsion from
the competition.

[4.3.6.5 NMAC - Rp, 4 NMAC 3.6.8-15,
11/30/2004]

[**Annotation:** 4.3.1 NMAC contains rules
regarding the due process procedure fol-
lowed for an exhibitor's alleged violation(s)
of New Mexico state fair rules and poli-
cies.]

HISTORY OF 4.3.6 NMAC:

Pre-NMAC History: The material in this
part was derived from that previously filed
with the state records center and archives:
SF 67-1, Premium List, 1967, filed 6/27/67;
SF 68-1, Premium List, 1968, filed 6/14/68;
SF 69-1, Premium List, 1969, filed 6/18/69;
SF 70-1, Premium List, 1970, filed 6/25/70;
SF 71-1, Premium List, 1971, filed 7/02/71;
SF 72-1, Premium List, 1967, filed 6/26/72;
SF 73-1, Premium List, 1973, filed 6/18/73;
SF 74-1, Premium List, 1974, filed 6/18/74;
SF 75-1, Premium List, 1975, filed 6/16/75;
SF 76-1, Premium List, 1976, filed 7/07/76;
SF 77-1, Premium List, 1977, filed 6/14/77;
SF 78-1, Premium List, 1978, filed 6/21/78;
SF 79-1, Premium List, 1979, filed 7/27/79.

History of Repealed Material: Those
applicable portions of SF 79-1, Premium
List, 1979 (filed 7/27/79) and 4 NMAC 3.6,
State Fair - Due Process and Disciplinary
Action - Horse Division Requirements
(filed 8/19/96).

Other History: Those applicable portions
of SF 79-1, Premium List, 1979 (filed

7/27/79) and 4 NMAC 3.6 State Fair - Due
Process and Disciplinary Action - Horse
Division Requirements (filed 8/19/96)
replaced by 4.3.6 NMAC, effective
11/30/2004.

NEW MEXICO STATE FAIR COMMISSION

TITLE 4 C U L T U R A L RESOURCES CHAPTER 3 STATE FAIR PART 7 PARTICIPANT REQUIREMENTS - LIVESTOCK DIVISION

4.3.7.1 ISSUING AGENCY:
New Mexico State Fair Commission.

4.3.7.2 SCOPE: All livestock
exhibitors at the New Mexico state fair.
[4.3.7.2 NMAC - Rp, 4 NMAC 3.7.2,
11/30/2004]

**4.3.7.3 S T A T U T O R Y
AUTHORITY:** Subsection B of 16.6.4
NMSA 1978.
[4.3.7.3 NMAC - Rp, 4 NMAC 3.7.3,
11/30/2004]

4.3.7.4 D U R A T I O N :
Permanent.
[4.3.7.4 NMAC - Rp, 4 NMAC 3.7.4,
11/30/2004]

4.3.7.5 E F F E C T I V E D A T E:
November 30, 2004, unless a later date is
cited at the end of a section.
[4.3.7.5 NMAC - Rp, 4 NMAC 3.7.5,
11/30/2004]

4.3.7.6 O B J E C T I V E: The
objective is to establish and provide guide-
lines for livestock exhibitors when entering
their animals at the New Mexico state fair.
[4.3.7.6 NMAC - Rp, 4 NMAC 3.7.6,
11/30/2004]

4.3.7.7 D E F I N I T I O N S:
A. "Commission" means
the regulating body of the New Mexico
state fair that shall prepare, adopt, publish
and enforce all necessary rules for the man-
agement of the state fair.
B. "General manager"
means the general manager of the New
Mexico state fair, or his/her designee.
C. "Livestock exhibitor"
means one who shows or displays cattle,
sheep, llamas, swine, alpacas, cattle, goats,
poultry or rabbits.

D. "*New Mexico state fair
premium book*" means the annual printed or
internet-posted publication of the New
Mexico state fair which contains rules that
govern certain events and exhibits at the

state fair.

[4.3.7.7 NMAC - Rp, 4 NMAC 3.7.7, 11/30/2004]

4.3.7.8 LIVESTOCK DIVISION GENERAL PROVISIONS:

A. All entries shall comply with the requirements as set forth in the *New Mexico state fair premium book*.

B. All exhibitors and their livestock shall comply with local and federal statutes including, but not limited to, the New Mexico livestock rules and regulations as set forth by the New Mexico livestock board.

C. All exhibitors shall operate in conformity with the New Mexico state fair's policy on humane treatment of animals as outlined in the *New Mexico state fair premium book*.

D. All exhibitors shall not utilize unethical practices or give unapproved medication to their animals.

E. All market animal exhibitors shall abide by the United States department of agriculture Wholesome Meat Act and shall sign a certification form attesting to compliance with this act.

F. Non-compliance with the rules contained herein or in the *New Mexico state fair premium book* may result in disciplinary action against the exhibitor, including, but not limited to, expulsion from the competition.

[4.3.7.8 NMAC - Rp, 4 NMAC 3.7.8-15, 11/30/2004]

[**Annotation:** 4.3.1 NMAC contains rules regarding the due process procedure followed for an exhibitor's alleged violation(s) of New Mexico state fair rules and policies.]

HISTORY OF 4.3.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives: SF 67-1, Premium List, 1967, filed 6/27/67; SF 68-1, Premium List, 1968, filed 6/14/68; SF 69-1, Premium List, 1969, filed 6/18/69; SF 70-1, Premium List, 1970, filed 6/25/70; SF 71-1, Premium List, 1971, filed 7/02/71; SF 72-1, Premium List, 1967, filed 6/26/72; SF 73-1, Premium List, 1973, filed 6/18/73; SF 74-1, Premium List, 1974, filed 6/18/74; SF 75-1, Premium List, 1975, filed 6/16/75; SF 76-1, Premium List, 1976, filed 7/07/76; SF 77-1, Premium List, 1977, filed 6/14/77; SF 78-1, Premium List, 1978, filed 6/21/78; SF 79-1, Premium List, 1979, filed 7/27/79.

History of Repealed Material: Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.7, State Fair - Due Process and Disciplinary Action - Livestock Division Requirements (filed 8/19/96) repealed effective 11/30/2004.

Other History: Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.7 State Fair - Due Process and Disciplinary Action - Livestock Division Requirements (filed 8/19/96) replaced by 4.3.7 NMAC, Participant Requirements - Livestock Division, effective 11/30/2004.

NEW MEXICO STATE FAIR COMMISSION

TITLE 4 C U L T U R A L RESOURCES CHAPTER 3 STATE FAIR PART 8 PARTICIPANT REQUIREMENTS - AGRICULTURE AND FLORICULTURE DIVISION

4.3.8.1 ISSUING AGENCY: New Mexico State Fair Commission.

4.3.8.2 SCOPE: Agriculture and floriculture exhibitors.
[4.3.8.2 NMAC - Rp, 4 NMAC 3.8.2, 11/30/2004]

4.3.8.3 STATUTORY AUTHORITY: Subsection B of 16.6.4 NMSA 1978.

[4.3.8.3 NMAC - Rp, 4 NMAC 3.8.3, 11/30/2004]

4.3.8.4 DURATION: Permanent.

[4.3.8.4 NMAC - Rp, 4 NMAC 3.8.4, 11/30/2004]

4.3.8.5 EFFECTIVE DATE: August 31, 1996, unless a later date is cited at the end of a section.

[4.3.8.5 NMAC - Rp, 4 NMAC 3.8.5, 11/30/2004]

4.3.8.6 OBJECTIVE: The objective is to establish and provide guidelines for entering and exhibiting agricultural products and floriculture projects at the New Mexico state fair.

[4.3.8.6 NMAC - Rp, 4 NMAC 3.8.6, 11/30/2004]

4.3.8.7 DEFINITIONS:

A. "Agricultural products" means food products raised in a farming environment.

B. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish and enforce all necessary rules for the management of the state fair.

C. "Floriculture" means the raising and cultivation of flowers.

D. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New

Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

[4.3.8.7 NMAC - Rp, 4 NMAC 3.8.7, 11/30/2004]

4.3.8.8 AGRICULTURE:

A. All entries shall comply with the specific category requirements as set forth in the *New Mexico state fair premium book*.

B. All entries must have been grown or raised by the exhibitor in New Mexico within the last year. Exhibitors may be required to sign an affidavit stating compliance with this rule.

C. No more than one sample of any variety of farm products grown on the same farm shall be entered for premium. Junior exhibitors are exempt from this provision, provided their exhibits are entered in the junior division.

D. The outer surface of the skin of agriculture or garden products shall be natural. No coatings or artificial repairs shall be permitted.

E. Advertising or selling is prohibited.

F. Exhibitors are responsible for picking up their own entries or providing written authorization for pick-up by another individual. Any exhibit that has not been picked up by the designated pick-up time shall be considered abandoned and shall become property of the New Mexico state fair.

[4.3.8.8 NMAC - Rp, 4 NMAC 3.8.8, 11/30/2004]

4.3.8.9 FLORICULTURE:

A. All entries shall comply with the specific category requirements as set forth in the *New Mexico state fair premium book*.

B. Any resident New Mexico gardener or designer, adult or junior, other than commercial growers or designers may enter in any or all shows in divisions I, II, or IV. Entrants for the junior show, division III, will be limited to youths up through age 17.

C. Exhibitors shall state the number of their entries upon registration. Exhibitors shall complete an entry tag for each exhibit which states exhibitor's name, section and class or subclass, number of the entry.

D. Only one member of a household may enter any specific class, but two members may enter as a team.

E. If any entry is eligible for competition in a specialty section (i.e. roses, dahlias, etc.), it shall be entered in the section.

F. An exhibit may be entered for competition in only one flower show at the fair.

G. Artificial plant material shall not be accepted for competition in any division.

H. All horticulture exhibits shall have been grown by the exhibitor. Container-grown plants shall have been within the exhibitor's possession at least ninety days prior to registration, except for multiple or combination plantings. Multiple or combination plantings shall have been in the exhibitor's possession for at least six weeks prior to registration.

I. All exhibits shall be fresh and free of insects, diseases or spray residues. Length of stem shall be in proportion to size of bloom as species permits. All exhibits shall comply with the size requirements as specified in the *New Mexico state fair premium book*. No wiring, oiling, spray or artificial coloring is permitted.

J. A stem shall have at least one bloom except in Subsections F and G of 4.3.8.9 NMAC where blooms may not be required or desired. Only foliage that is naturally attached to the stem shall be accepted.

K. Only container-grown entries may be reclaimed by the owner. Exhibits may not be removed from the show until after the show closes on its final day.

L. Exhibitors are responsible for picking up their own exhibits or providing written authorization for pick-up by another individual. Any exhibit that has not been picked up by the designated pick-up date shall be considered abandoned and shall become the property of the New Mexico state fair.

