

Adopt Saf-Mec 100 and 200, to read as follows:

CHAPTER Saf-Mec 100 ORGANIZATIONAL RULES

PART Saf-Mec 101 PURPOSE AND SCOPE OF ADMINISTRATIVE RULES OF THE BOARD

Saf-Mec 101.01 Purpose. The board's administrative rules set forth the organization of the mechanical licensing board, describe the board's practices and procedures, establish the licensing qualifications of fuel gas fitters and gas fitting trainees, master plumbers, journeyman plumbers, apprentice plumbers and the voluntary certification of water treatment technicians and oil heating technicians, establish requirements for the issuance of fuel gas fitting and plumbers' licenses and certifications for oil heating technicians and water treatment technicians, set forth continuing education requirements for the renewal of licenses and certifications, establish ethical standards for the professions governed by the board and otherwise implement the provisions of RSA 153:27 through 153:38.

Saf-Mec 101.02 Scope. These rules shall establish standards for the minimum requirements for education, field experience and testing for applicants seeking licensure or renewal of said licensure to become a plumber and/or a fuel gas fitter, or certification as oil heating technician or water treatment technician in the following categories:

(a) Individuals engaged in the installation, servicing and repair of residential and non-residential gas appliances and any other gas utilization equipment using liquefied propane gas or natural gas including but not limit to[.];

(1) Individuals engaged in the installation, servicing, or removal of gas piping for residential and non-residential gas appliances and any other gas utilization equipment using liquefied propane gas or natural gas; and[.];

(2) Individuals engaged in the installation, servicing or repair of hearth systems and domestic appliances using liquefied propane gas or natural gas[.];

(b) Individuals engaged in the installation, modification, servicing or repair of residential and non-residential plumbing systems including but not limited to fixtures, appliances, potable and non-potable water supply systems, potable and non-potable tempered or hot water supply systems, rain or grey water recovery systems, drainage waste and venting systems, including commercial kitchen and medical gas systems[.];

(c) Individuals engaged in the installation, servicing and repair of residential and non-residential oil heating appliances and any other fuel oil utilization equipment using heating oil kerosene or bio fuel derivatives and are seeking voluntary certification as an ["oil heating technician"] from the [M]mechanical [L]licensing [B]board and this chapter; and

(d) Individuals engaged in the installation, servicing and repair of any apparatus for treating or processing water to modify, enhance, or improve its quality or to meet a specific water quality need, desire, or standard, and the pipes, fittings, and other components servicing such apparatus, that are seeking voluntary certification as a [“]water treatment technician[”] from the [M]mechanical [L]licensing [B]board and this chapter.

Saf-Mec 101.03 Business Entities Scope. These rules shall establish standards for the minimum requirements for business entities seeking licensure to become a plumbing and/or a fuel gas fitting corporation, or voluntary oil heating or water treatment corporation in the following categories:

(a) Business [E]entities that offer the professional services of, or are engaged in the installation, servicing and repair of residential and non-residential gas appliances and any other gas utilization equipment using liquefied propane gas or natural gas including but not limited to[;]:

(1) Business [E]entities engaged in the installation, servicing, or removal of gas piping for residential and non-residential gas appliances and any other gas utilization equipment using liquefied propane gas or natural gas; and[;]

(2) Business [E]entities engaged in the installation, servicing or repair of hearth systems or domestic appliances using liquefied propane gas or natural gas[.];

(b) Business [E]entities engaged in the installation, modification, servicing or repair of residential and non-residential plumbing systems including but not limited to fixtures, appliances, potable and non-potable water supply systems, potable and non-potable tempered or hot water supply systems, rain or grey water recovery systems, drainage waste and venting systems, including commercial kitchen and medical gas systems[.];

(c) Business [E]entities engaged in the installation, servicing and repair of residential and non-residential oil heating appliances and any other fuel oil utilization equipment using heating oil, kerosene or bio fuel derivatives, and are seeking voluntary certification as an “oil heating business entity” from the [M]mechanical [L]licensing [B]board and this chapter;

(d) Business [E]entities engaged in the installation, servicing and repair of any apparatus for treating or processing water to modify, enhance, or improve its quality or to meet a specific water quality need, desire, or standard, and the pipes, fittings, and other components servicing such apparatus, that are seeking voluntary certification as a [“]water treatment business entity[”] from the Mechanical Licensing Board and this chapter.

PART Saf-Mec 102 DEFINITIONS

Saf-Mec 102.01 “Apprentice” means “plumbing apprentice” as defined in RSA 153:27, XV, namely, “any person who [works under the direct supervision of a Master or Journeyman plumber, who]is engaged in learning and assisting in the installation of plumbing and drainage under an apprenticeship program that meets the requirements of the state apprenticeship advisory council established in RSA 278.”

Saf-Mec 102.02 “Board” [shall]means the state [M]mechanical [L]licensing [B]board [defined]described in RSA 153:27-a.

Saf-Mec 102.03 “Domestic appliance technician” means “domestic appliance technician” as defined in RSA 153:27, II, namely, “any person engaged in the installation, servicing, and repair of liquefied propane or natural gas domestic appliances designed specifically for residential use, limited to residential clothes dryers and their venting systems, domestic stove tops, cook stoves and ranges and their venting systems, or outdoor cooking or equipment and pool heaters.”

Saf-Mec 102.04 “Fuel gas fitter” means “fuel gas fitter” as defined in RSA 153:27, III, namely, “a hearth system installation and service technician, a fuel gas installation technician, a fuel gas service technician, or a fuel gas piping installer [as defined in RSA 153:27 paragraphs V, VI, VII and IX] regulated by” RSA 153:27 through RSA 153:38.

Saf-Mec 102.05 “Fuel gas fitting” means “fuel gas fitting” as defined in RSA 153:27, IV, namely, “the installation, repair, alteration, service, demolition or removal of pipes, fixtures, fittings, appliances, or apparatus necessary for supplying natural gas or propane for residential or non-residential use from the [outlet of the natural gas meter or first stage liquefied propane regulator]point of delivery and all gas piping before connection to the combustion zone and including the applicable venting of flue gases to the outside atmosphere and the provisions for air for combustion and ventilation.” [pursuant to RSA 153:27, IV.]

