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New Mexico Register

Volume II Number 3

February 15, 1991

TABLE OF CONTENTS

	<u>Page</u>
I. NOTICES	
New Mexico Human Services Department	1
New Mexico Regulation and Licensing Department	
Real Estate Commission	1
II. RULES	
New Mexico Cultural Affairs Office	
Museum Division (Museum of New Mexico)	1
New Mexico Energy, Minerals and Natural Resources Department	
Oil Conservation Division	6
New Mexico Health and Environment Department	
Environmental Improvement Board	10
New Mexico Highway and Transportation Department	
Traffic Bureau	11
New Mexico Human Services Department	
Income Support Division	11
New Mexico Public Safety Department	
Hazardous Materials Safety Board	12
New Mexico Regulation and Licensing Department	
Barber Examiners Board	13
Pharmacy Board	14
Podiatry Board	14
New Mexico Taxation and Revenue Department	15
New Mexico Workers' Compensation Administration	15

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THE NEW MEXICOREGISTER is published twice a month by New Mexico Information System, Inc., under contract with the New Mexico State Records Center and Archives. Cost of an annual subscription is as follows: \$275 for non-rule making entities, either private or public, and \$90 for rule making agencies of state government. Individual copies can be obtained for \$12.50 to non-rule making entities and \$4.50 to rule making agencies of the state. Subscriptions, inquiries, etc., can be mailed to the publisher's office at 601 W. San Mateo #30, Santa Fe, NM 87501. Telephone: (505) 988-8010.

The New Mexico Register does not have editorial control over material submitted by state agencies; it is required contractually to publish as submitted. The New Mexico Register, therefore, is not responsible for editorial errors, omissions, etc., unless made by our staff.

New Mexico Register

Volume II Number 3
February 15, 1991

NOTICES

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

The New Mexico Human Services Department will hold a hearing on Monday, March 18, 1991 at 9:00 AM, in the Conference Room at the Kennedy Building, at 331 Sandoval, in Santa Fe, New Mexico.

The Department proposes to exclude Radiation Exposure Compensation Act payments made pursuant to Public Law 101-426 from consideration as income or resources for purposes of determining Medicaid eligibility in all categories.

Interested persons may testify at this hearing or may submit written comments no later than March 18, 1991 to Richard W. Heim, Secretary, Human Services Department, P. O. Box 2348, Santa Fe, New Mexico 87504-2348.

Copies of the proposed regulation may be obtained by sending a self-addressed stamped envelope to Medical Assistance Division, P. O. Box 2348, Santa Fe, New Mexico 87504-2348.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

NEW MEXICO REAL ESTATE COMMISSION

Notice is hereby given that the New Mexico Real Estate Commission will hold a hearing to discuss a change in their Rules and Regulations. The Hearing will be held at 1:30 p.m. on March 21, 1991, at the offices of the New Mexico Real Estate Commission, 1650 University Blvd. NE, Suite 490, Albuquerque, New Mexico 87102.

Persons desiring to present their views on the proposed Rule and Regulation must appear

in person at said time and place or can submit data, views or arguments in writing. Copies of the Rule and Regulation can be secured at the Commission Office, the New Mexico Real Estate Commission, 1650 University Blvd. NE, Suite 490, Albuquerque, New Mexico 87102, or by mailing a letter requesting a copy of the Rule.

Rule 18 will be added to the Rules and Regulations. Rule 18 defines and clarifies third party vendor promotional programs. Rule 13 will also be discussed.

Done this day, February 15, 16, 1991.

End of Notices Section

THE NEW MEXICO REGISTER

is now accepting advertising. Advertising rates, established by SRC Rule No. 90-10 dated August 1, 1990, are as follows:

Single full-page insertion	\$150.00
Single half-page insertion	\$80.00
Single quarter-page insertion	\$50.00

Rates will be reduced by 10% for additional insertions up to six times. An additional 10% discount will be granted for more than six insertions.

For additional information, and to place your advertisement in the Register, please call or write New Mexico Information System, 601 W. San Mateo #30, Santa Fe, NM 87501, 505-988-8010.

RULES

NEW MEXICO OFFICE OF CULTURAL AFFAIRS

MUSEUM DIVISION (MUSEUM OF NEW MEXICO)

P.O. Box 2087, 113 Lincoln Ave.
Santa Fe, New Mexico 87504

Rule No. 48
LOANS
Adopted: 01/17/91

In accordance with Museum of New Mexico loan procedures, the Museum shall transact loans from its collections for loan only to qualified* non-profit educational and cultural institutions for the purposes of exhibition or research. The period and terms of all loans will be clearly specified and subject to regular review.

(* A qualified institution is one whose procedures and facilities are in accordance with the accreditation standards of the American Association of Museums.)

I. In-Loans

In-loans are those made to the Museum for the purposes of special exhibitions, research, and potential acquisition.

Loans shall not be accepted when unusual burdens are imposed upon the facilities or staff of the Museum of New Mexico without approval of the Board of Regents. All items accepted for loan by the Museum will be covered by written agreement specifying the terms length of loan, and use of the objects. In addition, proof of ownership and legality of the manner in which the items were collected or acquired may be required.

Long-term loans, generally those longer than one year, are renewable annually under terms that will be clearly noted on all loan agreements unless established by Special

New Mexico Register

Volume II Number 3
February 15, 1991

Agreement (see Section II). The Museum shall not provide temporary or long term storage of objects not owned by the Museum unless by Special Agreement or unless the objects are to be a future donation to the Museum. Loans intended for future donations shall require the lender/donor to sign an irrevocable trust with the museum specifying the terms for the loan/gift.

MNM: Rule No. 48
-1-
Adopted 01/17/91

II. Loans by Special Agreement, In-Loans and Out Loans

Loans by Special Agreement are those loans made by the Museum of New Mexico with individuals, other institutions, or support organizations under separate loan agreements, with terms to be approved by the Board of Regents of the Museum of New Mexico and the individual or board(s) of governors of the institution concerned. In general, these loans involve major collections on loan to and from the Museum of New Mexico for periods exceeding five years. All collections not owned by the Museum of New Mexico but housed at the Museum will be covered by a written agreement clearly specifying the duration, terms and conditions of renewal of the loan. Unless otherwise stated in the Special Agreement, all policies and procedures governing Museum of New Mexico collections management as contained in the Museum of New Mexico Policy Manual will apply to collections accepted or under consideration as long-term loans.

All Loans by Special Agreement and all terms for the agreements covering these loans shall be made with full consideration to: the intrinsic value of the collection, the physical needs of the collection, the financial value of the collection, the financial burden imposed by the collection, the staff available for care and interpretation of the collection, the administration of the collection, and the impact of the collection upon other collections within the Museum.

The feasibility of caring for and housing collections other than those owned by the Museum will be determined by the associate directors involved, and the Director of the Museum of New Mexico.

Terms of Loans by Special Agreement will also provide for: additions and deletions, records, reports, review, care and preservation, insurance, credits, loans to third parties, termination, restrictions, usage, and reproduction rights.

III. Out-Loans

The Museum of New Mexico shall normally transact loans with qualified non-profit institutions, such as museums, libraries, universities, and other educational and cultural institutions. Such use is deemed appropriate when arrangements for the safe custodianship and public exhibition or research of collection items can be assured. A loan request may be rejected for reasons of preservation of the object; and/or improper or insufficient

MNM: Rule No. 48
-2-
Adopted 01/17/91

environmental conditions and control, security, or insurance on the part of the prospective borrower. In addition, the Museum of New Mexico has an obligation to exhibit and interpret its collections in an accurate and culturally sensitive manner. If it is determined that the loan of an object(s) would eclipse these goals, a loan request may be refused by unit staff or referred to the Museum of New Mexico's Collection's Committee.

All out-loans must be approved by the associate director of the appropriate unit in consultation with the Chief Conservator and Chief Registrar of the Museum of New Mexico. Major loans will be forwarded to the Director, Museum of New Mexico, and then to the Board of Regents for final approval. Major loans are those which would impose unusual burdens upon the facilities or staff of the Museum of New Mexico.

No loan objects shall leave the museum without clear, visible accession or catalogue numbers. Detailed condition reports and photographs shall be made at the time the loan is processed and when it is returned so that any changes in condition can be noted.

A. Terms:

Loans requested from the Museum of New Mexico shall be considered when the following conditions are met:

1. The institution is accredited by the American Association of Museums or can provide proof of ability to provide care, handling, and security in accordance with standard museum practices. In addition, the lendee must agree to meet any additional criteria for care as established by the Museum of New Mexico.

2. The lendee agrees to comply with all state, federal, and international law and regulations governing the transport and use of loan items.

3. The lendee agrees to accept all financial responsibility incurred in the loan, including (but not limited to) the following: insurance, photography, conservation, fumigation, packing, and shipping.

4. The lendee agrees to use credit lines as determined by the Museum of New Mexico. Photographic reproduction, usage, and rights accompanying credit information will be determined by the lender.

MNM: Rule No. 48
-3-
Adopted 01/17/91

5. In the case of loans to foreign institutions, a broker is employed and the borrowing institutions agree to pay the broker's fee. If the borrower cannot afford the fee, the Museum of New Mexico may opt to pay for it.

B. Restrictions:

1. Out-loans shall be determined by the availability of objects.

2. A thorough condition report shall be prepared by the curator, conservator or collections manager/unit registrar prior to releasing an object. Objects may be deemed to be so fragile, valuable, or rare that the risks in loaning the object are unacceptable.

3. No object shall be loaned for use in a manner not appropriate to its nature.

C. Duration:

Loans shall be normally made for one year or less. This period may be extended upon written request by the lendee. Extensions will be approved only upon recom-

New Mexico Register

Volume II Number 3

February 15, 1991

mentation by the appropriate curator and associate director, with the approval by the Director, Museum of New Mexico.

IV. Inter-Unit Loans

The Museum of New Mexico collection is a single entity and shall consist of the various collections housed in individual units. Inter-unit loans or the temporary transfer of objects from one unit to another for use in exhibitions, education or research shall be negotiated between the respective units. Inter-unit loans are made for a period of one year or less and are renewable. From time to time it may be deemed necessary to move collections from one unit to another on a long term basis. This may involve transfer of catalog cards and other pertinent records within the Museum system. Each unit will keep a detailed record of such transfers.

MNM: Rule No. 48

-4-

Adopted 01/17/91

V. Loans to State Governor's Offices and Residence

At the Governor's request, some works within the Museum of New Mexico collection may be made available for temporary loan to public space within the Governor's Office and residence. For the purpose of this loan the Governor's office shall designate a staff person as the borrowing officer.

These works of art shall be made available at the discretion of the responsible curator and shall not be displayed under conditions which will affect them adversely. All terms relative to general out-loans shall apply to these temporary loans. Collection items loaned by the Museum will be covered by a Loan Agreement stipulating but not limited to the following terms and conditions:

A. Works of art recommended by the curator as being available for loan must be approved as such by the appropriate associate director and the Director of the Museum of New Mexico and will be reported to the Board of Regents.

B. It will be the responsibility of the borrowing officer to ensure that the works remain where initially installed by the Museum staff. No work of art on loan may be moved

without the express direction of the curator of the collection from which the work was borrowed. Any loss, damage, or change in condition must be reported to the curator. Under no circumstances will the borrower alter the work or attempt to have it repaired.

C. It will be the borrower's responsibility to see that all works are properly cared for. Only trained Museum personnel shall clean, wipe, move, or otherwise touch the work of art unless special permission is granted.

D. The Museum of New Mexico retains the right to recall any work of art for any museum purpose at any time on thirty days written notice to the borrower, in which event the Museum may, at its option, make other works available to the borrower under the same terms and conditions.

E. Loans will normally be made for the term of office except that the term will expire one month before the end of the term at which time the works of art will be reclaimed by the Museum. The Museum shall have the right to annually review and inspect all loans to insure that the works of art are being displayed in conformity with museum standards of security and conservation.