[4.3.8.9 NMAC - Rp, 4 NMAC 3.8.9, 11/30/2004]

HISTORY OF 4.3.8 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives: SF 67-1, Premium List, 1967, filed 6/27/67; SF 68-1, Premium List, 1968, filed 6/14/68; SF 69-1, Premium List, 1969, filed 6/18/69; SF 70-1, Premium List, 1970, filed 6/25/70; SF 71-1, Premium List, 1971, filed 7/02/71; SF 72-1, Premium List, 1967, filed 6/26/72; SF 73-1, Premium List, 1973, filed 6/18/73; SF 74-1, Premium List, 1974, filed 6/18/74; SF 75-1, Premium List, 1975, filed 6/16/75; SF 76-1, Premium List, 1976, filed 7/07/76; SF 77-1, Premium List, 1977, filed 6/14/77; SF 78-1, Premium List, 1978, filed 6/21/78; SF 79-1, Premium List, 1979, filed 7/27/79.

History of Repealed Material: Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.8, State Fair - Participant Requirements - Agriculture and Floriculture Division (filed 8/19/96) repealed effective 11/30/2004.

Other History: Those applicable portions

of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.8, State Fair - Participant Requirements - Agriculture and Floriculture Division (filed 8/19/96) replaced by 4.3.8 NMAC, effective 11/30/2004.

NEW MEXICO STATE FAIR COMMISSION

TITLE 4 C U L T U R A L RESOURCES

CHAPTER 3 STATE FAIR PARTICIPANT REQUIREMENTS - HOME ARTS AND CREATIVE ARTS DIVISION

4.3.9.1 ISSUING AGENCY: New Mexico State Fair Commission.

4.3.9.2 SCOPE: Home and creative arts exhibitors. [4.3.9.2 NMAC- Rp, 4 NMAC 3.9.2, 11/30/2004]

4.3.9.3 STATUTORY AUTHORITY: Subsection B of 16.6.4, NMSA 1978. [4.3.9.3 NMAC- Rp, 4 NMAC 3.9.3, 11/30/2004]

4.3.9.4 DURATION: Permanent. [4.3.9.4 NMAC- Rp, 4 NMAC 3.9.4, 11/30/2004]

4.3.9.5 EFFECTIVE DATE: November 30, 2004, unless a later date is cited at the end of a section. [4.3.9.5 NMAC- Rp, 4 NMAC 3.9.5, 11/30/2004]

4.3.9.6 OBJECTIVE: The objective is to establish and provide guidelines for home art and creative art exhibitors, both nonprofessional and professional, when entering their work at the state fair. [4.3.9.6 NMAC- Rp, 4 NMAC 3.9.6, 11/30/2004]

4.3.9.7 DEFINITIONS:

A. "Amateur creative art exhibitor" means one who collects or crafts as a hobby and pleasure.

B. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish and enforce all necessary rules for the management of the state fair.

C. "Home art exhibitor" means one who creates and displays something relating to home skills such as sewing, quilting, cooking, baking or canning.

D. "New Mexico state fair premium book" means the annual printed or

internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

E. "Professional creative art exhibitor" means one who collects or crafts, in whole or in part, for a living and who may enter for display only and shall not compete for prize money.

F. "Professional home art exhibitor" means one who has either taught a class for compensation or who has been employed in that field.

[4.3.9.7 NMAC- Rp, 4 NMAC 3.9.7, 11/30/2004]

4.3.9.8 HOME ARTS:

A. Entries are limited to residents of New Mexico.

B. Articles shall be the work of the exhibitor.

C. Entries shall not be accepted for articles not listed in the *New Mexico state fair premium book*.

D. No person shall make multiple entries under one class number.

E. Professionals may only enter in professional sections. Any professional entries in any other class will be disallowed.

F. All entries shall comply with the size requirements as set forth in the *New Mexico state fair premium book*.

G. Exhibitors are responsible for picking up their own exhibits or providing written authorization for pick-up by another individual. Any exhibit that has not been picked up by the designated pick-up time shall be considered abandoned and shall become property of the New Mexico state fair.

[4.3.9.8 NMAC- Rp, 4 NMAC 3.9.8, 11/30/2004]

4.3.9.9 CREATIVE ARTS:

A. Entries are limited to residents of New Mexico.

B. Only amateurs who make or craft as a hobby are eligible to compete for prizes. Commercial or professional parties may exhibit for display only if space permits and shall not compete for prize money.

C. All exhibits shall be created solely by the exhibitor and be bona fide property of the exhibitor.

D. No person shall make multiple entries under one class number. Exhibits and parts shall be entered in only one group or section each.

E. Exhibits wrongly classified shall be placed in the proper class.

F. All entries shall comply with the requirements as set forth in the *New Mexico state fair premium book*.

G. Exhibitors are responsible for picking up their own exhibits or pro-

viding written authorization for pick-up by another individual. Any exhibit that has not been picked up by the designated pick-up date shall be considered abandoned and shall become property of the New Mexico state fair.

[4.3.9.9 NMAC - Rp, 4 NMAC 3.9.9, 11/30/2004]

HISTORY OF 4.3.9 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives: SF 67-1, Premium List, 1967, filed 6/27/67; SF 68-1, Premium List, 1968, filed 6/14/68; SF 69-1, Premium List, 1969, filed 6/18/69; SF 70-1, Premium List, 1970, filed 6/25/70; SF 71-1, Premium List, 1971, filed 7/02/71; SF 72-1, Premium List, 1967, filed 6/26/72; SF 73-1, Premium List, 1973, filed 6/18/73; SF 74-1, Premium List, 1974, filed 6/18/74; SF 75-1, Premium List, 1975, filed 6/16/75; SF 76-1, Premium List, 1976, filed 7/07/76; SF 77-1, Premium List, 1977, filed 6/14/77; SF 78-1, Premium List, 1978, filed 6/21/78; SF 79-1, Premium List, 1979, filed 7/27/79.

History of Repealed Material: Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.9, State Fair - Participant Requirements - Home Arts and Creative Arts Division (filed 8/19/96) repealed effective 11/30/2004.

Other History: Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.9 State Fair - Participant Requirements - Home Arts and Creative Arts Division (filed 8/19/96) replaced by 4.3.9 NMAC, Participant Requirements - Home Arts and Creative Arts Division, effective 11/30/2004.

NEW MEXICO STATE FAIR COMMISSION

TITLE 4 C U L T U R A L RESOURCES CHAPTER 3 STATE FAIR PART 10 PARTICIPANT REQUIREMENTS - CONCESSIONS AND COMMERCIAL EXHIBITS

4.3.10.1 ISSUING AGENCY:
New Mexico State Fair Commission.

4.3.10.2 S C O P E :
Concessionaires and commercial exhibitors at the New Mexico state fair.
[4.3.10.2 NMAC - Rp, 4 NMAC 3.10.2, 11/30/2004]

**4.3.10.3 S T A T U T O R Y
AUTHORITY:** Subsection B of 16.6.4.
NMSA 1978.
[4.3.10.3 NMAC - Rp, 4 NMAC 3.10.3, 11/30/2004]

4.3.10.4 D U R A T I O N :
Permanent.
[4.3.10.4 NMAC - Rp, 4 NMAC 3.10.4, 11/30/2004]

4.3.10.5 EFFECTIVE DATE:
November 30, 2004, unless a later date is cited at the end of a section.
[4.3.10.5 NMAC - Rp, 4 NMAC 3.10.5, 11/30/2004]

4.3.10.6 OBJECTIVE: The objective is to establish and provide guidelines for concessionaires and commercial exhibitors at the New Mexico state fair.
[4.3.10.6 NMAC - Rp, 4 NMAC 3.10.6, 11/30/2004]

4.3.10.7 DEFINITIONS:
A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the New Mexico state fair.

B. "Concessionaire" means a person who sells products or services on location, accepts orders, or sets up future business opportunities for potential monetary gain.

C. "*Concessions and exhibits guidelines and procedures manual*" means the annual publication of the New Mexico state fair which contains policies that govern concessions and certain exhibits at the New Mexico state fair. This publication is subject to change annually and the effective manual is the most recently published one.

D. "Exhibitor" means one who displays for informational purposes and who has no intent to sell products or services.

E. "General manager" means the general manager of the New Mexico state fair, or his/ her designee.
[4.3.10.7 NMAC - Rp, 4 NMAC 3.10.7, 11/30/2004]

4.3.10.8 GENERAL INFORMATION:

A. The commission delegates to the general manager of the New Mexico state fair, particularly the concessions department, the authority to publish an annual *concessions and exhibits guidelines and procedures manual*.

B. All concessions and exhibits must comply with terms as set forth in the *concessions and exhibits guidelines and procedures manual*. The general manager shall have the authority to make exceptions to the manual and other standards concerning concessions at the New Mexico state fair.

C. Security: Patrol services are provided throughout the fairgrounds. Exhibitors and concessionaires are respon-

sible for the protection of their property. Those requiring security escort service must request services by applying to the concessions department. Security service fees shall be paid upon receipt of an invoice or billing from the New Mexico state fair.

[4.3.10.8 NMAC - Rp, 4 NMAC 3.10.8, 11/30/2004]

4.3.10.9 HOURS OF OPERATION: The commission delegates to the general manager the authority to set the dates and hours of operation of the New Mexico state fair including, but not limited to, canceling and rescheduling. The general manager and the commission shall not be liable for any losses due to change in hours or dates.

[4.3.10.9 NMAC - Rp, 4 NMAC 3.10.9, 11/30/2004]

4.3.10.10 BUILDING AND BOOTH STANDARDS: The commission delegates to the general manager and concessions department the authority to set standards for buildings and booths at the New Mexico state fair. Application of these standards include, but are not limited to, the following: alterations, additions and improvements, portable structures, tents, trailers and storage.

[4.3.10.10 NMAC - Rp, 4 NMAC 3.10.10, 11/30/2004]

4.3.10.11 FIRE AND SAFETY STANDARDS: The commission delegates to the general manager the authority to set fire and safety standards in addition to those standards required by New Mexico state law. Application of these standards include, but are not limited to, the following: restrictions on the use of open-flame devices, use of fuel tanks, use of liquefied petroleum gas, filling of containers, use of fire-restrictive material, use of fire extinguishers and use of electrical accessories.

[4.3.10.11 NMAC - Rp, 4 NMAC 3.10.11, 11/30/2004]

4.3.10.12 INSPECTIONS AND PERMITS: The commission delegates to the general manager and the concessions department the authority to set regulations concerning the inspection of concessions and exhibit booths, as well as regulations pertaining to permits that are required by New Mexico state law. Inspections by state inspectors, law enforcement officials, fair management and concessions department employees may be conducted during reasonable hours during *any* phase of the fair, including set-up. All permits or licenses required under the Uniform Building, Electrical or Mechanical codes shall be obtained by the exhibitor at his or her sole expense. Any booth operation or business that fails to comply with safety or fire code

requirements shall be subject to immediate closure without refund.

[4.3.10.12 NMAC - Rp, 4 NMAC 3.10.12, 11/30/2004]

4.3.10.13 CREDENTIALS: The commission delegates to the general manager the authority to set regulations concerning the use, requirements and sale of credentials.