Saf-Mec 102.06 “Fuel gas installation technician” means “fuel gas installation technician” as defined in RSA 153:27, V, namely, “any person engaged in the installation of inside and outside piping and appliances from the outlet of the natural gas meter or first stage [liquefied propane]regulator or residential and non-residential heating equipment systems or water heating systems using liquefied propane gas or natural gas.” [as defined in RSA 153:27, V.]

Saf-Mec 102.07 “Fuel gas piping installer” means “fuel gas piping installer” as defined in RSA 153:27, VI, namely, “any person engaged in the installation of liquefied propane gas or natural gas piping [from the outlet of the gas meter or first stage regulator and terminating at the end use appliance or fuel gas utilization equipment,]or who is a New Hampshire licensed plumber, approved by the board through affidavit, experience,

[and]education or training in the use of NFPA 54, national fuel gas code as adopted pursuant to RSA 153:5 in the state fire code.”[, as defined in RSA 153:27, VI .]

Saf-Mec 102.08 “Fuel gas service technician” means “fuel gas service technician” as defined in RSA 153:27, VII, namely, “any person engaged in the servicing and repair of inside and outside piping[and appliances] from the outlet of the gas meter or first stage regulator or residential and non-residential heating equipment systems or water heating systems using liquefied propane gas or natural gas.”[as defined in RSA 153:27, VII.]

Saf-Mec 102.09 “Fuel gas trainee” means “fuel gas trainee” as defined in RSA 153:27, VIII, namely, “any person engaged in the process of meeting the[statutory] licensing requirements of” RSA 153:27 through RSA 153:38, “who shall work under the direct] supervision of a licensed fuel gas fitter in the repair or installation of inside and outside piping from a gas meter or first stage regulator, and the repair or installation of residential and nonresidential heating equipment systems, hot water heating systems, or hearth equipment systems utilizing liquefied propane gas or natural gas.”[pursuant to RSA 153:27 VIII.]

Saf-Mec 102.10 “Hearth system installation and service technician” means “hearth system installation and service technician” as defined in RSA 153:27, IX, namely “any person engaged in the installation, servicing, and repair of liquefied propane or natural gas hearth appliances and venting systems.”[in accordance with RSA 153:27, IX.]

Saf-Mec 102.11 “Journeyman plumber” means “journeyman plumber” as defined in RSA 153:27, X, namely, "any person who customarily performs the work of installing, maintaining and repairing plumbing and drainage under the direction of a master plumber."

Saf-Mec 102.12 “License” means any license issued pursuant to NH RSA 153:27 through RSA 153:38 and these rules.

Saf-Mec 102.13 “Master plumber” means “master plumber” as defined in RSA 153:27, XII, namely "any person, firm, corporation, or limited liability company that, as a business, hires or employs a person or persons to do plumbing work, or, without hiring any person, does that work as a principal business or as auxiliary to a principal business for its own account."

Saf-Mec 102.14 “Person” means “person” as defined in RSA 153:27, XIII, namely, “an individual, a natural person.”

Saf-Mec 102.15 “Plumbing” means “plumbing” as defined in RSA 153:27, XIV, namely, “the practice, materials, and fixtures used in the installing, maintenance, extension, and alteration of all piping, fixtures, plumbing appliances, and plumbing appurtenances within or adjacent to any structure, in connection with sanitary drainage or

storm drainage facilities; venting systems; and public or private water systems. For the purposes of these rules, “the term “plumbing” shall not apply beyond the first fitting beyond the foundation wall of the building or 5 feet of pipe from the building.” [as defined in RSA 153:27, XIV.]

Saf-Mec 102.16 “Point of delivery” means the outlet of the natural gas meter or first stage liquefied propane regulator.

Saf-Mec 102.17 “Supervision” means the direct supervision of an apprentice by a master or journeyman plumber or the direct supervision of a fuel gas trainee by a licensed fuel gas fitter.

PART Sac-Mec 103 DESCRIPTION OF THE BOARD

Saf-Mec 103.01 Composition of the Board.

(a) The board shall consist of 8 members, as described in RSA 153:27-a, III, and shall be appointed by the governor and council as follows:

(1) Two licensed journeymen or master plumbers, who are actively working in the trade as plumbers[.];

(2) Two licensed fuel gas fitters, both of whom are actively working in the trade as fuel gas fitters, and one of whom shall represent the propane fuel industry[.];

(3) One certified heating equipment installer or heating equipment service person under RSA 153:16-b[.];

(4) One licensed master plumber who is also a licensed fuel gas fitter and a certified heating equipment installer or servicer, actively working in the trade[.];

(5) One public member who is not, and never was, a member of the plumbing trade or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision of plumbing services or an activity directly related to plumbing, including the representation of the board or trade for a fee at any time during the 5 years preceding appointment[.]; and

(6) One certified water treatment technician, who shall be a nonvoting member of the board.

(b) Pursuant to RSA 153:27-a, members of the board are appointed by the governor, with the approval of the council, to a term of [3 years, with the term of office for the members appointed to the board shall be]3 years and until a successor is

appointed. The initial appointed members of the board shall serve staggered terms. Vacancies shall be filled in the same manner and for the unexpired terms. No member of the board shall be appointed to more than 2 consecutive terms.

(c) A member of the board shall serve as the board secretary.

Saf-Mec 103.02 Meetings of the Board.

(a) The board shall elect a chair, and vice-chair at its annual meeting from among its members.

(b) The chair shall preside over all meetings of the board.

(c) In the absence of the chair at a meeting of the board, the vice chair shall preside.

(d) Pursuant to RSA 153:27-a, the board shall hold at least 8 regular meetings each year, and may hold special meetings at such times as the business of the board [may]shall require.

(e) Notice of all meetings shall be given in such a manner as in accordance with New Hampshire RSA 91-A:2.

(f) Meetings of the board shall be open to the public to the extent required by RSA 91-A, and notice of board meetings shall be posted at the board's office and at another public location pursuant to NH RSA 91-A:2.

(g) A quorum of the board shall consist of 4 voting members pursuant to RSA 153:27-a, IV.