MNM: Rule No. 48

-5-

Adopted 01/17/91

In addition, the Museum will provide to the extent such are available for free distribution, graphic arts in the forms of posters, reproductions, prints, and duplicates of historic photographs to all cabinet officers, state agency directors, and the United States Congressional delegation of New Mexico. The cost of placing the item, including matting, framing, installation, and transportation will be borne by the borrower.

VI. Loans to Individuals

Loans will be made to individuals only under special circumstances such as contracted work by outside conservators, photographers, packers, and other professionals.

VII. Office Use of Museum Collections

Display of Museum collections, with the exception of specified historic furnishings, shall not be permitted in Museum offices or

other non-exhibit areas in the Museum.

The Museum recognizes that certain original and early furnishings and features of the Museum of New Mexico have become historic, especially early furnishings of the Laboratory of Anthropology, Museum of Fine Arts, and the Palace of the Governors.

The Museum shall catalog such items and the catalog record shall note this designation for office and/or public use, and their location shall be duly noted. Use of historic furnishings on an ongoing basis shall be reviewed annually by the Museum's collections committee to determine appropriateness of use of conservation concerns.

MNM: Rule No. 48

-6-

Adopted 01/17/91

NEW MEXICO OFFICE OF CULTURAL AFFAIRS

MUSEUM DIVISION
(MUSEUM OF NEW MEXICO)

P.O. Box 2087, 113 Lincoln Ave.
Santa Fe, New Mexico 87504

Rule No. 11
Adopted: 01/17/91

COLLECTION, DISPLAY AND REPATRIATION OF CULTURALLY SENSITIVE MATERIALS

I. INTRODUCTION

The policy of the Museum of New Mexico is to collect, care for, and interpret materials in a manner that respects the diversity of human cultures and religions.

Culturally sensitive materials include material culture as well as the broader ethical issues which surround their use, care, and interpretation by the Museum. The Museum's responsibility and obligation are to recognize and respond to ethical concerns.

New Mexico Register

Volume II Number 3

February 15, 1991

II. DEFINITIONS:

A. "Culturally sensitive materials" are objects or materials whose treatment or use is a matter of profound concern to living peoples; they may include, but are not limited to:

1. "Human remains and their associated funerary objects" shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later;

2. "Sacred objects" shall mean specific items which are needed by traditional religious leaders for the practice of an ongoing religion by present-day adherents;

3. Photographs, art works, and other depictions of human remains or religious objects, and sacred or religious events; and

MNM: Rule No. 11

-1-

Adopted 01/17/91

4. Museum records, including notes, books, drawings, and photographic and other images relating to such culturally sensitive materials, objects, and remains.

B. "Concerned party" is a museum-recognized and tribally-authorized representative of a tribe, community, or an organization linked to culturally sensitive materials by ties of culture, descent, and/or geography.

C. "Repatriation" is the return of culturally sensitive materials to concerned parties. Repatriation is a collaborative process that empowers people and removes the stigma of cultural paternalism which hinders museums in their attempts to interpret people and cultures with respect, dignity, and accuracy. Repatriation is a partnership created through dialogue based upon cooperation and mutual trust between the Museum and the concerned party.

D. The Museum of New Mexico's Committee on Sensitive Materials is the committee, appointed by the Director of the Museum of New Mexico, that shall serve as the Museum of New Mexico's advisory body on issues relating to the care and treatment of

sensitive materials.

III. IDENTIFICATION OF CONCERNED PARTIES

A. The Museum shall initiate action to identify potentially concerned parties who may have an interest in culturally sensitive material in the museum's collections.

B. The Museum encourages concerned parties to identify themselves and shall seek out those individuals or groups whom the Museum believes to be concerned parties.

MNM: Rule No. 11

-2-

Adopted 01/17/91

C. The Museum's sensitive materials committee shall review all disputed individual claims of concerned-party status in consultation with the tribe, community, or organization which the individual(s) claims to represent. The Museum's sensitive materials committee shall assist, when necessary, in designating concerned parties who have an interest in culturally sensitive materials contained in the collections of the Museum of New Mexico.

D. The Museum shall provide an inventory of pertinent culturally sensitive materials to recognized concerned parties.

E. The Museum shall work with concerned parties to determine the appropriate use, care and procedures for culturally sensitive materials which best balance the needs of all parties involved.

IV. IDENTIFICATION AND TREATMENT OF CULTURALLY SENSITIVE MATERIALS

A. Within five years of the date of adoption of this policy, each Museum unit shall survey to the extent possible (in consultation with concerned parties, if appropriate) its collections to determine items or material which may be culturally sensitive materials. The Museum unit shall submit to the Director of the Museum of New Mexico an inventory of all potentially culturally sensitive materials. The inventory shall include to the extent possible the object's name, date and type of accession, catalogue number, and cultural identification. Within six months of

submission of its inventory to the Director of the Museum of New Mexico, each Museum unit shall then develop and submit, a plan to establish a dialogue with concerned parties to determine appropriate treatment of culturally sensitive items or materials held by the unit.

MNM: Rule No. 11

-3-

Adopted 01/17/91

B. As part of its treatment plans for culturally sensitive materials, the Museum reserves the right to restrict access to, or use of, those materials to the general public. The Museum staff shall allow identified concerned parties access to culturally sensitive materials.

C. Conservation treatment shall not be performed on identified culturally sensitive materials without consulting concerned parties.

D. The Museum shall not place human remains on exhibition. The Museum may continue to retain culturally sensitive materials. If culturally sensitive materials, other than human remains, are exhibited, then a good-faith effort to obtain the advice and counsel of the proper concerned party shall be made.

E. All human skeletal remains held by the Museum shall be treated as human remains and are de facto sensitive materials. The Museum shall discourage the further collection of human remains; however, it will accept human remains as part of its mandated responsibilities as the State Archaeological Repository. At its own initiation or at the request of a concerned party, the Museum may accept human remains to retrieve them from the private sector and furthermore, may accept human remains with the explicit purpose of returning them to a concerned party.

V. REPATRIATION OF CULTURALLY SENSITIVE MATERIALS

A. On a case-by-case basis, the Museum shall seek guidance from recognized, concerned parties regarding the identification, proper care, and possible disposition of culturally sensitive materials.

MNM: Rule No. 11

New Mexico Register

Volume II Number 3

February 15, 1991

-4-

Adopted 01/17/91

B. Negotiations concerning culturally sensitive materials shall be conducted with professional discretion. Collaboration and openness with concerned parties are the goals of these dialogues, not publicity. If concerned parties desire publicity, then it will be carried out in collaboration with them.

C. The Museum shall have the final responsibility of making a determination of culturally sensitive materials subject to the appeal process as outlined under section VII A.

D. The Museum of New Mexico accepts repatriation as one of several appropriate actions for culturally sensitive materials only if such a course of action results from consultation with designated concerned parties as described in Section III of this policy.

E. The Museum may accept or hold culturally sensitive materials for inclusion in its permanent collections.

F. The Museum may temporarily accept culturally sensitive materials to assist efforts to repatriate them to the proper concerned party.

G. To initiate repatriation of culturally sensitive materials, the Museum of New Mexico's current deaccession policy shall be followed. The curator working with the concerned party shall complete all preparations for deaccession through the Museum Collections Committee and Director before negotiations begin.

H. Repatriation negotiations may also result in, but are not limited to, the retention of objects with no restrictions on use, care, and/or exhibition; the retention of objects with restrictions on use, care and/or exhibition; the lending of objects either permanently or temporarily for use to a community; and the holding in trust of culturally sensitive materials for the concerned party.

MNM: Rule No. 11

-5-

Adopted 01/17/91

I. When repatriation of culturally sensitive materials occurs, the Museum reserves the right to retain associated museum records but shall consider each request for such records on an individual basis.

VI. ONGOING RECOVERY OR ACCEPTANCE OF ARCHAEOLOGICAL MATERIALS

A. In providing sponsored archaeological research or repository functions, the Museum shall work with agencies that regulate the inventory, scientific study, collection, curation, and/or disposition of archaeological materials to ensure, to the extent possible under the law, that these mandated functions are provided in a manner that respects the religious and cultural beliefs of concerned parties.

B. When entering into agreements for the acceptance of, or continued care for, archaeological repository collections, the Museum may issue such stipulations as are necessary to ensure that the collection, treatment, and disposition of the collections include adequate consultation with concerned parties and are otherwise consistent with this Policy.

C. In addition to the mandated treatment of research sites and remains and in those actions where treatment is not mandated, defined, or regulated by laws, regulations, or permit stipulations, the Museum shall use the following independent guidelines in recovering or accepting archaeological materials:

1. Prior to undertaking any archaeological studies at sites with an apparent relationship to concerned parties, the Museum shall ensure that proper consultation with the concerned parties has taken place.

MNM: Rule No. 11

-6-

Adopted 01/17/91

2. When so requested by concerned parties, the Museum shall include an observer, chosen by the concerned party, in the crew of an archaeological study.

3. The Museum shall not remove

human remains and their associated funerary objects or materials from their original context nor conduct any destructive studies on such remains, objects, and materials, except as part of procedures determined to be appropriate through consultation with concerned parties, if any.

4. The Museum reserves the right to restrict general public viewing of in situ human remains and associated funerary objects or items of a sacred nature and further shall not allow the public to take or prepare images or records of such objects, materials, or items, except as part of procedures determined to be appropriate through consultation with concerned parties. Photographic and other images of human remains shall be created and used for scientific records only.

5. The Museum reserves the absolute right to limit or deny access to archaeological remains being excavated, analyzed, or curated if access to these remains would violate religious practices.

MNM: Rule No. 11

-7-

Adopted 01/17/91

D. Twice each calendar year, the State Archaeologist shall compile and distribute a listing of all proposed, ongoing, and complete state-permitted archaeological work in New Mexico and all Museum of New Mexico archaeological projects state-permitted or not. The list shall be public information and, in consonance with this policy, shall be distributed to all tribal governments in New Mexico, as well as to other recognized organizations that may be concerned with ongoing archaeological excavations and their findings.

VII. APPEAL PROCESS

A. A museum-recognized concerned party, or a party that claims to be a concerned party but which is not recognized to have such status by the Museum's committee on sensitive materials, may appeal in writing to the Director of the Museum of New Mexico. The Director shall issue a written response to the appeal within thirty (30) calendar days of its receipt. The decision of the Director may be contested by written appeal to the Board of Regents of the Museum, which shall take such final action as it deems appropriate.

New Mexico Register

Volume II Number 3
February 15, 1991

B. Museum staff may appeal a decision of the sensitive materials committee in writing to the Director of the Museum of New Mexico. The Director shall issue a written response to the appeal within thirty (30) calendar days of its receipt. The decision of the Director shall be final.

MNM: Rule No. 11
-8-
Adopted 01/17/91

NEW MEXICO DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES

NEW MEXICO OIL CONSERVATION
COMMISSION

P.O. BOX 2088
SANTA FE, NEW MEXICO 87504

SYNOPSIS OF ADOPTED RULES

By Order No. R-9388, dated December 20, 1990, the New Mexico Oil Conservation Commission ordered that the Rules and Regulations of the Oil Conservation Division, ("Division") be reformatted and re-compiled, and it adopted the reformatted rules, a list of which is attached hereto as Exhibit "A", as the Rules and Regulations of the Division, superseding all Rules and Regulations published prior to the effective date of the order, which is March 1, 1991.

Order R-9388 was entered because the various existing rules had been adopted over several years and were not consistent in the way the paragraphing was done. The only changes made to the existing rules were in the format by changing the paragraph numbering within each rule. The rules have used a consistent paragraphing numbering scheme throughout. No substantive changes of any kind were made to the rules currently on file with the New Mexico Records Center. In addition, the common effective date will enable the Division to maintain a current list of the rules as described below. All of the rules

as readopted have been filed with the New Mexico Records Center.

After the effective date of the rules, the Division will publish a new and current compilation of its rules for sale and distribution to the public. In addition to containing the rules themselves, the compilation will contain a listing, similar to Exhibit "A" hereto, which will list each rule and the effective date of the most current revision of that rule. Users will be able to keep the rulebook up to date by inserting replacement pages in a loose-leaf format. These replacement pages will be sent to subscribers from time to time as rules are amended or adopted, and a current listing of the rules will also be provided.