[4.3.10.13 NMAC - Rp, 4 NMAC 3.10.15, 11/30/2004]

4.3.10.14 ADVERTISING: The commission delegates to the general manager the authority to set regulations concerning advertising by exhibitors and concessionaires.

[4.3.10.14 NMAC - Rp, 4 NMAC 3.10.17, 11/30/2004]

4.3.10.15 DRAWINGS AND PRIZES: The commission delegates to the general manager the authority to set regulations concerning drawings and prizes held or given away by an exhibitor or concessionaire. These regulations include, but are not limited to, the following: give-away offers, free registrations and prohibition of raffles.

[4.3.10.15 NMAC - Rp, 4 NMAC 3.10.21, 11/30/2004]

4.3.10.16 INSURANCE COVERAGE: The New Mexico state fair and the state of New Mexico assume no liability for personal injury or loss or damage to any property of the concessionaire or exhibitor or their patrons due to fire, theft, tornado, weather conditions, *force majeure*, negligent or intentional acts of a third party or other incident. It is *required* that each concessionaire and exhibitor retain comprehensive general liability insurance in up to the amount of one million dollars, in addition to naming the New Mexico state fair as additionally insured.

[4.3.10.16 NMAC - Rp, 4 NMAC 3.10.25, 11/30/2004]

4.3.10.17 REPORTING PROCEDURES: The commission delegates to the general manager the authority to set regulations concerning the financial reporting by food vendors and exhibitors to the New Mexico state fair.

[4.3.10.17 NMAC - Rp, 4 NMAC 3.10.29, 11/30/2004]

4.3.10.18 VIOLATIONS: The commission delegates to the general manager the authority to issue notice of violation for infractions of policies set forth in the *concessions and exhibits guidelines and procedures manual*, as well as rules set forth in 4.3.10 NMAC. The concessionaire or exhibitor shall correct any problems found

and shall ensure future compliance. Non-compliance may result in the following: a fine; non-participation in the event; or future non-participation at the New Mexico state fair.

[4.3.10.18 NMAC - Rp, 4 NMAC 3.10.33, 11/30/2004]

4.3.10.19 DAMAGES: If a concessionaire or exhibitor is asked to prematurely leave the New Mexico state fair premises, he/she will be entitled to a pro rata refund for the balance of the contract.

[4.3.10.19 NMAC - Rp, 4 NMAC 3.10.22, 11/30/2004]

4.3.10.20 REGULATORY AGENCIES: Representatives of appropriate New Mexico state agencies shall be allowed access to all areas on the fairgrounds for monitoring and regulations compliance purposes. These agencies include, but are not limited to, the following:

- A. New Mexico environment department;
- B. New Mexico state fire marshal;
- C. New Mexico construction industries division;
- D. New Mexico safety counseling;
- E. law enforcement agencies;
- F. New Mexico state fair management and concession department employees.

[4.3.10.20 NMAC - Rp, 4 NMAC 3.10.34, 11/30/2004]

HISTORY OF 4.3.10 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives:

SF 67-1, Premium List, 1967, filed 6/27/67;
SF 68-1, Premium List, 1968, filed 6/14/68;
SF 69-1, Premium List, 1969, filed 6/18/69;
SF 70-1, Premium List, 1970, filed 6/25/70;
SF 71-1, Premium List, 1971, filed 7/02/71;
SF 72-1, Premium List, 1967, filed 6/26/72;
SF 73-1, Premium List, 1973, filed 6/18/73;
SF 74-1, Premium List, 1974, filed 6/18/74;
SF 75-1, Premium List, 1975, filed 6/16/75;
SF 76-1, Premium List, 1976, filed 7/07/76;
SF 77-1, Premium List, 1977, filed 6/14/77;
SF 78-1, Premium List, 1978, filed 6/21/78;
SF 79-1, Premium List, 1979, filed 7/27/79.

History of Repealed Material: Those applicable portions of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.10, State Fair - Participant Requirements - Concessions and Commercial Exhibits (filed 8/19/96) repealed effective 11/30/2004.

Other History: Those applicable portions

of SF 79-1, Premium List, 1979 (filed 7/27/79) and 4 NMAC 3.10 State Fair - Participant Requirements - Concessions and Commercial Exhibits (filed 8/19/96) replaced by 4.3.10 NMAC, Participant Requirements - Concessions and Commercial Exhibits, effective 11/30/2004.

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency amendment to 19.31.4 NMAC, Section 20.

19.31.4.20 EMERGENCY ORDER FOR FISH SALVAGE: Under authority of 19.31.10.18 promulgated by the state game commission on September 15, 1994, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists in Red River, Taos county at the Red River community kids pond to the extent that fish life will be destroyed by draining the water from the pond. Therefore, the method and manner of taking game fish, including the age restriction will be relaxed to allow grappling, spears, gigs, bows, and seines for all licensed anglers and unlicensed juvenile anglers under the age of 12 years, with daily bag and possession limits mandated by regulation also being relaxed. Bag limits on sport fish will be unlimited. This relaxation will go into effect at 10:00 a.m., November 3, 2004 and will remain in effect through 11:59 p.m. December 31, 2004.

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.400 NMAC, Section 12, which will be effective on December 1, 2004. The Medical Assistance Division amended the section to change the presumptive eligibility (PE) determination to once every six months.

8.200.400.12 PRESUMPTIVE ELIGIBILITY FOR CHILDREN: Effective July 1, 1998, a program of presumptive eligibility for children is being implemented. Presumptive eligibility for children provides full coverage medicaid benefits starting with the date of the presumptive eligibility determination and ending with the last day of the following month. Medicaid services will be provided on a fee-for-service basis during the presumptive eligibility period.

A. Only one presumptive eligibility period is allowed per ~~12 month~~ six (6) month period.

B. Presumptive eligibility determinations can be made only by individuals employed by eligible entities and certified as presumptive eligibility determiners by the medical assistance division. Determiners must notify the MAD claims processing contractor of the determination within 24 hours of the determination of presumptive eligibility.

[6-30-98; 8.200.400.12 NMAC - Rn, 8 NMAC 4.MAD.406, 7-1-01; A, 12-1-04]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.232.400 NMAC, Section 11, which will be effective on December 1, 2004. The Medical Assistance Division amended the section to change the presumptive eligibility (PE) determination to once every six months.

8.232.400.11 SPECIAL RECIPIENT REQUIREMENTS

A. **Age:** To be eligible for this category, an applicant/recipient must have been born after March 31, 1976 and be under nineteen (19) years of age.

B. **Presumptive eligibility for children:** A child may be eligible to receive medicaid services from the date the presumptive eligibility determination is made until the end of the month following the month in which the determination was made, a period of up to 60 days. The purpose of the presumptive eligibility is to allow medicaid payment for health care services furnished to a child while his/her application for medicaid is being processed. Only one presumptive eligibility period is allowed per ~~twelve month~~ six (6) months period. The period of presumptive eligibility begins when an approved presumptive eligibility provider establishes that the child's family income is below 235% of the federal income poverty guidelines for a family of the size involved. Presumptive eligibility criteria are a simplified version of category 32 eligibility requirements.

(1) **Processing presumptive eligibility information:** The medical assistance division (MAD) authorizes certain providers to make presumptive eligibility determinations. The provider must notify MAD through its claims processing contractor of the determination within 24 hours of the determination of presumptive eligibility.

(2) **Provider responsibility:** The presumptive eligibility provider must process both presumptive eligibility as well as an application for medical assistance for the child(ren).

(3) **Provider eligibility:** Entities

who may participate must be a:

(a) disproportionate share hospital (DSH facility), a federally qualified health center (FQHC), an Indian health service (IHS) facility, a department of health (DOH) clinic, a school, a children, youth and families department child care bureau staff member. The above-listed providers may be eligible entities starting July 1998.

(b) non-disproportionate share hospital, a primary care provider who is contracted with at least one SALUD! HMO, or a head start. The above-listed providers may be eligible entities starting January 1999.

C. **Health insurance:** In order to be eligible for SCHIP, (i. e., category 032 with family income between 185%-235% of federal income poverty guidelines), the child cannot have other health insurance coverage. Beginning October 1, 2002, an individual whose health insurance was voluntarily dropped will be ineligible for coverage under SCHIP for six months, starting with the first month that the health care coverage was dropped. For the purposes of determination of voluntary drop of coverage, any drop of coverage will be considered voluntary with the following exceptions:

(1) coverage was under a COBRA continuation provision and the coverage under that provision was exhausted; or

(2) coverage was not under a COBRA continuation provision and either the coverage was terminated as a result of loss of eligibility for the coverage, including as a result of legal separation, divorce, death, termination of employment or reduction in the number of hours of employment, or employer contributions toward the coverage were terminated.

[2-1-95; 4-1-95; 6-30-98; 3-1-99; 8.232.400.11 NMAC - Rn, 8 NMAC 4.KID.420, 421, 422, 426 & A, 7-1-01; A, 10-1-02; A, 12-1-04]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.312.3 NMAC, Section 11, which will be effective on December 1, 2004. The Medical Assistance Division amended Subparagraphs (h) and (k) of Paragraph (2) of Subsection G to show that oxygen administration equipment and the purchase of oxygen will no longer be included as a reimbursable cost on the nursing facility annual cost report.

8.312.3.11 DETERMINATION OF ACTUAL, ALLOWABLE AND

REASONABLE COSTS AND SETTING OF PROSPECTIVE RATES:

A. Adequate cost data:

(1) Providers receiving payment on the basis of reimbursable cost must provide adequate cost data based on financial and statistical records which can be verified by qualified auditors. The cost data must be based on an approved method of cost finding and on the accrual basis of accounting. However, where governmental institutions operate on a cash basis of accounting, cost data on this basis will be acceptable, subject to appropriate treatment of capital expenditures.

(2) **Cost finding:** The cost finding method to be used by NF providers will be the step-down method. This method recognizes that services rendered by certain non-revenue-producing departments or centers are utilized by certain other non-revenue-producing centers. All costs of non-revenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. The cost of the non-revenue-producing center serving the greatest number of other centers, while receiving benefits from the least number of centers, is apportioned first. Following the apportionment of the cost of the non-revenue-producing center, that center will be considered "closed" and no further costs will be apportioned to it. This applies even though it may have received some service from a center whose cost is apportioned later. Generally when two centers render services to an equal number, that center which has the greater amount of expense will be allocated first.

B. **Reporting year:** For the purpose of determining a prospective per diem rate related to cost for NF services, the reporting year is the provider's fiscal year. The provider will submit a cost report each year.

C. **Cost reporting:** At the end of each fiscal year the provider will provide to the state agency or its audit agent an itemized list of allowable cost (financial and statistical report) on the N.M. Title XIX cost reporting form. This itemized list must be submitted within 90 days after the close of the provider's cost reporting year. Failure to file a report within the 90-day limit, unless an extension is granted prior to the due date, will result in termination of Title XIX payments. Extensions must be requested in writing from the medical assistance division prior to the due date of the cost report. In the case of a change of ownership the previous provider must file a final cost report as of the date of the change of ownership in accordance with reporting requirements specified in this plan. The department will withhold the last month's payment to the previous provider as security against any outstanding obligations to the

department. The provider must notify the department 60 days prior to any change in ownership.