(h) The annual meeting of the board shall be the first regular meeting held in each state fiscal year.

(i) The secretary of the board shall receive at least monthly an accounting from the department of all moneys derived under the provisions of RSA 153:27 through RSA 153:38.

Saf-Mec 103.03 Record of Official Actions.

(a) Minutes shall be kept of all board meetings and of all official actions taken by the board.

(b) Minutes shall record those members who participate in each vote and shall separately record the position of any members who choose to dissent, abstain or concur.

(c) Minutes shall be public records to the extent provided by RSA 91-A and shall be available for inspection in accordance with the terms of RSA 91-A:4.

Saf-Mec 103.04 Duties of the Board. The [B]board shall:

(a) Adopt rules as provided for in RSA 153:27 through RSA 153:38;

(b) Implement the licensing program for RSA 153:27 through RSA 153:38 and these rules;

(c) Review and approve education programs for licensure, certification and continuing education;

(d) Review and approve continuing education providers and instructors for licensing and certification programs;

(e) Conduct hearings for disciplinary actions;

(f) Review and recommend adoptions, exceptions, or omissions to technical standards as adopted under RSA 153:28, III; and

(g) Develop and recommend for the legislature future changes to RSA 153:27 through RSA 153:38 and these rules.

PART Saf-Mec 104 PUBLIC REQUESTS FOR INFORMATION

Saf-Mec 104.01 Office Location; Mailing Address; Telephone, Fax and TTY Numbers.

(a) The board's mailing address is:

New Hampshire Mechanical Licensing Board
33 Hazen Drive
Concord, New Hampshire 03305

(b) The board's office location is:

New Hampshire Mechanical Licensing Board
Incident Planning and Operations Center
110 Smokey Bear Blvd.
Concord NH 03305

(c) The board's telephone number is 603-223-4289.

(d) The board's fax number is 603-223-4295.

(e) Access for in-state TTY/TDD users is through Relay New Hampshire by dialing 711 or by dialing 1-800-735-2964.

(f) Correspondence, filings and other communications intended for the board shall be addressed to "New Hampshire Mechanical Licensing Board" at the location stated in (a) above.

(g) Information can be obtained from the board by calling the telephone numbers stated in paragraphs (b) and (c) or by written correspondence to the address in (a).

Saf-Mec 104.02 Custodian of Records; Inspection and Copies of Records.

(a) The board's administrative office staff shall be the custodian of the board's records, and shall make available, upon request, those records which are subject to public inspection under RSA 91-A.

(b) Persons desiring to inspect or obtain copies of board records shall identify as specifically as possible the information being sought.

(c) Persons desiring copies of board records shall pay the actual costs of copying fees as defined in RSA 91-A, and in RSA 153:28, II and these rules.

(d) If records are requested which contain both public information and information exempt from disclosure pursuant to RSA 91-A or other law, the board shall redact the information exempt from disclosure and provide the remaining information, unless otherwise ordered by a court of competent jurisdiction.

CHAPTER Saf-Mec 200 PROCEDURAL RULES

PART Saf-Mec 201 PURPOSE, DEFINITIONS and CONSTRUCTION

Saf-Mec 201.01 Purpose and Applicability

(a) The purpose of this chapter is to adopt rules of the practice and procedure for adjudicative proceedings conducted by the board governing the conduct of administrative hearings, as well as for petitions for rulemaking, public comment hearings, declaratory rulings and explanation of adopted rules. The provisions of these rules are intended to supplement the procedures established by RSA 541-A and RSA 153:27 through RSA 153:38.

(b) [The rules in this chapter]Saf-Mec 203 through Saf-Mec 211 shall apply to any adjudicative proceeding conducted by the [M]mechanical [L]licensing [B]board and shall be construed to secure the just, accurate and efficient resolution of all disputes.

Saf-Mec 201.02 Definitions

(a) “Adjudicative proceeding” means “adjudicative proceeding” as defined in RSA 541-A: 1, I, namely “the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.”

(b) “Appearance” means a written notification to the board that a party, an intervenor or the representative of a party or intervenor intends to actively participate in an adjudicative proceeding.

(c) “Board” means the [M]mechanical [L]licensing [B]board as established by RSA 153:27-a.

(d) “Contested case” means “contested case” as defined in RSA 541-A:1, IV, namely, “a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing.”

(e) “Declaratory ruling” means “declaratory ruling” as defined in RSA 541-A:1, V, namely, “an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency.”

(f) “Hearing” means “adjudicative proceeding” as defined in RSA 541-A:1, I, namely “the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.”

(g) “Intervener” means a person without the status of a party but participating in an adjudicative proceeding to the extent permitted by the presiding officer acting pursuant to RSA 541-A:32.

(h) “Motion” means a request to the presiding officer for an order or ruling directing some act to be done in favor of the proponent of the motion, including a statement of justification or reasons for the request.

(i) “Natural [P]erson” means a human being.

(j) “Order” means “order” as defined in RSA 541-A:1, XI, namely, “the whole or part of an agency's final disposition of a matter, other than a rule, but does not include an agency's decision to initiate, postpone, investigate or process any matter, or to issue a complaint or citation.”

(k) “Party” means “party” as defined by RSA 541-A:1, XII, namely, “each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.” The term “party” includes all interveners in a hearing, subject to limitations established pursuant to RSA 541-A:32, III.

(l) “Person”, for the purposes of Saf-Mec 200, means “person” defined in RSA 541-A:1, XIII, namely, “any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than” the board.

(m) “Presiding officer” means “presiding officer” as defined in RSA 541-A:1, XIV, namely the individual to whom the board has given the authority to preside over a proceeding.

(n) “Proof by a preponderance of the evidence” means a demonstration by admissible evidence that a fact or legal conclusion is more probably true than not.

(o) “Public comment hearing” means a hearing held pursuant to RSA 541-A:11.

(p) “Record” means, in a contested case, the materials set forth in RSA 541-A:31, VI.

(q) “Rulemaking petition” means a petition made pursuant to RSA 541-A:4, I.

[Saf-Mec 201.03 Construction of Rules. Parts Saf-Mec 203 – Saf-Mec 211 shall be construed to secure the just, accurate and efficient resolution of all disputes.]