In addition to the rules themselves the compilation will contain Pamphlet 111 and supplement to the New Mexico Statutes which contains Chapter 70, N.M.S.A. 1978, Oil and Gas as well as extracts from other statutes which are relevant to the Division's activities.

The rulebook will be available to the public for a price yet to be determined. Supplements to the rulebook will be sent to subscribers whose names are on file with the Division. Persons wishing to receive copies of the new rulebook should write the Division at P.O. Box 2088, Santa Fe, NM 87504.

I CERTIFY THAT THIS SYNOPSIS GIVES ADEQUATE NOTICE OF THE CONTENTS OF THE RULE OF WHICH THIS IS A SYNOPSIS

THIS 31st DAY OF JANUARY, 1991.
BY: R. G. Stovall, Attorney, NMOCC

TABLE OF RULES

<u>RULE</u>	<u>TITLE</u>	<u>EFFECTIVE</u>
0.1	Definitions	3-1-91 Order R-9388
1	Scope of Rules and Regulations	3-1-91 Order R-9388
2	Enforcement of Laws, Rules and Regulations Dealing with Conservation of Oil and Gas	3-1-91 Order R-9388

3	General Operations/ Waste Prohibited	3-1-91 Order R-9388
4	United States Government Leases	3-1-91 Order R-9388
5	Classifying and Defining Pools	3-1-91 Order R-9388
6	Forms Upon Request	3-1-91 Order R-9388
7	Authority to Cooperate with Other Agencies	3-1-91 Order R-9388
8	Lined Pits/Below Grade Tanks	3-1-91 Order R-9388
101	Plugging Bond	3-1-91 Order R-9388
102	Notice of Intention to Drill	3-1-91 Order R-9388
103	Sign on Wells	3-1-91 Order R-9388
104	Well Spacing: Acreage require- ments for Drilling Tracts	3-1-91 Order R-9388
105	Pit for Clay, Shale, Drill Fluid and Drill Cuttings	3-1-91 Order R-9388
106	Sealing Off Strata	3-1-91 Order R-9388
107	Casing and Tubing Requirements	3-1-91 Order R-9388
108	Defective Casing or Cementing	3-1-91 Order R-9388
109	Blowout Prevention (See Rule 114 B. also)	3-1-91 Order R-9388
110	Pulling Outside Strings of Casing	3-1-91 Order R-9388
111	Deviation Tests and Directional Drilling	3-1-91 Order R-9388
112-A	Multiple Comple- tions	3-1-91 Order R-9388

New Mexico Register

Volume II Number 3

February 15, 1991

112-B	Bradenhead Gas Wells	3-1-91 Order R-9388	308	Salt or Sulphur Water	3-1-91 Order R-9388	408	Hardship Gas Well	3-1-91 Order R-9388
113	Shooting and Chemical Treatment of Wells	3-1-91 Order R-9388	309.A	Central Tank Batteries - Automatic Custody Transfer Equipment	3-1-91 Order R-9388	409	Application for Hardship Gas Well Classification	3-1-91 Order R-9388
114	Safety Regulations	3-1-91 Order R-9388	309.B	Administrative Approval, Lease Commingling	3-1-91 Order R-9388	410	Processing of Application for Hardship Gas Wells	3-1-91 Order R-9388
115	Well and Lease Equipment	3-1-91 Order R-9388	309.C	Administrative Approval, Off-Lease Storage	3-1-91 Order R-9388	411	Emergency Hardship Gas Well Classification	3-1-91 Order R-9388
116	Notification of Fire, Breaks, Leaks, Spills and Blowouts	3-1-91 Order R-9388	310	Tanks, Oil Tanks, Fire Walls, and Tank Identification	3-1-91 Order R-9388	412	Limits on Hardship Gas Well Classification	3-1-91 Order R-9388
117	Well Log, Completion and Workover Reports	3-1-91 Order R-9388	311	Sediment Oil, Tank Cleaning, and Transportation of Miscellaneous Hydrocarbons	3-1-91 Order R-9388	413	There is no rule 413	
118	Hydrogen Sulfide Gas - Public Safety	3-1-91 Order R-9388	312	Treating Plants	3-1-91 Order R-9388	414	Gas Sales by Less Than One Hundred Percent of the Owners in a Well	3-1-91 Order R-9388
201	Wells to be Properly Abandoned	3-1-91 Order R-9388	313	Emulsion, Basic Sediments, and Tank Bottoms	3-1-91 Order R-9388	501	Regulation of Oil Pools	3-1-91 Order R-9388
202	Plugging and Permanent Abandonment	3-1-91 Order R-9388	314	Gathering, Transporting and Sale or Drip	3-1-91 Order R-9388	502	Rate of Producing Wells	3-1-91 Order R-9388
203	Temporary Abandonment	3-1-91 Order R-9388	401	Method of Determining Natural Gas Well Potential	3-1-91 Order R-9388	503	Authorization for Production of Oil	3-1-91 Order R-9388
204	Wells to be Used for Fresh Water	3-1-91 Order R-9388	402	Method and Time of Shut-In Pressure Tests	3-1-91 Order R-9388	504	Authorization for Production of Oil While Completing, Recompleting, or Testing an Oil Well	3-1-91 Order R-9388
301	Gas-Oil Ratio and Production Tests	3-1-91 Order R-9388	403	Natural Gas from Gas Wells to be Measured	3-1-91 Order R-9388	505	Depth Bracket Allowables	3-1-91 Order R-9388
302	Subsurface Pressure Tests	3-1-91 Order R-9388	404	Natural Gas Utilization	3-1-91 Order R-9388	506	Gas-Oil Ratio Limitation	3-1-91 Order R-9388
303	Segregation of Production from Pools	3-1-91 Order R-9388	405	Storage Gas	3-1-91 Order R-9388	507	Unitized Areas	3-1-91 Order R-9388
304	Control of Multiple Completed Wells	3-1-91 Order R-9388	406	Carbon Dioxide	3-1-91 Order R-9388	508	Recovered Load Oil	3-1-91 Order R-9388
305	Metered Casinghead Gas	3-1-91 Order R-9388	407	Disconnection of Gas Wells	3-1-91 Order R-9388	509	Oil Discovery Allowable	3-1-91 Order R-9388
306	Casinghead Gas	3-1-91 Order R-9388				601	Allocation of Gas Production	3-1-91 Order R-9388
307	Use of Vacuum Pumps	3-1-91 Order R-9388						

New Mexico Register

Volume II Number 3

February 15, 1991

602	Proration Period	3-1-91 Order R-9388	Liquid Hydrocarbons from Gas Wells	Order R-9388	1109	Application for Discovery Allowable and Creation of a New Pool (Form C-109)	3-1-91 Order R-9388
603	Adjustment of Allowables	3-1-91 Order R-9388	804	Documentation Required	3-1-91 Order R-9388	1110	There is no rule 1110
604	Gas Proration Units	3-1-91 Order R-9388	901	Illegal Sale Prohibited	3-1-91 Order R-9388	1111	Gas Transporter's Monthly Report (Form C-111)
701	Injection of Fluids into Reservoirs	3-1-91 Order R-9388	902	Ratable Take	3-1-91 Order R-9388	1112	Transporter's and Storer's Monthly Report (Form C-112)
702	Casing and Cementing of Injection Wells	3-1-91 Order R-9388	1001	Refinery Reports	3-1-91 Order R-9388	1113	Refiner's Monthly Report (Form C-113)
703	Operation and Maintenance	3-1-91 Order R-9388	1002	Gasoline Plant Reports	3-1-91 Order R-9388	1114	There is no rule 1114
704	Testing, Monitoring, Step-Rate Tests, Notice to the Division, Requests for Pressure Increases	3-1-91 Order R-9388	1100	General	3-1-91 Order R-9388	1115	Operator's Monthly Report (Form C-115)
705	Commencement, Discontinuance, and Abandonment of Injection Operations	3-1-91 Order R-9388	1101	Application for Permit to Drill, Deepen, or Plug Back (Form C-101)	3-1-91 Order R-9388	1116	Gas-Oil Ratio Tests (Form C-116)
706	Records and Reports	3-1-91 Order R-9388	1102	Well Location and Acreage Dedication Plat (Form C-102)	3-1-91 Order R-9388	1117	Tank Cleaning, Sediment Oil Removal, Transportation of Miscellaneous Hydrocarbons and Disposal Permit (Form C-117-A), and Monthly Sediment Oil Disposal Statement (Form C-117-B)
707	Reclassification of Wells	3-1-91 Order R-9388	1103	Sundry Notices and Reports on Wells (Form C-103)	3-1-91 Order R-9388	1118	Treating Plant Operator's Monthly Report (Form C-118)
708	Transfer of Authority to Inject	3-1-91 Order R-9388	1104	Request for Allowable and Authorization to Transport Oil and Natural Gas (Form C-104)	3-1-91 Order R-9388	1119	Carbon Black Plant Monthly Report (Form C-119)
709	Removal of Produced Water from Leases and Field Facilities	3-1-91 Order R-9388	1105	Well Completion or Recompletion Report and Log (Form C-105)	3-1-91 Order R-9388	1120	Monthly Water Disposal Report (Form C-120-A)
710	Disposition of Transported Produced Water	3-1-91 Order R-9388	1106	Notice of Intention to Utilize Automatic Custody Transfer Equipment (Form C-106)	3-1-91 Order R-9388	1121	Purchaser's Nomination Forms (Form C-121 and Form C-121-A)
711	Commercial Surface Waste Disposal Facilities	3-1-91 Order R-9388	1107	Application for Multiple Completion (Form C-107)	3-1-91 Order R-9388	1122	Multipoint and One Point Back Pressure
801	Illegal Sale Prohibited	3-1-91 Order R-9388	1108	Application for Authorization to Inject (Form C-108)	3-1-91 Order R-9388		
802	Ratable Take; Common Purchaser	3-1-91 Order R-9388					
803	Production of	3-1-91					

New Mexico Register

Volume II Number 3
February 15, 1991

Test for Gas Well (Form C-122) Gas Well Test Data Sheet - San Juan Basin (Form C-122-A) Initial Potential Test Data Sheet (Form C-122-B) Deliverability Test Report (Form C-122-C) Worksheet for Calcula- tion of Static Column Wellhead Pressure (Pw) (Form C-122-D) Worksheet for Stepwise Calculation of (Surface) (Subsurface) Pressure (Pc & Pw) (Pf & Ps) (Form C-122-E) Work- sheet for Calculation of Wellhead Pressures (Pc or Pw) from Known Bottomhole Pressure (Pf or Ps) (Form C-122-F) Worksheet for Calcula- tion of Static Column Pressure at Gas Liquid Interface (Form C-122-G)			Storage Report (Form C-131-A) Annual LPG Storage Report (Form C-131-B)	Order R-9388	1212 Rules of Evidence	3-1-91 Order R-9388
			1132 There is no rule	1132	1213 Examiners' Qualifications and Appointment	3-1-91 Order R-9388
			1133 Authorization to Move Produced Water	3-1-91 Order R-9388	1214 Referral of Cases to Examiners	3-1-91 Order R-9388
			1134 There is no rule	3-1-91 Order R-9388	1215 Examiner's Power and Authority	3-1-91 Order R-9388
			1135 Gas Well Connection, Reconnection, or Disconnection Notice	3-1-91 Order R-9387	1216 Hearings Which Must be Held Before Commission	3-1-91 Order R-9388
			1201 Necessity for Hearing	3-1-91 Order R-9388	1217 Examiner's Manner of Conducting Hearing	3-1-91 Order R-9388
			1202 Emergency Orders	3-1-91 Order R-9388	1218 Report and Recommendations, Examiner's Hearing	3-1-91 Order R-9388
			1203 Method of Initiating a Hearing	3-1-91 Order R-9388	1219 Disposition of Cases Heard by Examiners	3-1-91 Order R-9388
1123 Request for the Creation of a New Pool (Form C-123)	3-1-91 Order R-9388		1204 Method of Giving Legal Notice for Hearing	3-1-91 Order R-9388	1220 De Novo Hearing Before Commission	3-1-91 Order R-9388
1124 Reservoir Pressure Report (Form C-124)	3-1-91 Order R-9388		1205 Contents of Notice of Hearing	3-1-91 Order R-9388	1221 Notice of Commission and Division Orders	3-1-91 Order R-9388
1125 Gas Well Shut-In Pressure Tests (Form C-125)	3-1-91 Order R-9388		1206 Personal Service of Notice	3-1-91 Order R-9388	1222 Rehearings	3-1-91 Order R-9388
1126 Permit to Transport Recovered Load Oil (Form C-126)	3-1-91 Order R-9388		1207 Additional Notice Requirements	3-1-91 Order R-9388	1301 District Offices	3-1-91 Order R-9388
1127 Request for Allowable Change (Form C-127)	3-1-91 Order R-9388		1208 Filing Pleadings: Copy Delivered to Adverse Party or Parties	3-1-91 Order R-9388	1302 Where to File Reports and Forms	3-1-91 Order R-9388
1128 Forms Required on Federal Land	3-1-91 Order R-9388		1209 Continuance of Hearing Without New Service	3-1-91 Order R-9388	1303 Duties and Authority of Field Personnel	3-1-913-1-91 Order R-9388
1129 Application for Exception to No- Flare Rule 306 (Form C-129)	3-1-91 Order R-9388		1210 Conduct of Hearings	3-1-91 Order R-9388	1304 Numbering of Division Orders	3-1-91 Order R-9388
1130 Notice of Disconnection (Form C-130)	3-1-91 Order R-9388		1211 Power to Require Attendance of Witnesses and Production of Evidence	3-1-91 Order R-9388		
1131 Monthly Gas	3-1-91					