D. Retention of records:

(1) Each NF provider shall maintain financial and statistical records of the period covered by such cost report for a period of not less than four years following the date of submittal of the New Mexico Title XIX cost report to the state agency. These records must be accurate and in sufficient detail to substantiate the cost data reported. The provider shall make such records available upon demand to representatives of the state agency, the state audit agent, or the department of health and human services.

(2) The state agency or its audit agent will retain all cost reports submitted by providers for a period of not less than three years following the date of final settlement of such reports.

E. Audits: Audits will be performed in accordance with 42 CFR 447.202.

(1) **Desk audit:** Each cost report submitted will be subjected to a comprehensive desk audit by the state audit agent. This desk audit is for the purpose of analyzing the cost report. After each desk audit is performed, the audit agent will submit a complete report of the desk review to the state agency.

(2) **Field audit:** Field audits will be performed on all providers at least once every three years. The purpose of the field audit of the provider's financial and statistical records is to verify that the data submitted on the cost report are in fact accurate, complete and reasonable. The field audits are conducted in accordance with generally accepted auditing standards and of sufficient scope to determine that only proper items of cost applicable to the service furnished were included in the provider's calculation of its cost and to determine whether the expenses attributable to such proper items of cost were accurately determined and reasonable. After each field audit is performed, the audit agent will submit a complete report of the audit to the state agency. This report will meet generally accepted auditing standards and shall declare the auditor's opinion as to whether, in all material respects, the costs reported by the provider are allowable, accurate and reasonable in accordance with the state plan. These audit reports will be retained by the state agency for a period of not less than three years from the date of final settlement of such reports.

F. Overpayments: All overpayments found in audits will be accounted for on the HCFA-64 report to HHS no later than the second quarter following the quarter in which found.

G. Allowable costs: The

following identifies costs that are allowable in the determination of a provider's actual, allowable and reasonable costs. All costs are subject to all other terms stated in HIM-15 that are not modified by these regulations.

(1) **Cost of meeting certification standards:** These will include all items of expense that the provider must incur under:

- (a) 42 CFR 442;
- (b) Sections 1861(j) and 1902(a)(28) of the Social Security Act;
- (c) standards included in 42 CFR 431.610;
- (d) cost incurred to meet requirements for licensing under state law which are necessary for providing NF service.

(2) **Costs of routine services:** Allowable costs shall include all items of expense that providers incur to provide routine services, known as operating costs. Operating costs include such things as:

- (a) regular room;
- (b) dietary and nursing services;
- (c) medical and surgical supplies (including syringes, catheters; ileostomy, and colostomy supplies);
- (d) use of equipment and facilities;
- (e) general services, including administration of oxygen and related medications, hand feeding, incontinency care, tray service and enemas;
- (f) items furnished routinely and relatively uniform to all patients, such as patient gowns, water pitchers, basins and bed pans;
- (g) items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities, such as alcohol and body rubs, applicators, cotton balls, bandaids, laxatives and fecal softeners, aspirin, antacids, OTC ointments, and tongue depressors;
- (h) items which are used by individual patients but which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, ~~[oxygen administration equipment,]~~ and other durable equipment;
- (i) special dietary supplements used for tube feeding or oral feeding even if prescribed by a physician;
- (j) laundry services including basic personal laundry;

~~[(k) oxygen for emergency use — The Department will allow two options for the purchase of oxygen for patients for whom the attending physician prescribes oxygen administration on a regular or on-going basis:~~

~~(i) the long term care facility may purchase the oxygen and include it as a reimbursable cost in its cost report. This is the same as the method of reimbursement for oxygen administration~~

~~equipment, or~~

~~(ii) (k) The department will make payment directly to the medical equipment provider in accordance with procedures outlined in [medical assistance manual] 8.324.5 NMAC, Durable Medical Equipment and Medical Supplies, and subject to the limitations on rental payments contained in that section;~~

~~(l) managerial, administrative, professional, and other services related to the providers operation and rendered in connection with patient care.~~

(3) **Facility costs,** for purpose of specific limitations included in this plan, include only depreciation, lease costs, and long-term interest.

(a) Depreciation is the systematic distribution of the cost or other basis of tangible assets, less salvage value, over the estimated useful life of the assets.

(i) The basis for depreciation is the historical cost of purchased assets or the fair market value at the time of donation for donated assets.

(ii) Historical cost is the actual cost incurred in acquiring and preparing an asset for use.

(iii) Fair market value is the price for which an asset would have been purchased on the date of acquisition in an arms-length transaction between an informed buyer and seller, neither being under any compulsion to buy or sell. Fair market value shall be determined by a qualified appraiser who is a registered member of the American institute of real estate appraisers (MAI) and who is acceptable to the department.

(iv) In determining the historical cost of assets where an on-going facility is purchased, the provisions of medicare provider reimbursement manual (HIM-15), Section 104.14 will apply.

(v) Depreciation will be calculated using the straight-line method and estimated useful lives approximating the guidelines published in American hospital association chart of accounts for hospitals.

(b) Long-term interest is the cost incurred for the use of borrowed funds for capital purposes, such as the acquisition of facility, equipment, improvements, etc., where the original term of the loan is more than one year.

(c) Lease term will be considered a minimum of five years for purposes of determining allowable lease costs.

(4) **Gains and losses on disposition:** Gains or losses on the disposition of depreciable assets used in the program are calculated in accordance with Section 130 and 132 of HIM-15. Disposition of a provider's depreciable assets which effectively terminates its participation in the program shall include the sale, lease or other

disposition of a facility to another entity whether or not that entity becomes a participant in the program. The amount of gain on the disposition of depreciable assets will be subject to recapture as allowed by HIM-15.

(5) Depreciation, interest, lease costs, or other costs are subject to the limitations stated in Section 2422 of HIM-15 regarding approval of capital expenditures in accordance with Section 1122 of the Social Security Act.

(6) Facility costs are subject to all other terms stated in HIM-15 that are not modified by these regulations.

H. **Non-allowable costs:**

(1) Bad debts, charity, and courtesy allowances: bad debts on non-Title XIX program patients and charity and courtesy allowances shall not be included in allowable costs.

(2) **Purchases from related organizations:** Cost applicable to services, facilities, and supplies furnished to a provider by organizations related to the provider by common ownership or control shall not exceed the lower of the cost to the related organization or the price of comparable services, facilities or supplies purchased elsewhere. Providers shall identify such related organizations and costs in the state's cost reports.

(3) return on equity capital;

(4) other cost and expense items identified as unallowable in HIM-15;

(5) interest paid on overpayments as per 8.302.2 NMAC, *Billing for Medicaid Services*;

(6) any civil monetary penalties levied in connection to intermediate sanctions, licensure, certification, or fraud regulations.

[2/1/95; 8.312.3.11 NMAC - Rn, 8 NMAC 4 MAD.731-D.III, 7-1-02; A, 12-01-04]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.324.5 NMAC, Section 12, which will be effective on December 1, 2004. The Medical Assistance Division made some amendments to the covered services section for durable medical equipment and medical supplies.

8.324.5.12 COVERED DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES:

A. Medicaid covers durable medical equipment (DME) that meet the definition of DME, the medical necessity criteria and the prior authorization requirements. Medicaid covers repairs, maintenance, delivery of durable medical

equipment and disposable and non-reusable items essential for use of the equipment, subject to the limitations specified in this section. All items purchased or rented must be ordered by providers who are currently enrolled in medicaid.

(1) "Durable medical equipment" is defined as equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is not useful to individuals in the absence of an illness or injury and is appropriate for use at home.

(2) Equipment used in a recipient's residence must be used exclusively by the recipient for whom it was approved.

(3) To meet the medical necessity criterion, durable medical equipment must be necessary for the treatment of an illness or injury or to improve the functioning of a body part.

(4) Replacement of equipment is limited to one item every three years for adults, unless there are changes in medical necessity or are otherwise indicated in policy.

B. Medicaid covers medical supplies that are necessary for an ongoing course of treatment within the limits specified in this section. As distinguished from DME, medical supplies are disposable and non-reusable items. Medicaid also covers oxygen, nutritional products and shipping charges as specified in this section. Medicaid coverage for DME and medical supplies may be limited for recipients in institutional settings when the institutions are expected to provide the necessary items. Institutional settings are hospitals, nursing facilities, intermediate care facilities for the mentally retarded and rehabilitation facilities.

C. **Covered services for non-institutionalized recipients:** Medicaid covers certain medical supplies, nutritional products and durable medical equipment provided to eligible non-institutionalized recipients without prior authorization. Medicaid covers the following for non-institutionalized recipients:

(1) needles, syringes and intravenous (IV) equipment including pumps for administration of drugs, hyperalimentation or enteral feedings;

(2) diabetic supplies, chemical reagents, including blood, urine and stool testing reagents;

(3) gauze, bandages, dressings, pads, and tape;

(4) catheters, colostomy, ileostomy and urostomy supplies and urinary drainage supplies;

(5) parenteral nutritional products prescribed for recipients who have a documented medical need for increased nutrition; and

(6) apnea monitors: prior authorization is required if the monitor is needed

for six (6) months or longer;

(7) disposable sterile gloves are limited to 200 per month; disposable non-sterile gloves are limited to 200 per month.

D. **Covered services for institutionalized and non-institutionalized recipients:** Medicaid covers the following items without prior authorization for both institutionalized and non-institutionalized recipients:

(1) trusses and anatomical supports that do not need to be made to measure;

(2) family planning devices;

(3) repairs to DME; medicaid covers repair and replacement parts if recipients own the equipment for which the repair is necessary and the equipment being repaired is a covered medicaid benefit; some replacement items used in repairs may require prior authorization; repairs to augmentative and alternative communication devices require prior authorization; see Subsection C of 8.324.5.14 NMAC;

(4) monthly rental includes monthly service and repairs;

~~[(4)]~~ (5) replacement batteries and battery packs for augmentative and alternative communication devices owned by the recipient.

E. **Covered oxygen and oxygen administration equipment:**

(1) Medicaid covers the following oxygen and oxygen administration systems, within the specified limitations:

(a) oxygen contents, including oxygen gas and liquid oxygen;

(b) oxygen administration equipment purchase, with prior authorization: oxygen administration equipment may be supplied on a rental basis for one (1) month without prior authorization; rental beyond the initial month requires prior authorization.

(c) oxygen concentrators, liquid oxygen systems and compressed gaseous oxygen tank systems; medicaid approves the most economical oxygen delivery system possible for a specific recipient when considering types of oxygen concentrators;

(d) cylinder carts, humidifiers, regulators and flow meters;

(e) purchase of cannulae or masks; and

(f) oxygen tents and croup or pediatric tents.