PART Saf-Mec 202 COMPLAINTS OF MISCONDUCT

Saf-Mec 202.01 Procedures for Submission of Complaints of Misconduct by Fuel Gas Fitting or Plumbing Licensees and Certified Oil Heating Technicians or Certified Water Treatment Technicians.

(a) Persons wishing to complain of misconduct by a fuel gas fitting or plumbing licensee, or a certified oil heating or water treatment technician, shall submit to the board:

(1) A signed and dated complaint form which includes the information described in (b) below; and

(2) If available, written contracts, bills of sale, statements of guarantee and other documents relating to the work complained about.

(b) On the complaint [for]submitted pursuant to (a)(1) above the complainant shall provide:

(1) The address of the building which is the location of the work complained about;

(2) If known, the name of the owner of that building;

(3) The name, mailing address, and phone number of the complainant;

(4) The name and license or certification number of the individual performing the work complained about;

(5) If known, the address of the individual complained about;

(6) A written statement about the complaint; and

(7) Information about any legal initiated by the complainant and related to the same complaint.

(c) The board shall dismiss any complaint, either before or after investigation, when it determines that:

(1) The board has no authority to regulate the actions or omissions complained of; or

(2) There is nothing in the complaint to suggest that the actions or omissions complained of constitute misconduct under RSA 153:27 through RSA 153:38[,] or these rules.

(d) The board shall issue a written statement to a complainant whose complaint it has dismissed, including notice of, and the reason for, the dismissal.

PART Saf-Mec 203 TIME PERIODS

Saf-Mec 203.01 Computation of Time.

(a) Unless otherwise specified, the unit of time for time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in this chapter shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

PART Saf-Mec 204 DISPUTE RESOLUTION

Saf-Mec 204.01 Principles of Dispute Resolution. The board shall resolve by agreement or by a decision all disputes about non-criminal matters within the scope of RSA 153:16(b) and RSA 153:27 through RSA 153:38 and the administrative rules implementing those statutes.

Saf-Mec 204.02 Right to A Hearing. Any person having a dispute with the board shall be entitled to a hearing of the dispute if:

(a) The legal rights, duties or privileges of that person will be determined in the course of deciding the outcome of the dispute; and

(b) Constitutional, statutory or case law requires the board to hold a hearing before determination of those rights, duties or privileges.

PART Saf-Mec 205 COMMENCEMENT OF ADJUDICATIVE PROCEEDINGS;
APPEARANCES; PRE-HEARING CONFERENCES; RECORDING THE HEARING

Saf-Mec 205.01 Commencement of Adjudicative Proceedings.

(a) All hearings before the board shall be open to the public.

(b) An adjudicative proceeding shall be commenced by:

(1) An order of the board giving the parties the notice specified in (c) below;
and

(2) In the case of a proceeding relating to the board's emergency suspension of a license, the notice specified in (c) below together with the order issued pursuant to Saf-Mec 208.02(a).

(c) The notice of hearing shall contain:

- (1) A statement of the time, place and nature of the hearing;
- (2) A statement of the legal authority under which the hearing is to be held;
- (3) A reference to the applicable statutes and rules;
- (4) A short and plain statement of the issues presented;
- (5) A statement that each party has the right to have representation by an attorney at the party's own expense;
- (6) The name of the presiding officer;
- (7) In the case of a hearing not related to the board's emergency suspension of a license, the statement that:
 - a. The licensee or certificate holder has the right to have the board provide a certified shorthand court reporter at the expense of the licensee or certificate holder;
 - b. The request of the licensee or certificate holder for a certified shorthand court reporter shall be submitted in writing at least 10 days before the beginning of the hearing; and
 - c. The licensee or certificate holder shall provide the board with a free copy of any transcript produced; and
- (8) In the case of a hearing related to the board's emergency suspension of a license pursuant to Saf-Mec 205.02, the statement that the board shall provide a certified shorthand court reporter at the board's expense.

Saf-Mec 205.02 Procedure for Emergency Suspension of Licenses.

(a) Upon a finding that public health, safety or welfare requires emergency action, the board shall immediately suspend a license by issuing a written order of suspension incorporating the finding.

(b) The board shall commence a hearing no later than 10 working days after the issuance of an order pursuant to (a) above and shall otherwise comply with RSA 541-A.

(c) Unless the 10-day deadline in (b) above is expressly waived by the licensee, the failure of the board to meet the deadline shall result in the automatic vacating of the order of license suspension.

(d) After the vacating of the order pursuant to (c) above, the board shall not again suspend the license on the basis of the same conduct which formed the basis for the vacated order without giving the licensee prior notice and the opportunity for a hearing.

(e) The recording of a hearing on the emergency suspension of a license shall be made by a certified shorthand court reporter provided and paid for by the board.

Saf-Mec 205.03 Appearances and Representation.

(a) An appearance shall be filed by:

- (1) Each party or the party's representative, if any; and
- (2) Each intervener or the intervener's representative, if any.

(b) The appearance shall contain the following information:

- (1) The docket number assigned by the board, or a brief identification of the case;
- (2) The daytime address and telephone number of the person filing the appearance; and
- (3) If applicable, the daytime address and telephone number of the party or intervenor represented by the person filing the appearance.

(c) The appearance shall be updated whenever there is a change in the address or telephone number of a person identified in the appearance.

(d) A party may be represented:

- (1) In person;
- (2) By an attorney; or
- (3) A citizen of good character [P]pursuant to RSA 311:1.

Saf-Mec 205.04 Prehearing Conference.

(a) A prehearing conference shall be scheduled on the request of any party or intervener or on the initiative of the presiding officer if the presiding officer determines that to do so would facilitate the proceedings or encourage resolution of the dispute.

- (b) A prehearing conference shall address one or more of the following:
- (1) Offers of settlement;
 - (2) Simplification of the issues;
 - (3) By the consent of the parties, stipulations or admissions as to issues of fact or proof;
 - (4) Limitations on the number of witnesses;
 - (5) Changes to standard hearing procedures;
 - (6) Consolidation of examination of witnesses; and
 - (7) Any other matters that advance the efficiency of the proceedings.
- (c) All hearings before the board shall be open to the public.