New Mexico Register

Volume II Number 3

February 15, 1991

NEW MEXICO HEALTH AND ENVIRONMENT DEPARTMENT

ENVIRONMENTAL IMPROVEMENT BOARD

1190 St. Francis Drive
Santa Fe New Mexico 87503

OHSR 200

OCCUPATIONAL HEALTH AND SAFETY REGULATION 200 GENERAL STANDARDS

A. Except as otherwise provided, the Occupational Safety and Health Standards of the United States Department of Labor, 29 CFR Part 1910, through September 5, 1989 are hereby incorporated as New Mexico Occupational Health and Safety Regulations.

B. The following modifications or exceptions are made to the incorporated federal standards:

1. omit 1910.1;
2. omit 1910.2(c), (d), and (e);
3. omit 1910.4;
4. omit 1910.5(a) and (f);

5. references in 1910.20 to 29 C.F.R. 1913 shall be construed as references to the appropriate Division regulation or policy.

6. amend 1910.1200 Hazard Communication, as follows:

(a) amend 1910.1200 as contained in 52 Fed. Reg. 31876-31886 (August 24, 1987);

(b) 1910.1200 (g)(9) is amended to read: Where employees must travel between work places during a workshift, i.e., their work is carried out at more than one geographical location, the material safety data sheets may be kept at a central location at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency. The information shall be readily accessible by telephone, two-

way communication, computer or actual copies of the material safety data sheets.

(c) 1910.1200(h) is amended to read: Employee information and training. Employers shall provide employees with information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new hazard is introduced into their work area, with the exception that a new employee shall be deemed to have been trained provided that the employer can demonstrate the employee has received training regarding the same hazards within the past twelve months.

7. amend 29 CFR 1910.1000 Air Contaminants, as contained in 54 Fed. Reg. 47513 (November 15, 1989);

8. amend 29 CFR 1910.1001 Asbestos as contained in 54 Fed. Reg. 52027 (December 20, 1989);

9. amend 29 CFR 1910.1048 Formaldehyde, as contained in 54 Fed. Reg. 31768 (August 1, 1989);

10. add a new section 29 CFR 1910.1450 Occupational Exposures to Hazardous Chemicals in Laboratories, as contained in 55 Fed. Reg. 3327-3335 (Jan. 31, 1990);

11. amend 29 CFR 1910.1001 Asbestos as contained in 55 Fed. Reg. 3731-3732 (Feb. 5, 1990).

12. amend 29 CFR 1910.1025 Lead as contained in 55 Fed. Reg. 4999 (Feb. 13, 1990);

13. amend 29 CFR 1910.1450 Occupational Exposures to Hazardous Chemicals in Laboratories as contained in 55 Fed. Reg. 7967 (March 6, 1990);

14. amend 29 CFR 1910 Subpart Q Welding, Cutting and Brazing as contained in 55 Fed. Reg. 13696-13711 (April 11, 1990);

15. amend 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response as contained 55 Fed. Reg. 14073-14075 (April 13, 1990);

16. amend 29 CFR 1910 Welding, Cutting and Brazing as contained in 55 Fed. Reg. 25094 (June 20, 1990);

17. amend 29 CFR 1910 Electrical Safety-Related Work Practices as contained in 55 Fed. Reg. 32014-32020 (August 6, 1990); and

18. amend 29 CFR 1910.147 Control of Hazardous Energy Sources (Lockout/Tagout) as contained in 55 Fed. Reg. 38685-38687 (September 20, 1990).

NEW MEXICO HEALTH AND ENVIRONMENT DEPARTMENT

ENVIRONMENTAL IMPROVEMENT BOARD

1190 St. Francis Drive
Santa Fe, New Mexico 87503

OHSR 300

OCCUPATIONAL HEALTH AND SAFETY REGULATION 300 CONSTRUCTION STANDARDS

A. Except as otherwise provided, the Occupational Safety and Health Standards of the United States Department of Labor, applicable to the construction industry, 29 CFR Part 1926 through June 1, 1989 are hereby incorporated as New Mexico occupational health and safety regulations.

B. Additionally, the Occupational Health and Safety Standards of the United States Department of Labor, 29 CFR Part 1910, incorporated by New Mexico Occupational Health and Safety Regulation 200 General Standards, identified by the Department of Labor as applicable to the construction industry, are hereby incorporated and made applicable to construction.

C. The following modifications or exceptions are made to 29 CFR Part 1926, incorporated by subsection A of this Regulation:

1. omit 1926.1;

2. amend 1926.2(a) by adding "(a) for multi-state employers only.....";

New Mexico Register

Volume II Number 3

February 15, 1991

3. omit 1926.3;
4. omit 1926.4;
5. omit sub-part B - General Interpretation (1926.10 through 1926.16);
6. add a new 1926.59 Hazard Communication as contained in 52 Fed. Reg. 31877-31886 (Aug. 24, 1987), with the following amendments:

a) 1910.1200(g)(9) is amended to read: Where employees must travel between work places during a workshift, i.e. their work is carried out at more than one geographical location, the material safety data sheets may be kept at a central location at the primary workplace facility.

In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency. This information shall be readily accessible by telephone, two-way communication, computer or actual copies of the material safety data sheets.

b) 1910.1200(h) is amended to read: Employee information and training. Employers shall provide employees with information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new hazard is introduced into their work area, with the exception that a new employee shall be deemed to have been trained provided that the employer can demonstrate the employee has received training regarding the same hazards within the past twelve months.

7. amend 29 CFR 1926.58 Asbestos, as contained in 54 Fed. Reg. 30704-30705 (July 21, 1989);

8. amend 29 CFR 1926.704 Concrete and Masonry Construction, as contained in 54 Fed. Reg. 41088 (October 5, 1989);

9. amend 29 CFR 1926 Subpart P Excavations, as contained in 54 Fed. Reg. 45959-45991 (October 31, 1989);

10. amend 29 CFR 1926.58 Asbestos, as contained in 54 Fed. Reg. 52027-52028 (December 20, 1989);

11. amend 29 CFR 1926.58 Asbestos as contained in 55 Fed. Reg. 3732

(Feb. 5, 1990); and

12. amend 29 CFR 1926 Concrete and Masonry Construction, Safety Standards, Lift Slab Construction Operations, as contained in 55 Fed. Reg. 42328-42330 (Oct. 18, 1990).

NEW MEXICO HIGHWAY AND TRANSPORTATION DEPARTMENT

The Secretary of Highways and Transportation, having reviewed a report of engineering surveys and traffic investigations on the following locations and having determined on the basis of these engineering surveys and traffic investigations that the speed set forth in Section 66-7-303 N.M.S.A. 1978 Compilation is greater or less than is reasonable and safe under the conditions found to exist thereat, and pursuant to the resolution of the Highway Commission adopted at its regular meeting of April 17, 1975, does hereby determine and declare for the State Highway Commission the following speed limits to be as follows during the daytime and nighttime:

1. Resolution #5159: NM 53 in Zuni, between 11.12 miles east of the Arizona-New Mexico State line and 11.63 miles east of said state line is to be 35 miles per hour. [Length of zone = 0.51 mile] (New Rule) (Rescinds that portion of SLR 3287)

2. Resolution #5160: NM 53 in Zuni, between 11.63 miles east of the Arizona-New Mexico State line and 12.10 miles east of said state line is to be 25 miles per hour. [Length of zone = 0.47 mile] (New Rule) (Rescinds that portion of SLR's 3287 and 3288)

3. Resolution #5161: NM 53 in Zuni, between 12.10 miles east of the Arizona-New Mexico State line and 12.70 miles east of said state line is to be 35 miles per hour. [Length of zone = 0.60 mile] (New Rule) (Rescinds that portion of SLR's 3288 and 3927)

4. Resolution #5162: NM 53 in Zuni, between 12.70 miles east of the Arizona-New

Mexico State line and 14.00 miles east of said state line is to be 45 miles per hour. [Length of zone = 1.30 mile] (New Rule) (Rescinds that portion of SLR's 3927 and 3289)

I CERTIFY THAT THIS SYNOPSIS GIVES ADEQUATE NOTICE OF THE CONTENTS OF THE RULE OF WHICH THIS IS A SYNOPSIS

THIS 24th DAY OF January 1991.

BY: Rey Romero

NEW MEXICO HUMAN SERVICES DEPARTMENT

FINANCIAL ASSISTANCE BUREAU

Pollon Plaza
P.O. Box 2348
Santa Fe, New Mexico

January 8, 1991

ISD—FA 850

SYNOPSIS

Synopsis of Rule ISD—FA 850 "State Supplement for Residential Care"

NOTE: This is a synopsis. The full rule text of ISD—FA 850 is filed with State Records Center and Archives.

The Human Services Department released final regulations with respect to the State Supplement for Residential Care Program, a state funded program, which provides a shelter care supplement to Supplemental Security Income (SSI) recipients who reside in shelter care homes licensed by the Health and Environment Department and who meet eligibility conditions established by the Human Services Department.

With the consent of the Legislative Finance Committee, the department is increasing the payment to recipients of SSI who reside in licensed residential care homes from 86 per

New Mexico Register

Volume II Number 3

February 15, 1991

month to \$100 per month effective January 1, 1991.

I CERTIFY THAT THIS SYNOPSIS GIVES ADEQUATE NOTICE OF THE CONTENTS OF THE RULE OF WHICH THIS IS A SYNOPSIS

THIS 9th DAY OF JANUARY 1991.

BY: Diane Garnty, AGC.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

P. O. BOX 1628 SANTA FE, NEW MEXICO
87504

SP/HMER-2 February 5, 1991

HAZARDOUS MATERIALS SAFETY BOARD

CURRICULUM OF HAZARDOUS MATERIAL ACCIDENT RESPONSE TRAINING AND CERTIFICATION PROGRAM

The Hazardous Materials Safety Board has established a revised curriculum of training for hazardous materials emergency response and mechanism for recognizing such training for both public and private sector personnel desiring to participate. The curriculum is based on performance criteria and hours of training. It is based on the standards promulgated by 29 CFR 1910.120, Occupational Safety and Health Administration, and the guidelines established in the NFPA 472 publication, "Standard for Professional Competence of Responders to Hazardous Materials Incidents".

This rule does not and is not intended to designate mandatory training for any agency and does not mandate or affect any training for the private sector.

There are six different levels, with Level I and Level II having two categories.