~~[(2)] For recipients in nursing facilities, medicaid covers oxygen contents but does not cover oxygen administration equipment or disposable supplies associated with oxygen. The oxygen administration equipment and associated supplies must be provided by nursing facilities. If it is cost-effective to cover an oxygen concentrator rental rather than oxygen contents for gaseous systems, medicaid approves oxygen concentrator rental for recipients in~~

nursing facilities.

~~(3) Rental of oxygen concentrators is limited to twelve (12) months. If the medical need for a concentrator extends beyond twelve (12) months, medicaid covers monthly service and repair fees rather than the monthly rental fee. Prior authorization must be obtained for rentals that extend beyond twelve (12) months. The monthly service and repair fee includes any repairs, parts or replacement of the entire unit, as needed.~~

~~(4) (2)~~ Medicaid does not cover oxygen tank rental (demurrage) charges as separate charges when renting gaseous tank oxygen systems. If medicaid pays rental charges for systems, tank rental is included in the rental payments.

(3) Nursing homes are administratively responsible for overseeing oxygen supplied to their residents. Nursing homes are encouraged to enter into agreements with oxygen suppliers to provide a well-managed process for provision of oxygen.

F. Augmentative and alternative communication devices: Medicaid covers medically necessary electronic or manual augmentative communication devices for medicaid recipients. Medical necessity is determined by the medical assistance division or its designee(s). Communication devices whose purpose is also educational and/or vocational are covered only when it has been determined the device meets medical criteria.

(1) A recipient must have the cognitive ability to use the augmentative communication device and meet one of the following criteria.

(a) the recipient cannot functionally communicate verbally or through gestures due to various medical conditions in which speech is not expected to be restored; or

(b) the recipient cannot verbally or through gestures participate in his/her own health care decisions (i.e., making decisions regarding medical care or indicating medical needs or communicate informed consent on medical decisions).

(2) All of the following criteria must be met before an augmentative communication device can be considered for authorization. The communication device must be:

(a) a reasonable and necessary part of the recipient's treatment plan;

(b) consistent with the symptoms, diagnosis or medical condition of the illness or injury under treatment;

(c) not furnished for the convenience of the recipient, the family, the attending practitioner or other practitioner or supplier;

(d) necessary and consistent with generally accepted professional medical

standards of care (i.e., not experimental or investigational);

(e) established as safe and effective for the recipient's treatment protocol; and

(f) furnished at the most appropriate level suitable for use in the recipient's home environment.

G. Rental of durable medical equipment: Medicaid covers the rental of durable medical equipment. All rental payments must be applied toward purchase of the equipment. When the rental charges equal the amount allowed by medicaid for purchase, the equipment becomes the property of the recipient for whom it was approved.

(1) Medicaid does not cover routine maintenance and repairs for rental equipment.

(2) Low cost items, defined as those items for which the medicaid allowed payment is less than one hundred and fifty (\$150) dollars, may only be purchased. Purchased DME becomes the property of the medicaid recipient for whom it was approved.

(3) Oxygen concentrators, ventilators, ~~and~~ stationary and portable liquid oxygen systems are not subject to the mandatory provisions of applying the rental payments toward purchase. See Subsection E of 8.324.5.12 NMAC, *covered oxygen and oxygen administration equipment*.

H. Delivery of equipment and shipping charges: Medicaid covers the delivery of DME only when the equipment is initially purchased or rented and the round trip delivery is over seventy-five (75) miles. Providers may bill delivery charges as separate additional charges only when the providers customarily charge a separate amount for delivery to non-medicaid patients. Medicaid does not pay delivery charges for equipment purchased by medicare, for which medicaid is responsible only for the coinsurance and deductible. Medicaid covers shipping charges for DME and medical supplies when it is cost effective or practical to ship items rather than have recipients travel to pick up items. Shipping charges are defined as the actual cost of shipping items from providers to recipients by a means other than that of provider delivery. Medicaid does not pay shipping charges for items purchased by medicare for which medicaid is only responsible for the coinsurance and deductible.

I. Rental and purchase of used equipment: Medicaid covers the rental and purchase of used equipment. The equipment must be identified and billed as used equipment. The equipment must have a statement of condition or warranty, and a stated policy covering liability.

J. Wheelchairs and seat-

ing systems for institutionalized recipients:

(1) Medicaid covers customized wheelchairs and seating systems made for specific recipients, including recipients who are institutionalized. Written prior authorization is required. MAD or its designee cannot give verbal authorizations for customized wheelchairs/seating systems. A customized wheelchair and seating system is defined as one that has been uniquely constructed or substantially modified for a specific recipient and is so different from another item used for the same purpose that the two items cannot be grouped together for pricing purposes. There must be a customization of the frame for the wheelchair base or seating system to be considered customized.

(2) Repairs to a wheelchair owned by a recipient residing in an institution may be covered.

(3) Customized or motorized wheelchairs required by an institutional recipient to pursue educational or employment activity outside the institution may be covered, and will be reviewed on a case-by-case basis.

[2/1/95; 3/1/99; 8.324.5.12 NMAC - Rn, 8 NMAC 4.MAD.754.3 & A, 7/1/04; A, 12/1/04]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC Section 16, effective November 30, 2004.

16.19.4.16 RESPONSIBILITIES OF PHARMACIST AND PHARMACIST INTERN:

A. The following responsibilities require the use of professional judgement and shall therefore only be performed by a pharmacist or pharmacist intern:

(1) receipt of all new verbal prescription orders and reduction to writing;

(2) initial identification, evaluation and interpretation of the prescription order and any necessary clarification prior to dispensing;

(3) professional consultation with a patient or his agent regarding a prescription;

(4) evaluation of available clinical data in patient medication record system;

(5) oral communication to the patient or patient's agent of information, as defined in this section under patient counseling, in order to improve therapy by ensuring proper use of drugs and devices;

(6) professional consultation with the prescriber, the prescriber's agent, or any other health care professional or authorized

agent regarding a patient and any medical information pertaining to the prescription; and

(7) preparation of prescription drug orders for cancer chemotherapy solutions.

B. Only A Pharmacist Shall Perform The Following Duties:

(1) Final check on all aspects of the completed prescription, and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container.

(2) Evaluation of pharmaceuticals for formulary selection within the facility.

(3) Supervision of all supportive personnel activities including preparation, mixing, assembling, packaging, labeling and storage of medications.

(4) Ensure that supportive personnel have been properly trained for the duties they may perform.

(5) Any verbal communication with a patient or patient's representative regarding a change in drug therapy or performing therapeutic interchanges (i.e. drugs with similar effects in specific therapeutic categories). This does not apply to substitution of generic equivalents.

~~(5)~~ (6) Any other duty required of a pharmacist by any federal or state law.

C. Patient Records:

(1) A reasonable effort must be made to obtain, record and maintain at least the following information:

(a) name, address, telephone number, date of birth (or age) and gender of the patient;

(b) individual medical history, if significant, including disease state or states, known allergies and drug reactions and a comprehensive list of medications and relevant devices; and

(c) pharmacists comments relevant to the individuals drug therapy.

(2) Such information contained in the patient record should be considered by the pharmacist or pharmacist intern in the exercise of their professional judgement concerning both the offer to counsel and the content of counseling.

D. Prospective Drug Review:

(1) A pharmacist or pharmacist intern shall review the patient record for:

(a) clinical abuse/misuse;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage;

(f) incorrect duration of drug treatment;

(g) drug-allergy interactions;

(h) appropriate medication indi-

cation.

(2) Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.

E. Counseling:

(1) Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist or pharmacist intern shall personally offer to counsel on matters which will enhance or optimize drug therapy with each patient or the patient's agent. Upon receipt of a refill prescription drug order a pharmacy technician may query the patient or patient's agent regarding counseling by the pharmacist or pharmacist intern concerning drug therapy. Such counseling shall be in person, whenever practicable, or by telephone, and shall include appropriate elements of patient counseling which may include, in their professional judgement, one or more of the following:

(a) the name and description of the drug;

(b) the dosage form, dosage, route of administration, and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescriptions refill information;

(i) action to be taken in the event of a missed dose;

(j) the need to check with the pharmacist or practitioner before taking other medication; and

(k) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(2) [REPEALED]

(3) Alternative forms of patient information may be used to supplement patient counseling when appropriate. Examples include, but not limited to, written information leaflets, pictogram labels and video programs.

(4) Patient counseling, as described above and defined in this regulation shall not be required for in-patients of a hospital or institution where other licensed health care professionals are authorized to administer the drug(s).

(5) A pharmacist shall in no way

attempt to circumvent or willfully discourage a patient or patient's agent from receiving counseling. However, a pharmacist shall not be required to counsel a patient or patients's agent when the patient or patients's agent refuses such consultation.

(6) When the patient or agent is not present when the prescription is dispensed, including but not limited to a prescription that was shipped by the mail, the pharmacist shall ensure that the patient receives written notice of available counseling. Such notice shall include days and hours of availability, and: (1) of his or her right to request counseling; and (2) a toll-free telephone number in which the patient or patient's agent may obtain oral counseling from a pharmacist who has ready access to the patient's record. For pharmacies delivering more than 50% of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than 6 days per week. The facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

(7) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice concerning available counseling.

F. [REPEALED]

G. R e g u l a t o r y

Assessment: Profiles, either electronic or hard copy, shall be available for inspection, and shall provide the capability of storing the described historical information. The profiles must demonstrate that an effort is being made to fulfill the requirements by the completion of the detail required. A patient record shall be maintained for a period of not less than three (3) years from the date of the last entry in the profile record.

[08-27-90; 16.19.4.16 NMAC - Rn, 16 NMAC 19.4.16, 03-30-02; 16.19.4.16 NMAC - Rn, 16.19.4.17 NMAC, 12-15-02; A, 02-01-04; A, 11-30-04]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.24 NMAC Section 7, effective November 30, 2004.

16.19.24.7 DEFINITIONS: All terms defined in the Pharmacy Act or elsewhere in the Board regulations shall have the same meanings in this regulation unless otherwise defined as follows:

A. "Emergency Medical Service" or "EMS" refers to an organization which: transports patients and/or in which patient care is delivered off-site primarily by mobile units in which one or more licensed practitioners assesses or diagnose and treat patients; and in which drugs are

stored, distributed, dispensed, or administered for patient treatment.

B. **"In Use" means when dangerous drugs and controlled substances are removed from the principle place of business' stored inventory and placed in jump kits or mobile units for emergency use.**

[B]C. "Jump Kit" means portable carrying devices that contain emergency medical supplies and drugs.

[C]D. "Location" refers to any sites which are part of the EMS's operations, including its headquarters, stations, vehicle bays, docks, or hangers. This can include the mobile units or the practitioner's jump kits.

[D]E. "Medical Director" means a physician who is responsible for all aspects of patient care of an EMS as defined in NMSA 24 10 B(3).

[E]F. "Mobile Unit" means to a vehicle such as an ambulance, rescue or fire truck; boat or ship; or aircraft.

[F]G. "Practitioner" refers to a licensee under the laws and regulations who is an employee or contractee of an EMS and is authorized to assess or diagnose patients, and to dispense drugs for emergency treatment. They may include physicians, physician's assistants, nurses, and/or emergency medical technicians/paramedics.