Saf-Mec 205.05 Recording the Hearing.

(a) Except in the circumstances described in (b) below, the presiding officer shall record the hearing by recording or any other method that will provide a verbatim record.

(b) A hearing on the immediate suspension of a license pursuant to RSA 541-A:30, III shall be recorded by a certified shorthand court reporter provided by the board.

(c) If any person requests a written transcript of a recording of a hearing, the following procedure shall apply:

- (1) The board shall ascertain the estimated cost of the transcript and convey that information to the person making the request;
- (2) Upon the receipt of the estimated cost, the person making the request shall advise the board whether he or she wishes to order the written transcript;
- (3) If the person wishes to order the transcript, he or she shall forward payment for the estimated cost to the board;
- (4) Upon receipt of payment for the estimated cost of the transcript, the board shall arrange for the preparation of the transcript and, upon the completion of the transcript, shall ascertain the final cost;
- (5) If the final cost of the transcript is less than the estimated cost, the board shall return the excess payment to the person with the transcript;

(6) If the final cost of the transcript is in excess of the estimated cost, the person requesting the transcript shall pay to the board the additional amount; and

(7) Upon receipt of payment in full for the final amount, the board shall forward the transcript to the person.

(d) The written request for a duplicate copy of the recording or a transcript shall be submitted and received by the [hearings examiner]board no later than 75 days from the date of the final decision of the administrative hearing. The department shall retain hearing recordings for at least 75 days from the date of final decision.

(e) Any person attending an administrative hearing may tape or otherwise record the hearing. The [hearings examiner]presiding officer conducting the hearing, upon being advised of any person's intention to make such a recording, shall notify all parties present of the fact that this record is in addition to the official recording being made by the bureau of hearings.

PART Saf-Mec 206 CONDUCT OF HEARINGS BY PRESIDING OFFICER; WAIVER OF RULES

Saf-Mec 206.01 Presiding Officer.

(a) Hearings shall be conducted by a quorum of the board under the direction of a presiding officer designated by the board.

(1) When a case is assigned to a [hearings examiner]presiding officer, it shall remain with that [hearings examiner]presiding officer until the case is concluded unless transferred pursuant to these rules[.];

(2) The presiding officer shall not be the person who is the official complainant against the party involved; and

(3) In the event of absence, disability or disqualification of a presiding officer, a case assigned to one presiding officer shall be transferred to another by the appropriate supervisor.

(b) The presiding officer shall as necessary:

(1) Regulate and control the course of the hearing;

(2) Facilitate an informal settlement of the dispute that is the subject of the hearing;

(3) Administer oaths and affirmations;

- (4) Receive relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;
- (5) Rule on procedural requests, including adjournments or continuances, at the request of a party or intervenor or on the presiding officer's own motion;
- (6) Interview and examine anyone who testifies to the extent required to make a full and fair record;
- (7) Arrange for a completed record of the hearing as specified in RSA 541-A:31, VII; and
- (8) Take any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner.

Saf-Mec 206.02 Withdrawal of Presiding Officer.

- (a) Upon his or her own initiative or upon the motion of any party or intervenor, the presiding officer shall withdraw from any adjudicative proceeding for good cause.
- (b) Good cause shall exist if the presiding officer:
 - (1) Has a direct interest in the outcome of the matter, including but not limited to, a financial or family relationship with any party or intervenor;
 - (2) Has had a personal or business relationship with any party, witness or representative, which may hinder him or her from being able to arrive at an impartial decision on the issue(s), or for any other reason that might interfere with his or her ability to remain impartial;
 - (3) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of the case; or
 - (4) Personally believes that he or she cannot fairly judge the facts of the case.
- (c) Mere knowledge of the issues or acquaintance with any party, intervenor or witness shall not constitute good cause for withdrawal.

Saf-Mec 206.03 Official Notice.

- (a) The presiding officer shall take official notice pursuant to RSA 541-A:33, V.
- (b) The presiding officer shall state on the record the matters of which he/she intends to take official notice, and afford the parties the opportunity to object.

Saf-Mec 206.04 Multiple Cases: Consolidation. Where the interests of justice shall be better served without substantial prejudice to the rights of any party, the presiding officer shall sever one case from another or shall consolidate 2 or more cases preserving for all parties the right of appeal from the single or several decisions rendered.

Saf-Mec 206.05 Control of Hearing.

(a) In cases of disorder or refusal to comply with the rules of the hearing, the presiding officer shall use reasonable means to control the hearing.

(b) Parties, representatives, and witnesses shall not engage in bitter exchanges, vulgarities, or abuse or make offensive or insulting comments. When such an act is committed, the presiding officer shall admonish the offender reminding the offender that such behavior does not contribute to a fair hearing and impedes the orderly disposition of a case.

(c) If the offense is repeated and further admonition appears fruitless, the presiding officer shall exclude a disorderly person from the hearing.

(d) A disorderly person shall not lose the case because of his/her offensive conduct or the offensive conduct of his/her representative or witness.

(e) Notwithstanding (d) above, if a disorderly person's offensive conduct is so flagrant that it prevents the completion of the case, the disorderly person shall be warned that his/her conduct shall result in a default judgment entered for the case. Such party may reopen the case upon submitting his/her offer of proof or argument in an orderly fashion.

Saf-Mec 206.06 Waiver or Suspension of Rules by Presiding Officer. A [hearings examiner]presiding officer, upon the accepted motion of any interested person, shall waive any procedural requirement or limitation imposed by this chapter upon reasonable notice to affected persons when it appears that the proposed waiver or suspension is lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues properly pending before the [hearing examiner]board than would adherence to particular procedural rules or requirements. A motion for waiver or suspension of a procedural rule or order shall fully set forth the reasons for the requested relief.

Saf-Mec 206.07 Transfer of Location by Presiding Officer. A case may be transferred from one designated location to another with due regard for the convenience and necessity of the parties or witnesses, and as the interests of justice may require.

PART Saf-Mec 207 FILING, FORMAT AND DELIVERY OF DOCUMENTS

Saf-Mec 207.01 Date of Issuance or Filing.