Descriptions of the levels, the target audi-

ences, and the requirements are as follows:

LEVEL I A - FIRST RESPONDER AWARENESS, INDUSTRY - This level shall be provided to those persons who in the course of their normal duties may be first on the scene of a hazardous materials incident within their work environment. This level is not intended for members of governmental public safety or support agencies who typically would be involved in a hazardous material emergency response.

Requirements are successful completion of a minimum of eight (8) hours training and demonstrated competence in the requirements set forth by OSHA for the First Responder Awareness Level.

LEVEL I B - FIRST RESPONDER AWARENESS, PUBLIC SAFETY - This level shall be for those persons who in the course of their normal duties with a governmental public safety or support agency may be first on the scene of a hazardous materials incident. This level is intended for members of law enforcement, fire service, emergency medical, highway, communications, civil preparedness, and other support agencies which would be involved in a hazardous materials incident.

Requirements are successful completion of a minimum of sixteen (16) hours training and demonstrated competence in the standards set forth in NFPA 472 for the First Responder Awareness Level.

LEVEL II A - FIRST RESPONDER OPERATIONS - This level shall be for those persons whose duties include responding to the scene of emergencies that may involve hazardous materials. Those individuals should have sufficient competence to respond safely to hazardous materials incidents but are not expected to use specialized chemical protective clothing or special control equipment. Requirements are successful completion of both hour and competency requirements for Level I B, a minimum of twenty-four (24) hours of Level II training, and demonstrated competence in the standards set forth in NFPA 472 for the First Responder Operations Level except NFPA paragraph 2-3.9.7 and 2-3.9.10, which requires the student to demonstrate the use of positive pressure air supplied respiratory devices and personal protective equipment.

LEVEL II B - FIRST RESPONDER OPERATIONS - This level shall be for those persons

whose duties include responding to the scene of emergencies that may involve hazardous materials. Those individuals should have sufficient competence to respond safely to hazardous materials incidents.

Requirements are successful completion of both hour and competency requirements for Level I B, a minimum of twenty-four (24) hours of Level II training, and demonstrated competence in the standards set forth in NFPA 472 for the First Responder Operations Level

LEVEL III - HAZARDOUS MATERIALS TECHNICIAN - This level shall be for those persons whose job duties require them to respond to releases or potential releases for the purpose of stopping the release. They may be members of hazardous material response teams, industrial brigades, or emergency response teams.

Requirements for Level III are successful completion of hour and competency requirements for Level I B and Level IIB, a minimum of twenty-four (24) additional hours of Level II training, and demonstrated competency in the standards set forth in NFPA 472 for Hazardous Material Technicians.

LEVEL IV - HAZARDOUS MATERIALS SPECIALIST - This level shall be for those persons whose job duties require them to respond with and provide support to hazardous material technicians and who have a more directed or specialized knowledge of the various substances they may be called upon to contain. They may be members of state teams, industrial teams, or skill oriented basic teams.

Requirements for Level IV are successful completion of hour and competency requirements for Level I B and Level II A or B, a minimum of twenty-four (24) additional hours of Level II training, and demonstrated competency in the standards set forth in NFPA 472 for Hazardous Material Specialists.

LEVEL V - ON SCENE COMMANDER - This level shall be for those persons whose job duties require them to assume control of the incident scene beyond the first responder awareness level.

Requirements for Level V are successful completion of hour and competency requirements for Level I B and Level IIB, a minimum of twenty-four (24) additional hours of Level II

New Mexico Register

Volume II Number 3

February 15, 1991

training, demonstrated competency in the standards set forth in NFPA 472, Appendix B for incident command, and demonstrated competency in the use of the ICS Field Operations Guide.

LEVEL VI - INCIDENT COMMAND TEAM - This level shall be for those persons who have been recognized by the Hazardous Materials Safety Board as a member of the New Mexico Incident Command Team. This level is not intended for anyone but ICS Team Members.

Requirements include designation as member of NM ICS Team, successful completion of hour and competency requirements for Level I B and Level II A or B, a minimum of twenty-four (24) additional hours of Level II training, demonstrated competency of the requirements set forth for Level V, and successful completion of the NIIMS ICS course requirements for the position(s) for which they have been assigned as an ICS Team Member. NOTE: Certain ICS Team positions will not require completion of the hazardous material training but will require only completion of ICS training. These will be so designated by the safety board.

RECERTIFICATION

Persons who have been certified at any of the above levels shall receive annual refresher training of sufficient duration and content to maintain their competencies or shall demonstrate competency in those areas at least annually.

DECERTIFICATION or DENIAL OF CERTIFICATION

Grounds - The Board may decertify or deny certification for:

1. Fraud
2. False or inaccurate material furnished to the Board whether furnished deliberately, or inadvertently.
3. Course that did not conform to the prescribed or published curriculum.

The Board may determine a period of ineligibility for reapplication up to three (3) years depending on the facts of a given case and the magnitude of the offense. An informal hearing at a regular board meeting will be allowed any individual adversely affected. No formal hearing proceeding will be utilized and

individuals must present their own information. Council will not be heard. Any individual may appear at the next scheduled meeting and present a defense or explanation.

GRANDFATHERING

Any individual who has been certified by the Hazardous Materials Safety Board as having completed all or a portion of the curriculum dated June 3, 1987, will be grandfathered into the closest appropriate level of the Curriculum of Hazardous Material Accident Response Training. This provision shall expire January 1, 1992 after which all applicants must meet current standards.

The previous levels and the corresponding new levels for grandfathering purposes are as follows:

Level I	Level I B - First Responder Awareness, Public Safety
Level II Responder	Level II A - First Responder Operations
Level II Coordinator	Level II - First Responder Operations
Level III Coordinator	Level V - On Scene Commander

APPLICATION PROCEDURES FOR CERTIFICATION

The safety board will promulgate administrative procedures for individuals to apply for certification. The procedures will include the application process, acceptable methods to determine appropriate and acceptable annual refresher training for each Level.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF BARBER EXAMINERS

RULE 21 INSPECTION - BARBER SCHOOLS

No barber school license shall be granted, renewed or allowed to remain in effect until a physical inspection by the State Board of Barber Examiners, determines that the school complies with the Barbering Act and Rules.

RULE 22 COURSE OF INSTRUCTION OFFERED

A. All barber schools shall offer and provide a main course of instruction complying with the minimum requirements provided in the Barbering Act and including in the practical phases of barbering the performance by the student, under the direct supervision of the instructor, the following minimum hours:

Barber Curriculum	HOURS
Sanitation, Sterilization & Safety	45
Permanent Waving & Chemical Relaxing	200
Hairstyling	150
Facials & Massage	150
Shampoo & Scalp Treatments	150
Hair Tinting	125
Hair Cutting	250
Law, Management, Ethics & Salesmanship	45
Shaving, Honing, Stropping	50
Unassigned	35
Total Hours	1,200

B. Proof of compliance with the practical phases must be made by ledger notation showing the date, the instructor and the student performing the service.

BBE 88-1, Amendment 2
-16-

C. Instructor Curriculum	HOURS
Lesson Planning	50
Teaching Methods	100
Classroom Management	75
Testing Evaluation	50
Teaching Practicum Lab	75
Total Hours	350

New Mexico Register

Volume II Number 3

February 15, 1991

RULE 23 SCHOOL'S REPORT OF HOURS EARNED

A. Each school shall submit to the Board a copy of the application of each student enrolled in the school.

B. Each school shall submit to the Board on a monthly basis a report of the hours earned in that month by each student.

C. Each school shall submit to the Board a final report for each student which provides a summary of the hours successfully completed by the student subdivided as to subject matter or in accordance with the curriculum prescribed by the Board.

RULE 24 RENEWAL

Every holder of barber school license and every holder of a barber instructor certificate of registration shall annually, on or before the 1st day of July each year renew the license and pay the required fee. Before renewing each certificate or license, the Board must be fully satisfied that the holder so seeking renewal meets all the requirements of law, including the Rules and Regulations of the Board, and the Board shall make such investigations and inspections as are reasonably necessary to fulfill this duty. Every license or certifi-

BBE 88-1, Amendment 2
-17-

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF PHARMACY

The Board of Pharmacy, at its January 22, 23 & 24, 1991, board meeting deleted, from Regulation No. 20, Section 904.1 Waiver of Fee:

A. Manufacturers and wholesale distributors shipping controlled substances into New Mexico shall not be required to pay the registration fee if the firm is registered under the provisions of the Pharmacy Act and the Drug

and Cosmetic Act to ship dangerous drugs (prescription status) into the state, provided the information requested by the Board on the application form relative to controlled substances is furnished at the time of registration under the Pharmacy Act and the Drug and Cosmetic Act. This waiver does not negate other requirements of the controlled substances regulations as they may apply to manufacturers and distributors shipping controlled substances into New Mexico.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF PODIATRY

P. O. Box 25101
Santa Fe, New Mexico 87504
827-7177

These rules and regulations are adopted pursuant to the Podiatry Act (NMSA 61-8-1 to 61-8-17).

These rules and regulations are to become effective thirty (30) days after filing with the New Mexico Records and Archives Center. Filing date with the New Mexico Records and Archives Center is January 28, 1991.

The following rules and regulations were filed as new rules:

RULE XV - COMPLAINTS AND DISCIPLINARY PROCEEDINGS

A. Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the Board, filed with the Board. The complaint and the hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act, Sections 61-1-1, et. seq., NMSA 1978.

B. Upon review by the Board, an investigation may be initiated upon receipt of a sworn complaint against any person licensed by the Board.

C. Upon completion of an initial investigation by the Board, the Board Chairman

may appoint one member of the Board, if necessary, to investigate the allegation further. After review of the complaint, the complaint's officer shall submit to the Board those matters he or she believes justify further action.

D. The Board may, but is not required to, offer the licensee an informal type of discipline such as a letter of reprimand in lieu of initiating formal proceedings. The Board shall notify the licensee:

1. that a letter of reprimand has been proposed;

2. that the respondent must accept or reject the offer in writing;

3. that if accepted, a copy of the reprimand will remain in the private files of the Board and that the fact thereof may be offered in evidence, if it is relevant and was made within the past ten (10) years, during the course of any subsequent formal hearing conducted pursuant to the Uniform Licensing Act (NMSA 1978 Sections 61-1-1 to 61-1-33) and;

4. that if rejected in writing or by non-response formal disciplinary action pursuant to the Uniform Licensing Act (NMSA 1978 Sections 61-1-1 to 61-1-33) will be initiated.

E. If accepted, the letter of reprimand shall be issued by the Board Chair and served on the licensee by certified mail. Copies of the reprimand will be furnished to members of the Board and the Board's Attorney.

F. The fact that a licensee has received a letter of reprimand is not a matter of public record. The complaining witness shall be notified that a practitioner has been reprimanded, and a brief explanation of the grounds for the reprimand shall be given, but the actual letter of reprimand shall not be released.

RULE XVI - RETIREMENT AND REINSTATEMENT

A. Any podiatrist who wishes to retire from practice shall notify the Board in writing prior to the expiration of the license or certificate. The notice will be recorded in the minutes of the Board. The podiatrist shall be exempt from payment of the yearly renewal fees during the period of retirement.

B. Any podiatrist who has retired as

New Mexico Register

Volume II Number 3
February 15, 1991

provided in Section A may, within three (3) years from the date of the active license expired, notify the Board of his/her desire to resume active practice.

C. Upon receipt of written notice required in Section B, the Board shall send to the retired podiatrist an application for reinstatement of license.

D. The application for the reinstatement of a license shall provide space for the applicant to provide the Board the following information:

1. the serial number of the former license;
2. the full name of the applicant;
3. the date of the original issue; and
4. the date of the applicant's retirement

The application must be completed and returned to the Board with a certified check or money order in an amount equivalent to all lapsed renewal fees. In addition, the applicant for reinstatement of license must offer proof sufficient to satisfy the Board that he/she has taken, in the calendar year immediately preceding the application for reinstatement, a minimum of 25 clock hours per year missed in refresher courses in addition to any hours of continuing education units the applicant might have been delinquent prior to retirement.

E. Any podiatrist who wishes reinstatement after retirement may apply at any time. The application will be reviewed by the Board at its next regularly scheduled meeting. If the Board finds the application is in order and is satisfied that the applicant for reinstatement has fulfilled that requirements as specified, the Board shall issue the applicant a license.

