

TITLE 4 CULTURAL RESOURCES
CHAPTER 3 STATE FAIR
PART 1 GENERAL PROVISIONS

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

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

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

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

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

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

4.3.1.7 DEFINITIONS:
A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the state fair.
B. "Concessionaire" means a person who sells products or services on location, accepts orders, or sets up future business opportunities for potential monetary gain.
C. "Contemplated action" means the events that may occur for violation of the general rules and information contained in the *New Mexico state fair premium book*.
D. "Exhibitor" means one who displays something or who competes at the New Mexico state fair.
E. "General manager" means the general manager of the New Mexico state fair, or his/ her designee.
F. "General public" means the people that attend the New Mexico state fair other than exhibitors or concessionaires.
G. "General fees" means charges for services that apply to everyone.
H. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.
I. "Professional services" means vocations and occupations that require advanced training in a liberal art or science. If such advanced learning or training is a requisite of a service, the service is technical or professional, and therefore exempt from provisions of the Public Purchases Act. Services performed under the direction of a licensed professional are technical or professional services.
J. "Respondent" means the person against whom the commission contemplates taking action for violations of the New Mexico state fair's rules and regulations.
K. "Technical services" means those having to do with the practical, industrial, or mechanical arts of the applied sciences. They must involve a specialized skill.
[4.3.1.7 NMAC - Rp, 4 NMAC 3.1.1.7 NMAC, 11/30/2004]

4.3.1.8 NOTICE OF CONTEMPLATED ACTION: When the commission contemplates taking action

against an exhibitor at the fair, including but not limited to: revoking a prize, honor, or cash award; barring participation in an event; or preventing an exhibitor from participating in future events, for alleged violation(s) of the general rules and policies of the *New Mexico state fair premium book* or the policies of the commission, the commission shall serve upon the respondent a written notice that contains:

- A. a statement that the commission has sufficient evidence that, if not rebutted or explained, shall justify the commission in taking the contemplated action;
- B. an indication of the general nature of the evidence;
- C. notice that the commission shall take the contemplated action unless the respondent, within fifteen days after service of the notice, requests a hearing by depositing in the mail a certified return receipt requested letter addressed to the New Mexico State Fair at P.O. Box 8546, Albuquerque, NM 87198, and,
- D. notice of the respondent's rights as follows:
 - (1) the right to be represented by counsel at the respondent's expense;
 - (2) the right to examine all evidence to be presented against the respondent;
 - (3) the right to present a defense;
 - (4) the right to call witnesses;
 - (5) the right to cross-examine witnesses.

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

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

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

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

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

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

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

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

- A. the chairman of the executive committee or his or her designee;
- B. the chairman of the agricultural committee or his or her designee;
- C. one member selected by the agreement of the representatives of the executive and agricultural committees, or if no agreement can be reached, a member selected by a majority vote of the commission.

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

4.3.1.13 PRE-HEARING DISCOVERY:

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

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

C. The parties shall disclose to each other and to the hearing officers, orally or in writing, the names

of witnesses to be called and the general area of their testimonies. If statements shall be presented to the hearing officers, the names of the persons making the statements and the general nature of the statements shall be disclosed.

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

E. Cost of document copying, mail or delivery service, interviews or written interrogatories, including mileage and per diem, paid in accordance with the New Mexico Per Diem and Mileage Act, shall be borne by the requesting party.

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

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

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

4.3.1.14 POSTPONEMENT OR CONTINUANCE: The hearing officers may, in their discretion, postpone or continue a hearing for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the original hearing date.
[4.3.1.14 NMAC - Rp, 4 NMAC 3.1.1.14 NMAC, 11/30/2004]

4.3.1.15 CONDUCT OF THE HEARING:

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

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

- (1) administer oaths or affirmations upon request of any party;
- (2) schedule continuances;
- (3) examine witnesses and direct witnesses to testify;
- (4) limit repetitious and cumulative testimony;
- (5) set reasonable time limits on individual testimony;
- (6) rule upon the admissibility of evidence either when an objection is made or in a later ruling;
- (7) receive offers of proof for the record;
- (8) dispose of procedural requests or similar matters; and
- (9) render and enter findings of fact, conclusions of law, opinions, decisions and recommendations.

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

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

4.3.1.16 DECISIONS AND APPEALS

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

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

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

4.3.1.17 MEETINGS BY TELEPHONE:

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

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

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

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

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

who speaks during the meeting.

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

4.3.1.18 ALCOHOLIC BEVERAGES:

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

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

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

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

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

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

4.3.1.19 DEADLY WEAPONS PROHIBITED:

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

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

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

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

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

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

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

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

HISTORY OF 4.3.1 NMAC:

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

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

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

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

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

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

History of Repealed Material: SF 80-1 (Regulation 78-1) A Regulation Defining Technical and Professional Services (filed 5/28/80); Rule 82-1 Deadly Weapons Prohibited (filed 9/27/82); Rule 82-2 Alcoholic Beverage (filed

9/27/82); 4 NMAC 3.1.1, Due Process and Disciplinary Action - General Requirements, (filed 8-19-96) and 4 NMAC 3.1.2, Meetings by Telephone (filed 12-1-98) repealed effective 11/30/2004.

Other History:

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