H. **"Principle Place of Business" refers to any site's which are part of the EMS's operations, including its headquarters, stations, vehicle bays, docks, or hangars where dangerous drugs and/or controlled substances are stored, but does not include dangerous drugs or controlled substances "in use".**
[12-15-99; 16.19.24.7 NMAC - Rn, 16 NMAC 19.24.7, 03-30-02; A, 11-30-04]

NEW MEXICO DEPARTMENT OF TRANSPORTATION

18 NMAC 28.3, Selection Committee for Qualification Based Proposals (filed 01/02/1998) is hereby repealed effective 12/01/2004. This rule is replaced by 18.28.3 NMAC, Selection Committee for Qualification Based Proposals, effective 12/01/2004.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 28 HIGHWAY CON-
TRACTING AND BIDDING
PART 3 SELECTION COM-
MITTEE FOR QUALIFICATIONS**

BASED PROPOSALS

18.28.3.1 ISSUING AGENCY:
New Mexico Department of Transportation,
P.O. Box 1149 Santa Fe, New Mexico
87504-1149.

[18.28.3.1 NMAC - Rp, 18 NMAC 28.3.1,
12/01/2004]

18.28.3.2 SCOPE: New Mexico
department of transportation. General pub-
lic. Engineering consultants.

[18.28.3.2 NMAC - Rp, 18 NMAC 28.2,
12/01/2004]

**18.28.3.3 S T A T U T O R Y
AUTHORITY:** NMSA 1978, Section 13-
1-121 (D).

[18.28.3.3 NMAC - Rp, 18 NMAC 28.3.3,
12/01/2004]

18.28.3.4 D U R A T I O N :
Permanent.

[18.28.3.4 NMAC - Rp, 18 NMAC 28.3.4,
12/01/2004]

18.28.3.5 EFFECTIVE DATE:
December 1, 2004, unless a later date is
cited at the end of a section.

[18.28.3.5 NMAC - Rp, 18 NMAC 28.3.5,
12/01/2004]

18.28.3.6 OBJECTIVE: To cre-
ate a professional services selection com-
mittee to serve as the selection committee
for transportation projects of the New
Mexico department of transportation using
competitive sealed qualifications based pro-
posals. This selection committee is neces-
sary in order for the New Mexico depart-
ment of transportation to fulfill its duties
and responsibilities by effectively and con-
tinuously managing and conducting its
work on transportation projects through the
procurement process.

[18.28.3.6 NMAC - Rp, 18 NMAC 28.3.6,
12/01/2004]

18.28.3.7 D E F I N I T I O N S :
[RESERVED]

**18.28.3.8 COMMITTEE FOR
QUALIFICATIONS BASED PROPOS-
ALS:**

A. The professional ser-
vices selections committee for transportation
projects using competitive sealed qualifica-
tions based professional services shall con-
sist of the following members:

- (1) permanent members:
 - (a) context sensitive solutions
manager, or designee, who shall serve as
chair, non-voting member;
 - (b) infrastructure division direc-
tor, or designee, voting member;
 - (c) programs division director, or
designee, voting member;

(d) regional design manager over-
seeing project development engineers or
development support services manager, or
designee, voting member;

(e) deputy secretary for business
support, or designee, voting member, and

(f) district engineer, or designee,
voting member.

(2) advisory (non-voting) mem-
bers:

(a) contract administration sec-
tion;

(b) equal employment opportuni-
ty programs bureau;

(c) federal highway administra-
tion (only if federal participation is request-
ed);

(d) development support services
bureau;

(e) state transportation commis-
sion member (at their discretion);

(f) project development engineer
or project manager;

(g) professional services contracts
manager; and

(h) any other person as requested
by the secretary of transportation.

B. Members of the state
transportation commission may attend any
or all meetings of the professional services
selection committee for consultant engi-
neering and land surveyors at their discre-
tion, but shall not participate in the selection
process directly or indirectly.

[18.28.3.8 NMAC - Rp, 18 NMAC 28.3.8,
12/01/2004]

HISTORY OF 18.28.3 NMAC:

Pre-NMAC History: The material in this
part was derived from that previously filed
with the State Records Archives under:
SHTD Rule 93-4, Emergency Rule creating
a Highway Project Selection Committee for
Competitive Sealed Qualifications Based
Proposals, filed 6/29/93; SHTD Rule 93-4,
Rule Creating a Highway Project Selection
Committee for Competitive Sealed
Qualifications Based Proposals, filed
11/2/93; and SHTD Rule 93-4, Amendment
1, Amendment to Rule Creating a Highway
Project Selection Committee for
Competitive Sealed Qualifications Based
Proposals, filed 12/15/94.

History of Repealed Material: 18 NMAC
28.3, Selection Committee for Qualification
Based Proposals (filed 01/02/1998)
repealed 12/01/2004.

Other History: SHTD Rule 93-4, Rule
Creating a Highway Project Selection
Committee for Competitive Sealed
Qualifications Based Proposals, filed
11/2/93 was renumbered, reformatted,
amended and replaced by 18 NMAC 28.3,
Selection Committee for Qualification
Based Proposals, effective 01/15/1998.

18 NMAC 28.3, Selection Committee for Qualification Based Proposals (filed 01/02/1998) was replaced by 18.28.3 NMAC, Selection Committee for Qualifications Based Proposals, effective 12/01/2004.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an emergency amendment to 11.4.3 NMAC, Section 11, effective November 15, 2004.

11.4.3.11 MILEAGE BENEFITS: Employer shall pay worker's mileage, transportation and meal expenses for travel to HCPs of fifteen (15) miles or more, one (1) way, from the worker's residence or place of employment, depending upon the point of origin of the travel, based on the following rates:

A. ~~[twenty five cents (25)]~~ thirty-two cents (.32) per mile for travel in a privately owned vehicle;

B. actual reimbursement for the cost of a ticket on a common carrier, if applicable;

C. actual reimbursement, not to exceed ~~[twenty two dollars and fifty cents (\$22.50)]~~ thirty dollars (\$30.00) for meals in a 24-hour period; and

D. actual reimbursement, not to exceed ~~[sixty dollars (\$60.00)]~~ eighty five dollars (\$85.00) for the cost of overnight lodging in the event travel of at least two hours one way is required, provided however that the maximum actual expense reimbursement for an overnight stay in the city of Santa Fe shall not exceed one hundred and thirty five dollars (\$135.00).

[5/26/87...6/1/96; 11.4.3.11 NMAC - A/E, 11/15/04]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.2 NMAC, Sections 3, 5, 7, 8, and 9 effective 11/30/04. This rule was also reformatted and renumbered from 11 NMAC 4.2 to comply with current NMAC requirements.

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 4 WORKERS' COMPENSATION
PART 2 DATA REPORTING
AND SAFETY REQUIREMENTS**

11.4.2.1 ISSUING AGENCY: Workers' Compensation Administration. [6/1/96; 11.4.2.1 NMAC - Rn, 11 NMAC 4.2.1, 11/30/04]

11.4.2.2 SCOPE: These provisions govern all employers subject to the Act. [6/1/96; 11.4.2.2 NMAC - Rn, 11 NMAC 4.2.2, 11/30/04]

11.4.2.3 STATUTORY AUTHORITY: The director is authorized by Section 52-5-4, NMSA 1978 [~~(Repl. Pamph. 1991)~~], to promulgate regulations to implement the Act. The regulations implementing the safety program requirements are adopted pursuant to Section 52-5-5, NMSA 1978 [~~(Repl. Pamph. 1991)~~]. The rules on gathering and reporting of statistical data are adopted pursuant to Section 52-5-3, NMSA 1978 [~~(Repl. Pamph. 1991)~~]. [6/1/96; 11.4.2.3 NMAC - Rn & A, 11 NMAC 4.2.3, 11/30/04]

11.4.2.4 DURATION: Permanent, except as provided in 11.4.2.8 NMAC. [6/1/96; 11.4.2.4 NMAC - Rn, 11 NMAC 4.2.4, 11/30/04]

11.4.2.5 EFFECTIVE DATE: June 1, 1996, unless a later date is cited at the end of a section [~~or paragraph~~]. [6/1/96; 11.4.2.5 NMAC - Rn & A, 11 NMAC 4.2.5, 11/30/04]

11.4.2.6 OBJECTIVE: The objective of 11.4.2 NMAC is to establish reporting and safety requirements for employers. This rule creates a standardized method for reporting data on work accidents, notifying workers about legal requirements for making a claim, and complying with mandatory safety provisions of the Act. [6/1/96; 11.4.2.6 NMAC - Rn, 11 NMAC 4.2.6, 11/30/04]

11.4.2.7 DEFINITIONS:
A. "ASCII" means a code that follows the proposed standard for defining codes for information exchange between equipment produced by different manufacturers. [A(MERICAN) S(TANDARD) C(ODE FOR) I(NFORMATION) I(NTERCHANGE)].

B. "Ivanlink/Advantis" means the insurance value added network used by the insurance industry to communicate electronically. The IVANLINK/ADVANTIS system allows users to maintain an electronic mail box to receive or send electronic transmissions.

C. "Claims administrator" means the insurance carrier, third party

administrator, self-insured employer, or any claims coordinator designated by the employer or another claims payor to provide claims processing services on workers' compensation claims. These services include receiving and sending workers' compensation claims information to the WCA, employer, insurance carrier, and injured worker by use of the paper copy first report of injury or illness and notice of benefit payment, or the electronic transmission of these documents.

D. "Loss run" means a computer generated report, listing or file that provides uniquely identifying and financial data of each individual claim for a group of claims occurring during a particular period for an insured or employer.

E. "Severity index" means a calculated value assigned to an injury by summing the ratings associated with type of benefit payable, medical costs and indemnity costs.

F. "Average severity index" means the sum of all severity indexes for an employer during the time period examined divided by the number of separate injuries reported during that time period for that employer as shown by the WCA E-1.2 and E-6 databases.

G. "Average severity index by industry" means the sum of the severity indexes within an industry divided by the number of separate employers within the industry, during the time period examined, based upon the data in the possession of the WCA on the date of the calculation.

H. "Average sum severity index" means the sum of all severity indexes for an employer during the time period examined.

I. "Average sum severity index by industry" means the sum of the sum severity indexes for each employer in the industry divided by the number of employers in the industry, during the time period examined, based upon the data in the possession of the WCA on the date of the calculation.

J. "Industry" means a business, or all businesses, as the context requires, that have identical 2 digit NAICS codes as determined by the WCA.

K. "NAICS code" means a designator of the principal business of an employer assigned by the WCA pursuant to the current version of the North American Industry Classification System, a publication of the Executive Office of the President, Office of Management and Budget, United States.

[6/1/96; 4/30/98; 11.4.2.7 NMAC - Rn & A, 11 NMAC 4.2.7, 11/30/04]

11.4.2.8 DATA COLLECTION:

A. General provisions:

(1) All paper copy reports must be legibly typed or printed in black ink.