F. No podiatrist who has retired shall reactivate his/her practice until a new license is received.

G. No application for retirement will be accepted if the podiatrist is under investigation or facing disciplinary proceedings.

TAXATION AND REVENUE DEPARTMENT

Joseph M. Montoya Building
Post Office Box 630
Santa Fe, New Mexico 87509-0630

REGULATION PERTAINING TO THE MOTOR VEHICLE CODE SECTION 66-3- 1003 NMSA 1978

MVC 3-1003:1 - OFF-HIGHWAY MOTOR VEHICLES - AFFIXING OF REGISTRATION PLATES

The registration plate issued by the department for an off-highway motor vehicle shall be affixed to the rear of the motor vehicle in the place provided by the manufacturer of the motor vehicle for the affixing of registration plates. In the event that no place is specifically provided by the manufacturer for the affixing of registration plates, the plate shall be affixed to the rear of the off-highway motor vehicle so that it is easily readable from a position ten feet to the rear center of the motor vehicle. In the event that it is not feasible to affix the registration plate to the rear of the off-highway motor vehicle, the plate may be affixed to the dashboard or other portion of the motor vehicle so that it is easily readable from outside the motor vehicle.

All directives of the secretary shall apply to the administration and enforcement of municipal and county tax acts to the extent that such directives do not conflict with the provisions of the listed municipal and county tax acts:

Municipal Gross Receipts Tax Act [7-19-1 to 7-19-9]

Supplemental Gross Receipts Tax Act [7-19-10 to 7-19-18]

Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7]

Municipal Environmental Services Gross Receipts Tax Act [7-19B-1 to 7-19B-7]

County Gross Receipts Tax Act [7-20-1 to 7-20-18]

County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9]

County Sales Tax Act [7-21-1 to 7-21-7]

County Environmental Services Gross Receipts Tax Act [7-21B-1 to 7-21B-7]

Special County Hospital Gross Receipts Tax Act [7-20-19 to 7-20-26]

Local Liquor Excise Tax Act [7-24-8 to 7-24-16]

Effective Date. This regulation is retroactively effective on July 1, 1990.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

TA 2:1 - INTERPRETATION, ENFORCE- MENT AND COLLECTION OF CERTAIN MUNICIPAL AND COUNTY TAXES

The municipal and county tax acts listed below, as they now exist or may hereafter be amended, shall be interpreted, administered and enforced by the secretary under the provisions of the Tax Administration Act.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

P.O. BOX 27198
ALBUQUERQUE, NEW MEXICO 87125-
7198

WCA 91-1

MISCELLANEOUS PROCEEDINGS AND
PRELIMINARY QUESTIONS OF FACT

New Mexico Register

Volume II Number 3

February 15, 1991

I. Authority.

The authority for this Rule derives from Section 52-5-4(A) NMSA 1978 as amended, and Sections 16, 20, 22, 29, 65 and 89 of Chapter 2, Laws of 1990, Second Special Session.

II. Purpose.

The purpose of this Rule is to establish procedures, requirements, enforcement mechanisms and definitions relating to, and implementing, Chapter 2, Laws of 1990, Second Special Session.

III. Definitions.

For the purposes of this Rule:

A. Accident Notice.

"Accident Notice" means that document referred to in Section 52-1-29(A) NMSA 1978 and that document referred to as an "attachment" in Section 52-1-29(C) NMSA 1978.

B. Accident Notice Placard.

"Accident Notice Placard" means that document referred to in Section 52-1-29(B) NMSA 1978.

C. Authorized Supervisory Employee.

An "authorized supervisory employee" is:

(1) The owner, proprietor or chief executive officer of an entity employing workers;

(2) The highest ranking managerial official of any branch office of any entity employing workers; or

(3) Any person designated in a notarized authorization, signed by the owner, proprietor, chief executive officer or the highest ranking managerial official in the branch office of an entity employing workers.

D. Claim.

A "claim" has been initiated when all action under the control of the injured worker, has been taken to initiate with the employer and/or his insurance carrier, a claim for workers' compensation benefits. Actions under the control of the worker include the

execution of an accident notice, where such notice is required by law.

E. Day.

"Day" means a calendar day and includes Saturdays, Sundays and legal holidays.

F. Emergency Care.

"Emergency care" means that care provided in response to an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life or health.

G. Employer.

"Employer" means:

(1) The chief executive officer, owner or proprietor of any entity employing workers;

(2) Any expressly authorized representative or agent of the owner, proprietor or chief executive officer, whether or not the agent is also an employee of the entity employing workers;

(3) Any insurance carrier, legal agent of an insurance carrier, authorized adjuster or third party administrator for an employer or insurance carrier.

H. Health Care Provider.

"Health Care Provider" means any health care provider set forth in Section 52-4-1 NMSA 1978 including any providers designated pursuant to 52-4-1(O) NMSA 1978.

I. Initial Choice of Health Care Provider.

"Initial Choice of Health Care Provider" means that act, oral or written, which constitutes the initial choice of health care provider within the meaning of Section 51-1-49(B) NMSA 1978 and Section VI(B) and these Rules.

J. Miscellaneous Proceedings Judge.

A "Miscellaneous Proceedings Judge" is a Workers' Compensation Judge, temporarily assigned to the miscellaneous proceedings docket, on a rotating basis.

K. Notice.

(1) "Notice" means actual notice provided to a party. Notice shall be written unless otherwise provided for in these Rules.

(2) Any party may designate and serve upon the opposing parties an exhaustive list of all persons authorized to accept notice or Notice of Accident.

L. Notice of Change of Health Care Provider.

"Notice of Change of Health Care Provider" means that written document which constitutes notice of change of health care provider as provided in Section 52-1-49(C) NMSA 1978 and Section VI(C) of these Rules.

M. Objection to Notice of Change of Health Care Providers.

"Objection to Notice of Change of Health Care Providers" means that written document constituting an objection to a notice of change of health care providers as provided in Section 52-1-49(D) NMSA 1978 and Section VI(D) of these Rules.

N. Request for Change of Health Care Provider.

"Request for Change of Health Care Provider" means that written document which constitutes a request for change of health care providers as provided in Section 52-1-49(E) NMSA 1978 and Section VI(D) of these Rules.

O. Treatment.

"Treatment" means any administration of a medical procedure, administration of a medical test, referral of a patient for medical or psychological procedures or tests, prescription of medication or prescription of bed rest, exercise or other specified plan for recovery, by an health care provider as provided in 52-4-1 NMSA 1978.

P. Working Days.

"Working days" means a Monday, Tuesday, Wednesday, Thursday or Friday, but shall not include any day upon which the Workers' Compensation Administration is closed for business due to a state or national holiday. If the Workers' Compensation Administration is closed to the public for any other reason, then any document required by Rule WCA 91-1 to be filed with the Workers'

New Mexico Register

Volume II Number 3
February 15, 1991

Compensation Administration shall be deemed timely if filed no later than the close of business the next working day.

IV. Applicability.

The provisions pertaining to health care provider selection, accident notices, independent medical examiner selection, unfair claims-processing practices, bad faith and late payments shall apply to all cases involving injuries to workers where that injury occurred on or after the effective date of these Rules. The provisions pertaining to confidentiality shall apply to all records of workers' compensation claims in the possession of the Workers' Compensation Administration.

The General Provisions (Rule V) shall apply to all proceedings pertaining to any action, petition, motion, objection, request or proceedings arising under any of the substantive provisions contained in these Rules.

V. General Provisions.

A. The Rules of Civil Procedure in the District Courts do not apply to proceedings under Rule WCA 91-1.

(1) All matters arising under these rules shall be heard by the Miscellaneous Proceedings Judge assigned to that docket on the date of the hearing, provided, however, that if a case is assigned to a Workers' Compensation Judge for formal hearing, then that judge shall hear the matter.

(2) The opposing party may, but is not required to, file a response to any pleading called for in these Rules, unless otherwise provided.

(3) Unless otherwise expressly provided, no motions practice with respect to these Rules will be allowed and no motion will be accepted for filing in any miscellaneous proceedings docket case. The Miscellaneous Proceedings Judges will allow reasonable latitude to the parties during the hearing to raise such issues as are necessary to achieve a just result.

(4) A Miscellaneous Proceedings Judge may conduct any hearing in person or telephonically, in his/her sole discretion. Any hearing conducted shall be recorded in the manner of a formal hearing.

(5) Hearing Procedure:

(a) The party bearing the burden of proof upon the miscellaneous proceeding may present evidence first.

(b) The opposing party may present evidence after the party bearing the burden of proof has rested.

(c) The party bearing the burden of proof may present rebuttal evidence only at the discretion of the court.

(d) The party with the burden of proof may present legal authorities and closing argument after the close of evidence.

(e) The opposing party may present legal authorities and closing argument thereafter.

(f) The party bearing the burden of proof may present rebuttal argument.

B. Service and Filing.

(1) Service and filing may be accomplished by the U.S. mail, hand delivery, facsimile transmission with a machine verification of receipt of the transmission and a follow up original transmitted by the U.S. mail or delivery by a courier or express service.

(2) Time Computation.

All computations of time shall be based upon proof of actual receipt of notice. No additional time shall be allowed for use of the U.S. mail. A Miscellaneous Proceedings Judge, Workers' Compensation Judge or the Director may require reasonable proof of delivery of notice, such as, a certified mail return receipt, facsimile transmittal verification, courier or express company delivery verification document, affidavit of hand delivery or other similar method of proof.

C. Evidence.

For all proceedings under Rule WCA 91-1, the rules of evidence, other than the rules with respect to privileges, do not apply.

D. Disqualification.

(1) No peremptory disqualification of a Miscellaneous Proceedings Judge shall be allowed.

(2) No additional right to disqualify

a Workers' Compensation Judge shall accrue to any party by virtue of a miscellaneous proceedings being assigned to that judge, as a part of the formal hearing.

(3) Any party may file a written request for a Miscellaneous Proceedings Judge to recuse him/herself for cause. A Miscellaneous Proceedings Judge shall observe the Canons of Judicial Conduct in their handling of such requests.

E. Docketing and Notice of Related Matters.

(1) All proceedings arising under these Rules shall be separately docketed by the Clerk of the Court.

(2) All parties to these proceedings have the duty to bring to the attention of the Miscellaneous Proceedings Judge and to the Clerk of the Court all claims and other miscellaneous proceedings under the jurisdiction of the Workers' Compensation Administration and arising from the same injury or disability. Failure to provide notice of related matters constitutes a violation of the Rules of the Workers' Compensation Administration and may be punished as a violation of Section 52-1-61 NMSA 1978. Such violations may form the basis of such other relief or remedy as may be required to achieve justice in the resolution of the matter.

(3) If the miscellaneous proceeding has been assigned to a Workers' Compensation Judge for formal hearing, that judge shall hear the miscellaneous proceeding.

F. Reconsideration.

Any party may move, in writing, for a reconsideration of the ruling of a Miscellaneous Proceedings Judge, solely upon the ground of lack of notice. Such motions must be filed within ten (10) working days of the entry of the order to be reconsidered. The order to be reconsidered shall continue in effect until withdrawn.

G. Discovery.

No formal discovery may be undertaken pursuant to these Rules, unless otherwise provided herein.

VI. Health Care Provider Choice.

A. Emergency Care.

New Mexico Register

Volume II Number 3

February 15, 1991

Emergency care provided to a worker shall be provided as needed. No provision of emergency care shall constitute a choice by the employer or worker of the treating health care provider. Continuing or follow up care, provided after the initial emergency has passed, shall constitute an instance of selection of a health care provider.

B. Initial Health Care Provider Choice.

(1) The following post injury acts shall constitute selection of a health care provider by the employer, whether expressed orally or in writing:

(a) A specification or suggestion of a health care provider to a worker. The worker's acceptance or rejection of the specification or suggestion of a health care provider shall not change the fact that the employer made the initial health care provider choice.

(b) Presentment of a list of health care providers to the worker where the initial health care provider is selected from that list, by the worker.

(c) A declaration that the employer will control the initial selection of health care provider.