(a) The date on all written documents from the board governed by this chapter shall be rebuttably presumed to have been issued on the date noted on the document.

(b) The date stamp placed on all written documents governed by this chapter by the board, shall be rebuttably presumed to have been filed with the board on the date of receipt, as evidenced by a date placed on the document by the board or its staff in the normal course of business.

Saf-Mec 207.02 Format of Documents.

(a) A docket number shall be assigned to each matter heard which shall appear on the notice of hearing and all subsequent orders or decisions of the board

(b) All correspondence, pleadings, motions or other documents filed shall:

(1) Include the title and docket number of the case, if known;

(2) Be typewritten or clearly printed on durable paper 8 1/2 by 11 inches in size;

(3) Be signed by the proponent of the document, or, if the proponent appears by a representative, by the representative; and

(4) Include a statement certifying that a copy of the document has been delivered to all parties and intervenors in compliance with Saf-Mec 206.03.

(c) The signature of a party or intervenor or the representative of the party or the intervenor on a document filed with the board shall constitute certification that:

(1) The signer has read the document;

(2) The signer is authorized to file it;

(3) To the best of the signer's knowledge, information and belief there are good and sufficient grounds to support it; and

(4) The document has not been filed for purposes of delay.

Saf-Mec 207.03 Delivery of Documents.

(a) Copies of all pleadings, motions, exhibits, memoranda, or other documents filed by any party or intervenor shall be delivered by that party or intervenor to the board and to all other parties and intervenors.

(b) All notices, orders, decisions or other documents issued by the presiding officer or the board shall be delivered to all parties and intervenors.

(c) Delivery of documents relating to a proceeding shall be made either in hand or by depositing into the United States mail a copy of the document in an envelope bearing:

- (1) The name of the person intended to receive the document;
- (2) The full address, including zip code, last provided to the board by such person; and
- (3) Prepaid first class postage.

(d) When a party or intervenor appears by a representative, delivery of a document to the party's or intervenor's representative either in hand or at the address stated on the appearance filed by the representative shall constitute delivery to the party or intervenor.

PART Saf-Mec 208 MOTIONS AND OBJECTIONS

Saf-Mec 208.01 Motions; Objections to Motions; Ruling on Motions.

(a) Motions shall be in written form and filed with the presiding officer unless made in response to a matter asserted for the first time at a hearing or based on information that was not received in time to prepare a written motion.

(b) Oral motions and any oral objections to such motions shall be recorded in full in the record of the hearing. If the presiding officer finds that the motion requires additional information in order to be fully and fairly considered, the presiding officer shall direct the proponent to submit the motion in writing and provide supporting information.

(c) All written motions submitted on the date of the hearing shall be excluded from consideration by the [hearings examiner]presiding officer.

(d) Notwithstanding (c) above, the [hearings examiner]presiding officer shall accept a written motion submitted on the day of the scheduled hearing if the moving party is able to show:

- (1) The existence of newly discovered evidence which due diligence would not have discovered prior to the hearing; or
- (2) Exigent circumstances, pursuant to Saf-Mec 210.01(c), existed that prevented the filing of the motion prior to the day of the hearing.

(e) If the presiding officer accepts the written motion on the day of the scheduled hearing and the opposing party requests time to respond, a continuance shall be granted. The continuance shall be attributed to the party submitting the motion.

(f) Except as otherwise provided in this chapter, objections to written motions shall be filed within 30 days of the date of the motion.

(g) The board shall grant extensions of time for the filing of objections only for good cause.

(h) For the purposes of (g) above, good cause shall include:

(1) Circumstances not within the control of the party or intervenor requesting the extension that render the party or intervenor unable to file an objection within the normal period for objection; and

(2) Circumstances that otherwise demonstrate that an extension would assist the board in fully and fairly understanding and resolving the issues presented in the motion.

(i) Failure by an opposing party or an intervenor to object to a motion shall not in and of itself constitute grounds for granting the motion.

(j) When necessary to obtain information or clarify an issue relating to the proceedings, the presiding officer [may]shall hold a hearing on the motion.

(k) The presiding officer shall rule upon a motion after full consideration of all objections and applicable law.

PART Saf-Mec 209 INTERVENTION; ROLES OF COMPLAINANTS AND BOARD STAFF

Saf-Mec 209.01 Intervention Procedure.

(a) Petitions for intervention shall:

(1) Describe in writing the petitioner's interest in the subject matter of the proceedings;

(2) Be submitted to the presiding officer; and

(3) Be mailed in copy form to all parties identified in the notice commencing the hearing.

(b) A non-party may intervene in a matter pending before the board under the provisions of 541-A:32, by filing a petition that states the facts demonstrating the non-party's rights or other substantial interests might be affected by the proceeding or that the non-party qualifies as an intervenor under any provision of the law.

(c) If the presiding officer determines that the intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearing, the petition for intervention shall be granted.

(d) A person whose petition for intervention has been granted shall be admitted as a party, subject to Saf-Mec 209.02.

Saf-Mec 209.02 Effect of Intervention and Rights of an Intervenor.

(a) Approval of intervention by the presiding officer shall apply only to the proceeding in which the petition for intervention was granted.

(b) Notwithstanding the provisions of this chapter, an intervenor's right to participate in an adjudicative proceeding shall be subject to any limitations or conditions imposed by the presiding officer pursuant to RSA 541-A:32, III.

(c) An intervenor shall take the proceedings as he or she finds them and no portion of the proceeding shall be repeated because of the fact of intervention.

Saf-Mec 209.03 Role of Complainants and Board Staff.

(a) Complainants alleging misconduct by a licensee or certificate holder shall have no role in any hearing other than that of witness unless they petition for, and are granted, the right to intervene.

(b) The [C]chief [M]mechanical [I]inspector and [M]mechanical [I]inspection staff of the [D]division of [F]fire [S]safety on behalf of the board, or another representative of the board shall:

- (1) Investigate disputes about matters within the scope of RSA 153:16-b and RSA 153:27 through RSA 153:38 and the administrative rules implementing those statutes;
- (2) Present the results of investigations to the board at adjudicative hearings or during informal dispute resolution; and
- (3) Present, or solicit from witnesses, such testimony as is required by the board to resolve the issues raised in adjudicative hearings.