(2) It is the employer's responsibility to timely complete and submit all reports required under the data collection rules. Such reports will not be accepted for filing unless complete and legible.

(3) All reports must be filed with the statistical reporting section of the economic research bureau of the WCA.

(4) Time frames for submission of reports are not waived when the WCA returns an incomplete or erroneously completed report for correction.

(5) It is the responsibility of the claims administrator to report to the WCA required financial, legal and medical claims activity for the insured including reporting of the first dollar of indemnity benefits paid by, or on behalf of, an employer who has a deductible policy.

(6) It is the responsibility of the claims administrator to provide a loss run to the WCA upon request for reconciliation of a noted discrepancy.

(7) Claims administrators that file any required report at the time of the mediation conference, either with the mediator or at the clerk of the courts office, have not met their filing obligation with the WCA and must file all required reports with the economic research bureau. Date of actual filing with the economic research bureau will be determinative of compliance with filing requirements.

B. Employers' first report of injury or illness (Form E1.2):

(1) A completed Form E1.2 must be submitted, within ten (10) days of notification, for all injuries or occupational diseases that result in more than seven (7) cumulative days of lost time.

(2) Form E1.2 must be timely submitted by employer even if the claim is disputed.

(3) The employer must furnish a legible paper copy of the E1.2 to the worker and insurance carrier at the time of submission to the WCA.

(4) Electronic filing (effective through December 31, 1996)

(a) An employer's representative may file electronically with the WCA.

(b) EDI trading partner profile must be on record with the WCA before electronic filings can be accepted. A sample EDI trading partner profile is contained in Attachment A. An EDI trading partner profile must be submitted by the claims administrator to the WCA within 30 days of when the criteria set forth in Paragraph (5) of Subsection B and Paragraph (2) or Subsection C of 11.4.2.8 NMAC has been met.

(c) The transmission format is the international association of industrial acci-

dent boards and commissions 148 record scheme. Transmission header and trailer records are also required under this format. The transmission record formats are also contained in Attachment A.

(d) During the testing phase of EDI, an employer's representative must achieve at least a ninety-seven percent success rate in filing claims data prior to be allowed to stop the paper processing of statistical forms and move into EDI production.

(e) Electronic mailboxes must be registered with the economic research bureau of the WCA.

(f) Accepted and rejected transmissions will be electronically returned.

(5) Electronic filing (effective January 1, 1997):

(a) A claims administrators submitting 200 or more notice of benefit payment forms indicating initial payment of indemnity benefits, in calendar year 1998, must file the E1.2 electronically with the WCA beginning in calendar 1999. Claims administrators submitting 100 or more notice of benefit payment forms indicating initial payment of indemnity benefits, in calendar year 1999 or thereafter, must file the E1.2 electronically with the WCA beginning in calendar year 2000 or thereafter.

(b) Electronic transmissions must be in the ASCII format. The file may be transmitted by electronic transmission via ADVANTIS or Internet.

(c) Subparagraphs (b) through (f) of Paragraph (4) of Subsection B of 11.4.2.8 NMAC continue to govern all electronic filings.

C. Notice of benefit payment (Form E6):

(1) Form E6 must be submitted:

(a) within ten (10) days of the date of initial payment of the indemnity portion of any claim;

(b) within fifty (50) days of the filing of an order of the WCA, or of the date upon which a recommended resolution became a compensation order for payment made to or on behalf of an injured worker, unless an order staying enforcement of a compensation order is filed with the clerk; and

(c) within thirty (30) days of the date of the closing payment of the indemnity portion of the claim; and

(d) within thirty (30) days of any change in benefits; and

(e) within ~~one hundred and eighty (180)~~ ninety (90) days of the date of the initial payment of a medical-only claim with cumulative payments over \$300.00, provided, however, that a E-6 closing report shall be submitted with respect to all claims for which expenses have been previously reported;

(f) for medical-only claims with cumulative payments over \$300.00, the initial and closing E-6 may be submitted on one form.

(2) Electronic filing (effective January 1, 1999 and January 1, 2000)

(a) Claims administrators submitting 200 or more notice of benefit payment forms indicating initial payment of indemnity benefits, in calendar year 1998 shall file the E6 electronically beginning in calendar year 1999 pursuant to the procedures in Paragraph (4) of Subsection B of 11.4.2.8 NMAC. Claims administrators submitting more than 100 notice of benefit payment forms indicating initial payment of indemnity benefits, in calendar year 1999 and thereafter, shall file the E6 electronically beginning in calendar year 2000 or thereafter pursuant to the procedures in Paragraph (4) of Subsection B of 11.4.2.8 NMAC.

(b) The transmission format for the notice of benefit payment form shall be the international association of industrial accident boards and commissions A49 record scheme.

D. Annual expenditure report: Employers shall file an annual expenditure report with the economic research bureau of the WCA. The annual expenditure report must:

(1) be submitted on a form approved by the director;

(2) identify the carrier(s), groups, pools or self-insured employer(s), by the name and the federal employers identification number (FEIN);

(3) be submitted for all expenditures reported in a calendar year (January 1-December 31); and

(4) be received by the WCA no later than February 15th of the year following the reporting period.

E. Failure to file. Any failure to timely file a statistical report as required by 11.4.2 NMAC, shall be considered a violation of these rules and may be penalized pursuant to Section 52-1-61 NMSA 1978 [~~Repl. Pam. 1991~~].

F. Waiver. Any provision of 11.4.2.8 NMAC may be waived, either permanently or temporarily, by written order of the director upon good cause shown.

[5/26/87, 6/20/89, 5/29/91, 6/1/96, 1/1/97, 1/1/98, 4/30/98, 10/1/98; 11.4.2.8 NMAC - Rn & A, 11 NMAC 4.2.8, 11/30/04]

11.4.2.9 SAFETY:

A. Annual inspections:

(1) All employers, members of a group self-insurer or members of a governmental pool paying an annual workers' compensation insurance premium in excess of \$5,000.00 and all employers certified as individual self-insurers are required to have

a safety inspection at least once per year. All other employers are encouraged to do so.

(2) The minimum standards for the annual safety inspection are contained in the WCA booklet, Annual Safety Inspections.

(3) Failure to comply with the annual safety inspection requirement may subject an employer to penalties under Section 52-1-6.2 NMSA 1978 [~~Repl. Pamp. 1991~~].

B. Extra-hazardous employers:

~~[(1) An extra hazardous employer shall be an employer with an injury frequency rate greater than two (2) standard deviations above the mean for employers industry.~~

~~[(2) The safety bureau of the WCA shall determine which employers are extra-hazardous by comparing industry specific data compiled by the WCA with information collected from the employers first report of injury and notice of initial benefit payment.~~

~~[(3) The safety bureau shall provide a notice of classification as an extra-hazardous employer to any employer so classified within ten (10) working days of its determination, and shall attach copies of the statistical data upon which the determination is based.]~~

~~(1) An "extra-hazardous employer is:~~

~~(a) an employer whose average severity index for the twelve months preceding the designation is at least two standard deviations above the mean of the average severity indexes in the industry in which the employer is classified; or~~

~~(b) an employer whose average sum of severity indexes is at least two standard deviations above the mean of the average sum of severity indexes in the industry in which the employer is classified.~~

~~(2) The official reports to the WCA of notices of accident (Form E-1.2) and payment of benefits (Form E-6) shall definitively constitute the database from which the severity index for an employer is calculated. Additional or updated data not present in the E-1.2 or E-6 databases shall not be considered in the calculation of the severity index, the imposition of requirements or sanctions under this rule, nor for any other purpose. For purposes of administrative and judicial review, a copy of the WCA computer generated report showing the E-1.2 and E-6 report data used to calculate the employer's average severity index, together with an attestation from the database manager that the report is correct and accurate, shall be considered competent evidence of the correct data on which the severity index and average severity index should be calculated.~~

~~(3) The severity index for a par-~~

ticular injury shall be a number between 1 and 15, calculated by using the following table for assignment of values:

Type of benefit payable:	Medical only	TPD	TTD	PPD	PTD	Death
Rating:	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Medical costs		<u>\$0-1000</u>	<u>\$1001-5,000</u>	<u>\$5001-10,000</u>	<u>\$10,001-30,000</u>	<u>\$30,001 or greater</u>
Rating:	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Indemnity costs:		<u>\$0-1000</u>	<u>\$1001-5,000</u>	<u>\$5001-10,000</u>	<u>\$10,001-30,000</u>	<u>\$30,001 or greater</u>
Rating:	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>

(4) The WCA shall utilize the E-1.2 and E-6 databases to calculate the severity index for each reported accident for an employer for which expenditures for benefits were made during the twelve (12) months preceding the calculation, utilizing the table set forth in Paragraph (3) of Subsection B of this Section.

(5) The WCA shall calculate an average severity index and average sum severity index for the employer for all injuries reported to the WCA's E-1.2 and E-6 databases for the twelve (12) months immediately preceding the calculation. The calculations shall occur every six (6) months on a schedule to be determined by the director.

(6) The WCA shall compare the average severity index for the employer with the average severity index and average sum severity index of other employers in the same 2 digit NAICS code classification determined by the WCA to be appropriate for the employer, for the same time period, utilizing standard statistical techniques.

(7) The WCA shall give written notice to any employer, and the insurer or self-insurance entity, if any, that it determines to fall into the definition of "extra-hazardous" by personal service upon any person of suitable age and discretion at the business location or by certified mail addressed to the owner, proprietor, managing partner, president, majority stockholder, chief operational officer or manager of the business.

~~[(4)]~~ (8) Employers who have received a notice of classification shall have [ten (10)] five (5) working days to file a written request for reconsideration with the director. No requirement under these rules shall be stayed during the pendency of a request for reconsideration. The director may hold hearings upon a request for reconsideration and make a determination as appropriate. [The director's determination upon the request for reconsideration is final.] Appeal of a ruling by the director shall be by writ of certiorari to the district court, pursuant to S.C.R.A. Rule 1-075.

~~[(5)]~~ (9) Within [thirty (30)] fifteen (15) days of service of a notice of classification, an extra-hazardous employer [must] shall have a safety consultation performed at every location where it does business in New Mexico unless a more limited safety consultation is authorized in writing by the director, for good cause shown. The consultation must be performed by [safety bureau] field office safety personnel, the employer's insurer or a safety consultant approved by the director. [Safety bureau] Field office safety personnel may assist employers in interpreting the requirement for a safety consultation and in conducting the consultation.

~~[(6)]~~ (10) Within [ten (10)] five (5) working days of the safety consultation called for in Paragraph [(4)] (8) of Subsection B of 11.4.2.9 NMAC the [safety inspector must] person performing the safety inspection shall submit a written report detailing any identified hazardous conditions and practices. The written report must be in a form acceptable to the director.