(2) The following post injury acts shall constitute initial selection of a health care provider by a worker, whether expressed orally or in writing:

(a) Selection of a health care provider in the absence of, or prior to, any act constituting specification or suggestion of a health care provider by the employer. The employer's acceptance or rejection of the selection of a health care provider shall not change the fact that the worker made the initial health care provider choice.

(b) Presentment of a list of health care providers to the employer where the initial health care provider is selected from that list, by the employer.

(c) A declaration by the employer that the worker may initially select the health care provider.

(3) If both parties submit lists of proposed health care providers and a selection of the initial health care provider is made

by the explicit agreement of the parties, then the initial health care provider shall be deemed chosen by neither party. Subsequent acts shall constitute initial health care provider choice as set forth in Section VI(B)(1) and (2) of these Rules.

(4) The employer may give written notice to a worker, prior to the date of injury, as provided below. Such notice shall create a rebuttable presumption that the initial choice of health care provider conforms with the notice. Such a notice may state:

(a) That one or more health care providers specified have been selected to provide health care in the event of accident; or

(b) That the employer intends to exercise his right to control the initial selection of health care provider; or

(c) That the worker is free to choose the initial health care provider.

(5) Referrals.

Referral of an injured or disabled worker by the initially selected health care provider to any other health care provider shall constitute a continuation of the initial selection of health care provider and shall not give rise to any enlargement of the initial period of health care provider choice. Nor shall such a referral constitute a Notice of Change in Health Care Provider, Objection to Change of Health Care Provider, or Request for Change of Health Care Provider.

(6) The sixty (60) day period of initial health care provider choice shall run from the date of first treatment or examination by, or consultation with, the selected initial health care provider.

C. Notice of Change of Health Care Provider.

(1) A party may, pursuant to statute, give notice of his or her intent to change from the initially selected health care provider to any other health care provider enumerated in Section 52-4-1 NMSA 1978, as amended. Such notices shall only be effective if they conform to Subsections (2) or (3) of this section.

(2) A worker shall provide oral or written Notice of Change of Health Care

Provider to his or her foreman or other immediate supervisor, the owner or proprietor, to the person who, prior to the injury or disability, delivers paychecks or other payment for work to the worker or to any other person, designated in writing, for receipt of such notices by the employer. An employer may provide the worker with an exhaustive list of all persons authorized to receive Notices of Change of Health Care Provider to the worker. If oral notice is provided, then a written notice shall be mailed to the employer or person authorized to receive Notices of Change of Health Care Provider no later than the next business day.

(3) The employer shall provide oral or written Notice of Change of Health Care Provider to the worker. If oral notice is provided, then a written notice shall be mailed to the worker no later than the next business day. If the worker cannot be located, then the employer may serve Notice of Change of Health Care Provider at the last known address of the worker. The worker may designate, in writing, another person to receive Notice of Change of Health Care Provider. Retention of an attorney to represent the worker shall be deemed designation of the attorney to receive Notices of Change of Health Care Provider.

(4) All written Notices of Change of Health Care Provider shall contain the following:

(a) Name of worker.

(b) Name of employer and employer's insurance carrier(s), if any.

(c) Address of each party.

(d) Name(s) and address(es) of counsel, if any.

(e) Date of accident.

(f) County of accident.

(g) Nature of injury.

(h) The name of the prior health care provider.

(i) The name, address and telephone of the proposed new health care provider.

(j) The signature of the party or authorized agent of the party requesting

New Mexico Register

Volume II Number 3

February 15, 1991

the change in the initial health care provider.

(k) The following text: "To the person who received this notice: Your legal and financial rights will be affected by your response to this notice. If you need information or assistance and are not already represented by an attorney, please contact the Workers' Compensation Administration Ombudsman Program."

(5) The Notice of Change of Health Care Provider may be filed on or after the fiftieth (50th) day after the first treatment or examination by, or consultation with, the initial health care provider. Such notices are effective ten (10) days later if not objected to, and subject to the court's order.

(6) All Notices of Change of Health Care Provider shall be upon a form approved by the Director or other document containing all the entries required by Subsection VI(C)(4) of these Rules. All employers shall post approved forms in conspicuous places upon their premises where notices to employees and applicants for employment are customarily posted.

D. Objection to Notice of Change of Health Care Provider.

(1) If a Notice of Change of Health Care Provider is served upon a party, the party to whom notice is given may object. Such objection shall be deemed to be a Request for Change of Health Care Provider. Objections shall be written and filed with the Workers' Compensation Administration, with a copy to the opposing party.

(2) If an Objection to a Notice of Change of Health Care Provider is not filed by an employer within three (3) working days of receipt of the Notice of Change of Health Care Provider from the worker, then the employer shall be liable for the cost of treatment provided by the health care provider selected by the worker, until an Objection to Notice of Change of Health Care Provider is filed and acted upon by a Miscellaneous Proceedings Judge.

(3) If an Objection to a Notice of Change of Health Care Provider is not filed by a worker within three (3) working days of the date of service of the employer's Notice of Change of Health Care Provider, then the worker shall be liable for the cost of treatment provided by any health care provider selected by the worker, until an Objection to Notice of

Change of Health Care Provider is filed and acted upon by a Miscellaneous Proceedings Judge.

E. Request For Change of Health Care Provider.

(1) At any time, either party may file a Request for Change of Health Care Provider with the Workers' Compensation Administration. Written notice of the Request for Change of Health Care Provider shall be provided to the non-requesting party.

(2) An Objection to a Notice of Change of Health Care Provider is deemed to be a Request for Change of Health Care Provider.

(3) The Request for Change of Health Care Provider shall state the reason for the request and all information called for in sub-section C(4) of this Section.

(4) A failure by the party filing the Request for Change of Health Care Provider to state the reason for the Request for Change of Health Care Provider or provide other required information may be resolved by the Miscellaneous Proceedings Judge by telephone conference or by other remedy fashioned by the Miscellaneous Proceedings Judge to inform the non-requesting party while complying with the requirement for expeditious resolution of the Request for Change of Health Care Provider.

(5) The party filing the Request for Change of Health Care Provider or filing an Objection to a Notice of Change of Health Care Provider bears the burden of proving that the care being received, or proposed to be received, is not reasonable.

(6) A Miscellaneous Proceedings Judge shall render a decision and file an order within seven (7) days of the filing of the Request for Change of Health Care Provider or Objection to Notice of Change of Health Care Provider. The order shall be effective on the date of filing. The order shall not preclude the parties or the Administration from challenging, in a utilization review proceeding, formal hearing or other procedure, the necessity or appropriateness of any billings, treatment or procedures arising from any health care provider services.

(7) The Request for Change of Health Care Provider or Objection to Notice of

Change of a Health Care Provider shall not be filed, upon the same evidence, more than once in the same case. If a Request for Change of Health Care Provider or Objection to Notice of Change of Health Care Provider has been previously filed by a party, then all subsequent Requests for Change of Health Care Provider or Objections to Notice of Change of Health Care Provider filed by that party and arising from the same injury or disablement, shall state the fact of the prior Requests for Change of Health Care Provider or Objections to Notice of Change of Health Care Provider and shall further state those facts relied upon in the present request or objection that differ from those facts upon which the prior request or objection was based.

F. Periodic Examination of the Worker.

(1) In the event the injured worker selects a new health care provider pursuant to Sub-section C of this Rule, the employer shall be entitled to periodic examinations of the worker by the health care provider he initially selected. Examinations may not be made more frequently than at six (6) month intervals, except upon application to the Miscellaneous Proceedings Judge.

(2) The Miscellaneous Proceedings Judge may review applications for more frequent medical examinations and hold such hearings as may be necessary for determination of the issues.

(3) Upon a showing of reasonable cause, the Miscellaneous Proceedings Judge may order the worker to submit to examinations within the six (6) month interval, provided, however, the Miscellaneous Proceedings Judge shall exercise care to prevent harassment of the worker.

VII. Independent Medical Examiner Selection.

A. If an independent medical examination is desired by either party, then the parties will attempt in good faith to agree upon and jointly specify an independent medical examiner authorized by statute.

B. If there is no agreement by the parties upon an independent medical examiner, any party may petition the Workers' Compensation Administration and a Miscellaneous Proceedings Judge will select an independent medical examiner. The petition will recite the issue or issues upon which the

New Mexico Register

Volume II Number 3

February 15, 1991

independent medical examination is desired, the fact that an attempt has been made in good faith to jointly specify an independent medical examiner and the name of the health care provider currently treating the worker pursuant to Section VI of this Rule.

C. The Miscellaneous Proceedings Judge shall review the petition and shall appoint an independent medical examiner if he or she finds that a bona fide dispute concerning a medical issue has been shown. The Miscellaneous Proceedings Judge may hold hearings to determine whether a bona fide dispute concerning a medical issue exists.

D. The Miscellaneous Proceedings Judge shall select an independent medical examiner from a list provided by the Independent Medical Examiner Selection Committee appointed by the Workers' Compensation Advisory Council.

E. In any appropriate case, the parties may agree, or the Miscellaneous Proceedings Judge may order, that the independent medical examination be conducted by a panel of health care providers of various specialties alleged to be involved in the injury.

F. Temporary Provision.

Until such time as the Independent Medical Examiner Selection Committee appointed by the Workers' Compensation Advisory Council has provided a list of independent medical examiners to the Workers' Compensation Administration, the Director may, upon consultation with the appropriate professional societies, specify a list of independent medical examiners from which the Miscellaneous Proceedings Judge shall select. The sole purpose of this temporary provision is to provide a source of independent medical examiners until the mechanism established by statute has been implemented. Inclusion or exclusion from the list submitted by the Director pursuant to this temporary provision shall not give rise to any expectation or presumption with regard to inclusion or exclusion from the list of independent medical examiners submitted by the Independent Medical Examiner Selection Committee.

VIII. Accident Notice Placards and Accident Notices.

A. Every employer shall post and keep posted in conspicuous places on their premises, where notices to employees and ap-

plicants for employment are customarily posted, a placard stating the requirement that workers notify employers of accidents. The Accident Notice Placard must include the following text in both english and in spanish and shall be upon a form approved by the Director:

NOTICE OF ACCIDENT: A worker claiming entitlement to workers' compensation benefits must file a NOTICE OF ACCIDENT with their employer. However, this is not necessary if the employer or any superintendent, foreman or other agent in charge of the work connected to the accident had actual knowledge of the accident's occurrence. This notice must be given within fifteen (15) days after the worker knew, or should have known, of his or her accident unless the injury or other factors beyond the worker's control prevented notification. In that case, notice must be given as soon as is reasonably possible but not later than sixty (60) days after the occurrence of the accident.

A FORM APPROVED BY THE DIRECTOR FOR REPORTING AN ACCIDENT TO THE EMPLOYER IS PROVIDED HEREWITH. THESE FORMS ARE ALSO AVAILABLE FROM THE WORKERS' COMPENSATION ADMINISTRATION. IT IS THE EMPLOYER'S RESPONSIBILITY TO ENSURE THAT FORMS ARE KEPT AVAILABLE WITH THIS POSTER. THE WORKER AND THE EMPLOYER, ANY SUPERINTENDENT OR FOREMAN, OR ANY AGENT OF THE EMPLOYER IN CHARGE OF THE WORK WHERE THE ACCIDENT OCCURRED MUST SIGN THE FORM WHERE INDICATED. SIGNING THE FORM DOES NOT CONCEDE ANY RIGHTS OR DEFENSES ON THE PART OF THE WORKER OR THE EMPLOYER. THE SIGNATURES MERELY ACKNOWLEDGE THE COMPLETION OF A NOTICE OF ACCIDENT. THE ORIGINAL IS KEPT BY THE EMPLOYER AND THE COPY BY THE WORKER.

B. Every employer shall keep attached to the Accident Notice Placard a supply of Accident Notice Forms for providing report of accidents. The form shall be approved by the Director.

C. Any employer may submit to the Director a proposal for approval of an Accident Notice or Accident Notice Placard. No form shall be approved, except in writing, signed by the Director.