PART Saf-Mec 210 CONTINUANCES AND FAILURE TO ATTEND HEARING

Saf-Mec 210.01 Continuances.

(a) Any party or intervenor may make an oral or written motion that a hearing be delayed or continued to a later date or time.

(b) A request for continuance of a hearing shall be made in writing with a copy to the respective party(s) and received by the department, absent exigent circumstances, at least 5 working days prior to the hearing.

(c) Exigent circumstances shall include:

- (1) Serious illness;
- (2) Hospitalization;
- (3) Incarceration;
- (4) Death of a family member; or
- (5) Any other unforeseeable circumstance beyond the party's control that requires or results in the party's absence from the scheduled hearing.

(d) Appearance by a representative of a party shall not waive the party's required presence at a hearing.

(e) The written request or motion shall contain but not be limited to:

- (1) The specific reason(s) for the request including issue(s) to be resolved and conflicts with scheduled court appearances;
- (2) Optional dates and times when all interested parties shall be available;
- (3) The identity of the requestor; and
- (4) The name and date of birth of the respondent.

(f) A motion for a delay or a continuance shall be granted if the presiding officer determines that there is good cause to do so.

(g) Good cause shall include:

- (1) The unavailability of parties, intervenors, witnesses or attorneys necessary to conduct the hearing;
- (2) The likelihood that a settlement will make the hearing or its continuation unnecessary; or
- (3) Any other circumstances that demonstrate that a delay or continuance would assist in resolving the case fairly.

(h) If the later date, time and place are known when the hearing is being delayed or continued, the information shall be stated on the record. If the later date, time and place are not known at that time, the presiding officer shall as soon as practicable issue a written scheduling order stating the date, time and place of the delayed or continued hearing.

Saf-Mec 210.02 Failure of a Party to Attend or Participate in the Hearing.

(a) A party shall be in default if the party:

- (1) Has the overall burden of proof;
- (2) Has been given notice in accordance with Saf-Mec 208.01; and
- (3) Fails to attend the hearing, unless the failure to attend the hearing is the result of accident, injury, illness or other event beyond the party's control.

(b) If a party is in default under (a) above, the case shall be dismissed.

(c) If a party who does not have the overall burden of proof fails to attend a hearing after having been given notice in accordance with Saf-Mec 208.01, the testimony and evidence of any other parties or intervenors shall be received and evaluated.

(d) If a party who has the overall burden of proof attends a hearing but fails to participate by presenting evidence or argument, a decision shall be entered against that party.

PART Saf-Mec 211 REQUESTS FOR INFORMATION AND DOCUMENTS

Saf-Mec 211.01 Voluntary Production of Information.

(a) Each party and intervenor shall attempt in good faith to make complete and timely response to requests for the voluntary production of information and documents relevant to the hearing.

(b) When a dispute arises concerning a request for the voluntary production of information or documents, any party or intervenor may file a motion under Saf-Mec 211.02 to compel the production of the requested information or documents.

Saf-Mec 211.02 Motions to Compel Production of Information and Documents.

(a) Any party or intervenor may make a motion seeking an order for compliance with an information or document request. The motion shall be filed at least 30 days before the date scheduled for the hearing, or as soon as possible after receiving the notice of the hearing if such notice is issued less than 30 days in advance of the hearing.

(b) The motion to compel shall:

- (1) Set forth in detail those facts which justify the request for information or documents; and
- (2) List with specificity the information or documents being sought.

(c) Objections to motions to compel shall be filed within 10 days of the delivery of the motion.

(d) The presiding officer shall grant the motion to compel if its proponent has demonstrated that an order for compliance is necessary for a full and fair presentation of evidence at the hearing.

Saf-Mec 211.03 Mandatory Pre-Hearing Disclosure of Witnesses and Exhibits. At least 5 days before the hearing, the parties and intervenors shall provide to the other parties and intervenors:

- (a) A list of all witnesses to be called at the hearing containing the names of the witnesses, their addresses and their telephone numbers;
- (b) Brief summaries of the testimony of the witnesses to be called;
- (c) A list of all documents and exhibits to be offered as evidence at the hearing;
- (d) A copy of each document intended to be offered as evidence at the hearing;
and
- (e) An offer to allow the inspection of non-documentary exhibits intended to be offered as evidence at the hearing at times and places of convenience to the parties and intervenors.

PART Saf-Mec 212 HEARING PROCEDURE

Saf-Mec 212.01 Standard and Burden of Proof.

- (a) The party or intervenor asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.
- (b) Unless otherwise specified by law, the standard of proof shall be a preponderance of the evidence.

Saf-Mec 212.02 Order of Testimony; Cross-Examination.

- (a) All testimony of parties shall be made under oath or affirmation administered by the presiding officer.

(b) Any individual offering testimony, evidence or arguments shall state for the record his or her name and role in the hearing. If the individual is representing another person, the person being represented shall also be identified.

(c) Testimony on behalf of the parties shall be offered in the following order:

(1) The testimony of the party or parties bearing the overall burden of proof and such witnesses as such party or parties may call; and

(2) Thereafter, the testimony of the party or parties opposing the party who bears the overall burden of proof and such witnesses as such party or parties may call.

(d) If there is a clear dispute of facts between the parties in which the credibility of testimony might determine the outcome of the hearing, the [hearings examiner] presiding officer, on the request of a party, shall sequester witnesses until they are called to testify.

(e) Notwithstanding (d) above, a witness shall be sequestered only if prosecution and defense, as appropriate, shall have one individual present throughout the process to ensure neither side is placed at an unfair advantage for summation.

(f) The testimony of intervenors and such witnesses as such intervenors may be allowed to call shall be offered at the time directed by the presiding officer.

(g) Each party may cross-examine any witnesses offered against that party.

(h) The right of an intervenor to cross-examine witnesses shall be determined by the presiding officer.

(i) Subject to the direction of the presiding officer who shall regulate the time and manner of speaking in an orderly fashion, board members present during and participating in an adjudicative proceeding shall question witnesses and make such inquiry of witnesses, as they believe appropriate for a full and true disclosure of the facts of the case.