~~[(7)]~~ (11) Within [fifteen (15)] ten (10) working days of the submission of the written report [of] concerning the safety consultation, the extra-hazardous employer [must] shall submit a specific accident prevention plan to resolve the hazards and practices identified in the written report. The plan must propose acceptable access to work sites and workers for field office safety [bureau] personnel for the purpose of determining compliance with the plan. [The specific accident prevention plan must be approved by the director.] The director must approve the specific accident prevention plan. Any plan not approved by the director must be corrected and resubmitted for approval within ten (10) days of the notice of disapproval by the director.

~~[(a)]~~ (12) [For good cause shown, the director may extend the time for submission of a specific accident prevention plan for up to thirty (30) additional days.] For good cause shown, the director may extend any time limit required by this Part for up to thirty (30) additional days.

~~[(b)]~~ (a) All applications for extension shall be submitted in writing and shall state with specificity the reasons for requested additional time.

(b) The director may hold hearings to determine the appropriateness of extensions of time for submission of specific accident prevention plans.

(c) The director's determination on a request for an extension is final.

(d) In the case of an extra-hazardous employer whose employees are assigned to furnish services to other employers, the responsibility for the development and submission of an accident prevention plan as required by these rules shall be with the employer who controls and provides direct on-site supervision of the workers who are exposed to the hazards and practices identified in the written report of the safety consultant.

(13) Any employer who fails to develop, submit, cause to be submitted, implement or comply with a specific accident prevention plan as provided for in these rules shall be subject to imposition of a penalty of up to \$5,000.00 per failure. Each incident of failure to formulate, submit, cause to be submitted, implement or comply with a specific accident prevention plan persisting for a period of fifteen (15) working days shall constitute a separate violation and subject the employer to additional penalties. The enforcement procedures established in Part Five (5) of these rules shall be utilized in all proceedings under this subsection.

(14) An employer shall no longer be designated as "extra-hazardous" when the provisions of Paragraphs (8) through (11) of Subsection B of 11.4.2.9 NMAC, inclusive, have been satisfied and when the average severity index for the employer and average sum of severity indexes for the employer both are less than two standard deviations from the industry mean as determined by a regularly scheduled calculation.

C. The employer, its insurer and all agents of the employer or insurer have the duty of compliance with reasonable requests for information from ~~[safety bureau]~~ workers' compensation administration personnel. ~~[The safety bureau]~~ WCA personnel shall collect data regarding all work-place fatalities in New Mexico.

[2/24/92, 10/30/92, 6/1/96, 4/30/98; 11.4.2.9 NMAC - Rn & A, 11 NMAC 4.2.9, 11/30/04]

11.4.2.10 ACCIDENT NOTICE POSTERS AND ACCIDENT NOTICES:

A. Every employer shall post and keep posted in conspicuous places on its business premises, in areas where notices to employees and applications for employment are customarily posted, an accident notice poster stating the requirement that workers notify employers of accidents. The accident notice poster is available at the WCA at no charge to the employ-

er on a form approved by the director.

B. Every employer must keep attached to the accident notice poster an adequate supply of notice of accident forms approved by the director.

C. Any employer may submit to the director a proposal for approval of a notice of accident form or accident notice poster. No form shall be approved except in writing, signed by the director.

[1/24/91...6/1/96; 11.4.2.10 NMAC - Rn, 11 NMAC 4.2.10, 11/30/04]

HISTORY OF 11.4.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

WCA 86-5, Final Notice of Final Payment of Compensation, filed 5/26/87.

WCD 89-5, Final Reports, filed 6/20/89.

WCA 86-6, Completed Supplement Report to Accident, filed 5/26/87.

WCD 89-6, Annual Reports, filed 6/20/89.

History of Repealed Material:
[RESERVED]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.3 NMAC, Sections 5 and 12 effective 11/30/04. This rule was also reformatted and renumbered from 11 NMAC 4.3 to comply with current NMAC requirements.

11.4.3.5 EFFECTIVE DATE:

June 1, 1996 unless a later date is cited at the end of a section.

[6/1/96; 11.4.3.5 NMAC - Rn & A, 11 NMAC 4.3.5, 11/30/04]

11.4.3.12 CONDUCT OF PARTIES

A. Worker's duties:

(1) Worker shall answer reasonable requests from the employer regarding work status.

(2) When a worker is receiving disability benefits, worker shall report to employer, within fifteen (15) days, any return to work, any written medical release to return to work provided to worker, and any physical limitations imposed by a physician and provided to worker in writing.

(3) Worker shall, upon request, give employer the names, addresses, relationship and degree of dependency of all dependents, and may be required to make a verified statement regarding these matters.

(4) Worker may be required to sign the authorization to release medical information as a condition of receipt of

workers' compensation benefits.

B. Employer's duties:

(1) Upon receipt of a medical release to return to work employer shall notify worker about any required procedures for application for a pre-injury job or modified work.

(2) The employer shall not require the worker to sign any medical release, other than the authorization to release medical information, as a condition of receipt of workers' compensation benefits.

(3) The employer shall sign any notice of accident form on the date submitted by the worker.

(4) The employer shall report every accident to their insurer or, in the case of a self-insured employer or member of a self insurance group, their claims administrator, whether or not the employer considers the claim to be valid, within 72 hours of the earlier of:

(a) actual knowledge of the accident by the employer; or

(b) presentation of a notice of accident form to the employer.

(5) An insured employer is prohibited from making any payment of statutory workers' compensation benefits directly to a worker, the dependents of a worker, or to a service provider on behalf of a worker, except when the employer is a self-insurer, or member of a group self insurance program, certified by the director. Payments of statutory benefits by a certified self-insurer or a member of a certified group self-insurance program must be made by the authorized claims administrator for the self-insurance program. This prohibition does not preclude any employer from paying a worker his or her full wage or salary pursuant to a wage continuation program, or from paying wages or salary to a worker for limited or light duty employment.

(6) Employers who are subject to the Act but uninsured at the time of a compensable accident shall pay statutory workers' compensation benefits directly to a worker or eligible dependent upon request. Any employer paying a claim under this subsection shall inform the director in writing within 10 days of the initial payment, and shall provide the employer's business location, the total number of employees, and the worker's name, address, and benefit status. The director may impose upon the employer any conditions regarding the manner of payment of benefits as may reasonably be required to protect the interests of the worker and insure compliance with the Act.

C. A violation of this section may result in the imposition of criminal, administrative and judicial sanctions.

[5/26/87, 6/20/89, 1/24/91, 6/1/96; 11.4.3.12 NMAC - Rn & A, 11 NMAC 4.3.12, 11/30/04]

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Other Material Related to Administrative Law

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment Extra Hazardous Employers

The proposed rules governing data reporting and safety requirements were opened for public comment on October 19, 2004 for in person comment and through October 26, 2004 for written comment. Several questions and one suggestion were received from members of the public at the public hearing. Two comments were received from the public in writing.

One commentator suggested that there was the potential for confusion in the use of the term "disability" in the description of the methodology for rating accidents. It was suggested that the term "severity" be used consistently to avoid confusion with the common use of the term "disability" in claims handling. The suggestions will be adopted in principle. The actual terminology to be used will be "type of benefit payable".

One commentator suggested that insurers had a concern about the time for conduct of safety inspections after designation of an employer as extra hazardous. The commentator observed that the goal of obtaining a safety consultation from the company's insurer within 15 days of the designation is unrealistic if insurance companies are going to be held liable for performance of the inspections. It was pointed out at the hearing that the role of the insurance company, under applicable law, is to provide annual safety inspections to certain policyholders. The designation of an employer as extra hazardous does not invoke that requirement and, therefore, the ability of any particular insurer to perform the service within the time frame set forth in the rule will not subject the insurer to liability. The listing of the insurer in the rule as a possible source of acceptable safety consultations was meant only to open the possibility, subject to the ability of the insurer to perform the requested service. In the meantime, workers are at imminent risk of injury in an environment that has already proven to be unreasonably dangerous, and an extension of time to comply with the requirement for corrective action is not advisable. The suggestion that the time for a post-designation safety consultation be extended will not be adopted.

One commentator had a number of comments directed to the statistical validity of

the calculations described in the designation process. Our resident statistician has examined the comments in detail and believes that the comments do not take into account the fact that scaling labels in the context of the severity index calculation have a hierarchical meaning that allows meaningful statistical calculations to be made from them, in the context of the calculation system in which the labels exist. No suggestion was offered as an alternative to the calculation system described in the rule, so no adoption or rejection of a comment is possible.

One commentator suggested that the provision at 11.4.2.9.B(3), which contains the reference to the "safety bureau", be deleted as the terminology is obsolete. The suggestion is well-founded and will be adopted.

One commentator made two suggestions aimed at removing the personal prejudices of a safety consultant in proposing the remedial safety plan by introducing "industry standards" as the standard for the remediation plan. While the WCA understands the concern that some safety consultants may impose onerous requirements, the safeguard is the approval of the safety remediation plan by the Administration. The interposition of "industry standards", which are subject to reasonable debate, will present the opportunity for litigation of the remediation plan in many instances, with the possibility of resulting delay in the implementation of the plan, to the detriment of the workers at risk. The suggestions will not be adopted.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rulemaking proceedings shall close upon execution of this document.

Alan M. Varela
Director
N.M. Workers' Compensation
Administration
November 15, 2004

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment Employer Conduct Rules

The proposed rules governing the payment of claims and conduct of parties were opened for public comment on October 26, 2004 for in person comment and through

November 2, 2004 for written comment. Several comments were received from the public at the public hearing. Two comments were received from the public in writing.

Several commentators suggested that the utilization of a period of time running from a lost time accident or the incurring of reportable medical expense was too indefinite or speculative under certain scenarios. After discussion, the consensus was that utilization of the presentation of a Notice of Accident, or actual notice of the accident, should be the trigger for the new reporting requirement. The suggestions will be adopted.

One commentator suggested that the term "refrain" in 11.4.3.12.B.5 be changed to "prohibited". The suggestion will be adopted.

One commentator suggested that language specifying that only an authorized claims administrator for a self-insurer may pay claims directly. The suggestion will be adopted.

One commentator suggested that the law requires that an uninsured employer pay workers' compensation benefits to an injured worker in the event that the worker does not choose to pursue a tort remedy against the employer. The suggestion is well-founded and resulted in a restructuring of the proposed changes at 12.B.5 to reflect that such payments must be reported to the Director and that the Director may impose requirements on the employer to insure the prompt and appropriate payment of the worker.

Several commentators pointed out that the proposed regulation appeared to prohibit the possibility that an employer may pay more than the mandated statutory benefits to a worker. The observation is correct, and a rephrasing of the rule was adopted to allow for the possibility of such payments.

One commentator suggested that the rule specify that the claim reporting requirement is not dependent upon, nor constitutes an admission that the claim is valid. The suggestion will be adopted.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rulemaking proceedings shall close upon execution of this document.

Alan M. Varela
Director

N.M. Workers' Compensation
Administration
November 15, 2004

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

Volume XV	Submittal Deadline	Publication Date
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

2005

Volume XVI	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 14
Issue Number 8	April 15	April 29
Issue Number 9	May 2	May 13
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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