D. No employer shall knowingly refuse or fail to sign a Accident Notice Form submitted by a worker.

IX. Late Payments.

A. The Workers' Compensation Administration shall determine the timeliness of initial payments to the workers based upon a comparison of the date of filing with the Workers' Compensation Administration of the Employers First Report of Accident (Form E-1) and the date of the first payment as stated on the Report of First Payment (Form E-2).

B. All employers shall file with the Workers' Compensation Administration, or cause their insurance carrier to file with the Workers' Compensation Administration, the Report of First Payment (Form E-2) in a timely manner.

C. The following acts shall constitute a violation of Workers' Compensation Administration Rules with respect to claims that are not contested when the initial payment of benefits is due:

(1) The failure of an employer, after notice from the Workers' Compensation Administration, to cure a late initial payment to a worker within three (3) working days. The date of service of the notice of late initial payment from the Workers' Compensation Administration shall be the first day of three (3) working day cure period;

(2) Any initial payment to a worker which is, due to the fault of the employer, more than ten (10) working days late, whether or not notice of late payment has been given to the employer by the Workers' Compensation Administration. The ten (10) working day period provided in this sub-section shall begin the working day following the date upon which the payment is considered late, pursuant to statute; or

(3) A pattern of conduct, involving multiple late initial payments, which the Director finds provides him with probable cause to believe that the employer or carrier is intentionally or negligently, failing to adequately cause the timely initial payment of injured workers.

D. The Director shall, upon an allegation of violation of one or more the provisions of Sub-section C, determine the validity of the allegation. If the Director finds that a violation

New Mexico Register

Volume II Number 3
February 15, 1991

has occurred, he may issue a warning notice or, after notice and an opportunity for a hearing, impose any fine authorized by Section 52-1-61 NMSA 1978 or an additional award to the worker of up to one hundred percent (100%) of the amount of the initial payment due.

X. Confidentiality.

A. The Clerk of the Court shall store exhibits introduced into evidence at Workers' Compensation Administration formal hearings in a manner which allows the prompt and accurate identification and retrieval of such exhibits.

B. Any person may examine any material contained in a segregated file of evidence introduced at a formal hearing upon a request that is sufficiently specific to uniquely identify that file. Such examinations may take place during normal working hours at the main office of the Workers' Compensation Administration in Albuquerque.

C. Parties to a claim may examine any current and all prior Workers' Compensation Administration files in which the worker making the current claim, or, in the case of a claim against the Subsequent Injury Fund, the underlying claim, is or was named as a party, upon proper proof of identification, relationship to a party and existence of a claim.

D. Proof of identity shall be a driver's license or other identification bearing the photograph, name and address of the person requesting records.

E. Proof of relationship to a party shall be an entry of appearance by counsel, or an affidavit signed by the claimant, or by an authorized supervisory employee of the employer or the employer's insurance carrier, setting forth sufficient facts to establish an agency relationship with a party.

F. Proof of a current claim shall be established by:

- (1) A copy of the Notice of Accident for the claim; or
- (2) A copy of the Employer's First Report of Accident for the claim; or
- (3) A copy of the First Report of Payment for the claim; or
- (4) A copy of a current benefits

check where it is apparent from the face of the check that it was issued for workers' compensation benefits with respect to the claim; or

(5) A copy of the workers' compensation claim filed with the Workers' Compensation Administration or any other document endorsed by the Clerk of the Workers' Compensation Administration as filed in the Administration and pertaining to a claim; or

(6) An affidavit, signed by the claimant or by an authorized supervisory employee of the employer or insurance carrier setting forth the names of the parties and the fact that a claim for benefits has been made.

G. No records shall be examined except as provided by Sub-sections (B) and (C). The provisions of this Section are not waivable by any party.

H. Every employer and insurance carrier has an affirmative duty to ensure that the records of the Workers' Compensation Administration reflecting the identities of authorized supervisory employees are accurate and complete.

XI. Bad Faith and Unfair Claims Processing.

A. Purpose.

The purpose of these Regulations is to implement legislative intent with respect to Section 29, Chapter 2, Laws of 1990, Second Special Session by setting forth a non-exhaustive definition of bad faith and unfair claims processing, distinguishing that definition from the explicit statutory definition set forth in Section 23, Chapter 2, Laws of 1990, Second Special Session and providing a penalty for prohibited conduct. It is explicitly contemplated that the additional regulations be further refined as practice and case law under Chapter 2, Laws of 1990, Second Special Session become more clear.

B. Bad Faith.

Any and all of the following practices, if proven to the satisfaction of the Director, by an insurer, legal agent of an insurer, employer, self-insured employer, third party administrator, claimant, agent of a claimant, representative of the Subsequent Injury Fund or other person, knowingly committed or performed

with such frequency as to indicate a general business practice, are defined as bad faith, distinguished from bad faith as defined in Section 23 Chapter 2, Laws of 1990, Second Special Session, and are prohibited:

(1) Failure to accept or sign for a Recommended Resolution, Notice of Hearing or other process for the purpose of extending any deadline, frustrating the adjudication process or creating a procedural right of reconsideration.

(2) Use of requests for examinations by an independent medical examiner and/or Requests for Change of Health Care Provider to harass, intimidate or unduly inconvenience or annoy a party.

(3) Making or threatening a claim of unfair claims processing, bad faith, fraud or other abuse, late payment, over-utilization of medical services or any other complaint or other notice arising out of or pertaining to these Rules where the purpose of filing such a notice or complaint is to harass, intimidate or unduly inconvenience or annoy any party.

(4) Attempting to bypass the approval of a settlement or lump sum award by a Workers' Compensation Judge for the purpose of avoiding legislative intent regarding lump sum settlements.

(5) Requesting information from, or communicating with, a health care provider in violation of Section 90, Chapter 2, Laws of 1990, Second Special Session pertaining to written requests for medical information or in violation of S.C.R.A. 11-504 (physician-patient and psychotherapist-patient privilege) with the intent of coercing or improperly influencing any health care provider.

(6) Knowingly violating S.C.R.A. 16-303, pertaining to candor to the tribunal.

(7) Knowingly misrepresenting or knowingly failing to inform the opposing party or any Workers' Compensation Administration mediator or Workers' Compensation Administration Judge assigned to the case of any and all facts pertaining to educational background, work history, current work status or other facts pertinent to evaluation of disability of a worker.

(8) Intentionally, engaging in other actions demonstrating the intent of a party to knowingly and intentionally harass, intimidate

New Mexico Register

Volume II Number 3

February 15, 1991

or coerce another party.

C. Unfair Claims Processing.

Any and all of the following practices, if proven to the satisfaction of the Director, by an insurer, legal agent of an insurer, self-insured employer, third party administrator or representative of the Subsequent Injury Fund, knowingly committed or performed with such frequency as to indicate a general business practice, are defined as unfair claims processing and are prohibited:

(1) Failing without justification to acknowledge and act reasonably promptly upon communications with respect to claims for workers' compensation benefits.

(2) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims for workers' compensation benefits.

(3) Making known to claimants a practice of the insurer appealing workers' compensation awards or rejecting Recommended Resolutions for the purpose of compelling them to accept settlements or compromises that are less than the amount awarded in the Workers' Compensation Administration.

(4) Delaying the investigation or payment of claims by requiring a claimant or health care provider to submit more than one statement of how the accident occurred and then requiring subsequent submission of additional forms or statements, by that person, where both submissions contain substantially the same information.

(5) Failure to provide an injured worker with the identity and source of coverage for the injury.

(6) Failure to provide an explanation for denial of liability or explanation for refusal or termination of benefits upon request from the party affected, or his representative.

(7) Failure to resolve conflicts regarding issues in which no evidence exists which supports opposing positions.

(8) Failure or refusal to provide a claimant or his representative with a copy of the claimant's statement upon request.

(9) Failure or refusal of a claimant

or his representative to provide a medical authorization on a form approved by the Workers' Compensation Administration to the employer or insurer.

(10) Failure or refusal by any party or their representative to provide the other parties with copies of all medical information as it becomes available to them.

(11) Failure or refusal by any party or their representative to disclose each factor used by them in calculating disability values.

(12) Failure or refusal to appear for scheduled hearings or to participate and cooperate in the conduct of those hearings.

D. Enforcement.

(1) Any interested person may initiate a complaint of bad faith or unfair claims processing with the Fraud and Abuse Bureau, Regulatory Division, Workers' Compensation Administration. No complaint, motion or request for relief with respect to bad faith or unfair claims processing as defined in Rule XI may be initiated or made an issue in a mediation conference or formal hearing, except as provided in this Rule.

(2) Upon receipt of the complaint the Fraud and Abuse Bureau, Regulatory Division, Workers' Compensation Administration shall investigate and make recommendations to the Director. All parties and persons possessing information and documents are required to comply promptly with reasonable requests by Administration personnel for investigatory documents or information. Failure to comply promptly with reasonable requests by Administration personnel for investigatory documents or information shall be punishable pursuant to Section 52-1-61 NMSA 1978.

(3) Upon receipt of recommendations, the Director shall report findings to the parties. If a Workers' Compensation Judge has been assigned to the claim in which the complaint arose, the Director shall certify his findings to the Workers' Compensation Judge. The Director, or Workers' Compensation Judge, may hold a hearing to determine what benefit penalty, if any, is due and owing to the worker. No benefit penalty shall be imposed until a hearing upon the Director's findings is held.

(4) If the Director finds that an

employer, insurer or claims-processing representative has a history or pattern of repeated unfair claims-processing practices or bad faith, the Director may impose a civil penalty of up to \$1,000. The procedures governing imposition of penalties assessed pursuant to Section 52-1-61 NMSA 1978 shall control proceedings under this Subsection.

(5) If the Director finds that any other party has committed bad faith or unfair claims processing, the Director may initiate penalty proceedings under Section 52-1-61 NMSA 1978.

STATE OF NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

IN THE MATTER OF: DIRECTOR'S FINAL RULE MAKING:

THE WORKERS' COMPENSATION ADMINISTRATION DIRECTOR'S NOTICE OF ADOPTION OF RULES RELATING TO MISCELLANEOUS PROCEEDINGS AND PRELIMINARY QUESTIONS OF FACT

The Workers' Compensation Administration is adopting Rules pertaining to Miscellaneous Proceedings and Preliminary Questions of Fact, more specifically rules concerning Health Care Provider Choice, Selection of Independent Medical Examiners, Accident Notices, Late Payments, Confidentiality and Bad Faith and Unfair Claims-processing Practices. The Director of the Workers' Compensation Administration is generally authorized to promulgate such Rules pursuant to Section 52-5-4(a) and specifically required to promulgate them pursuant to various Sections of Chapter 2, Laws of 1990, Second Special Session.254

To assist the Director in his promulgation of the Rules, the input of a wide variety of staff members from the Workers' Compensation Administration was enlisted. The proposal was reviewed and modified by the Director in late November, 1990.

The Director's Proposed Rules were presented to the public for oral comment on January 11, 1991, at 9:00 a.m. at the P.E.R.A. Building in Santa Fe, New Mexico. Notice of the Public Hearing was published in four newspapers of general circulation and the New Mexico Bar Bulletin. The Director ac-

New Mexico Register

Volume II Number 3
February 15, 1991

cepted written comments upon the proposed Regulations through the close of business on January 11, 1991.

At the Public Hearing, twelve persons came forth and made public comment. A large audience of non-commenting participants was also present. In addition, thirteen persons submitted written comments for the Director's consideration. All comments were considered and a large number of modifications of the Proposed Rules were made in response to the comments.

The Rules being adopted by this Notice shall be considered final this 22nd day of January, 1991. Pursuant to Section 12-8-5 NMSA 1978 Compilation, these Rules will become effective on February 8, 1991 and shall be forthwith presented to the State Records Administrator for publication pursuant to Section 12-8-6 NMSA 1978 Compilation as amended.

These Rules shall be binding upon the Workers' Compensation Administration pursuant to Section 52-5-4 NMSA 1978 Compilation with respect to the Administration of the Workers' Compensation Act and the New Mexico Occupational Disease Disabling Law on February 8, 1991.

Gerald B. Stuyvesant, Director

Dated

End of Rules Section

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