Saf-Mec 212.03 Evidence.

(a) Receipt of evidence shall be governed by the provisions of RSA 541-A:33.

(b) All rules of privilege recognized under the laws of the state of New Hampshire shall apply in proceedings before the board.

(c) All documents, materials and objects offered as exhibits shall be admitted into evidence unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.

(d) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.

(e) Transcripts of testimony as well as documents, materials and objects admitted into evidence shall be public records unless the presiding officer determines that all or part of them is exempt from disclosure under RSA 91-A:5, other statutes or applicable case law.

Saf-Mec 212.04 Proposed Findings of Fact and Conclusions of Law.

(a) Any party or intervenor may submit up to 25 proposed findings of fact and conclusions of law. Each requested finding or conclusion shall be a separately numbered statement. Compound requests shall not be accepted.

(b) The board shall allow a party or intervenor to file more than a combined total of 25 proposed findings of fact and conclusions of law if:

- (1) At least 10 days prior to the hearing, the party or intervenor files a request to exceed 25 findings of fact and rulings of law; and
- (2) The board finds that the filing of more than 25 findings of fact and rulings of law would assist in clarifying the issues.

(c) The presiding officer shall require the submission of proposed findings of fact and rulings of law and specify a deadline after the close of the hearing for their submission when:

- (1) Any party or intervenor has requested such action;
- (2) The presiding officer is required by Saf-Mec 212.07(c)(3) to make findings of fact and rulings of law; or
- (3) The presiding officer determines that proposed findings of fact and rulings of law would clarify the issues presented at the hearing.

(d) In any case where proposed findings of fact and rulings of law are submitted, the decision shall include rulings on the proposals.

Saf-Mec 212.05 Closing the Record.

(a) After the conclusion of the hearing and the filing of such post-hearing submissions as [may be]are ordered by the presiding officer, the record shall be closed and no additional evidence shall be received into the record except as allowed by paragraph (b) below and Saf-Mec 211.06.

(b) Before the conclusion of the hearing, a party may request that the record be left open to allow the filing of specified evidence not available at the hearing. If the other parties to the hearing have no objection or if the presiding officer determines that such evidence is necessary to a full consideration of the issues raised at the hearing, the presiding officer shall keep the record open for a period of time necessary for the party to file the evidence.

Saf-Mec 212.06 Reopening the Record.

(a) If no written proposal for decision pursuant to Saf-Mec 212.07(c) or final decision pursuant to Saf-Mec 212.07(a) has been issued, any party or intervenor may move to reopen the record for the inclusion in the record of specified evidence or claims of law.

(b) A motion pursuant to (a) above shall be granted if:

(1) There is no objection from any other party or intervenor;

(2) The evidence sought to be included in the record was not available at the time of the hearing or the claim of law was inadvertently omitted; and

(3) The presiding officer determines that the evidence or claim of law is relevant, material and non-duplicative and its inclusion in the record is necessary to a full and fair consideration of the issues to be decided.

(c) If there is an objection from a party or intervenor to a motion made pursuant to (a) above, the hearing shall be reopened for the purpose of receiving evidence, permitting cross-examination and permitting argument on the issue of reopening the record.

(d) The presiding officer shall grant a motion made pursuant to (a) above if, after the reopened hearing described in (c) above, the presiding officer determines that the evidence sought to be included in the record was not available at the time of the hearing or the claim of law was inadvertently omitted and the evidence or claim of law is relevant, material and non-duplicative and its inclusion in the record is necessary to a full and fair consideration of the issues to be decided.

(e) If the presiding officer permits the reopening of the record for the admission of specified evidence or claim of law, the presiding officer shall extend the hearing reopened pursuant to (c) for the purpose of receiving evidence, permitting cross-examination and permitting argument on the substance of the evidence or on the claim of law.

Saf-Mec 212.07 Disposition.

(a) The board shall issue a decision or order, whether or not the record has been reopened pursuant to Saf-Mec 212.06, based on:

- (1) A hearing attended by a quorum of the board;
- (2) A written proposal for disposition meeting the requirements of paragraph (d) below; or
- (3) A hearing held pursuant to subparagraph (e)(2) below.

(b) The decision or order shall:

- (1) Be in writing and dated; and
- (2) Include findings of fact and rulings of law.

(c) A board member shall not participate in the board's disposition if he or she has not personally heard all of the testimony in the case, unless the disposition does not depend on the credibility of any witness and the record provides a reasonable basis for evaluating the testimony.

(d) If a presiding officer has been delegated the authority to conduct the hearing, the presiding officer shall submit to the board a written proposal for disposition containing:

- (1) The disposition proposed by the presiding officer;
- (2) A statement of the reasons for the proposed disposition; and
- (3) Findings of fact and rulings of law.

(e) If a proposed disposition submitted pursuant to paragraph (d) is adverse to a party or an intervenor, the board shall:

- (1) Serve a copy of it on each party and intervenor; and
- (2) Provide an opportunity to file objections and present briefs and oral arguments to the board.

(f) The board shall keep a final decision in its records for at least 5 years following their dates of issuance, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

Saf-Mec 212.08 Reconsideration.

(a) Within 30 days of the board's decision or order, any party or person directly affected may request consideration of any matter determined in the proceeding or covered by the decision or order by submitting a written motion specifying:

- (1) The issues to be considered; and
- (2) Every ground on which it is claimed that the decision or order is unlawful or unreasonable.

(b) An objection to a motion for rehearing shall be submitted within 5 days of the submission of the motion.

(c) At its next meeting following the submission of the motion for reconsideration the board shall:

- (1) Grant the motion;
- (2) Deny the motion; or
- (3) Suspend the board's decision or order pending further consideration.

(d) The board shall grant the motion for reconsideration if it determines that, in the original hearing it:

- (1) Incorrectly assessed the relevant evidence;
- (2) Incorrectly applied the relevant law; or
- (3) Otherwise failed substantially to comply with this chapter or acted in a manner which was unlawful or unreasonable.

Saf-Mec 212.09 Appeal. [Pursuant to RSA 153:33 any party aggrieved by a final decision or order of the board may appeal the decision by;]

(a) A party to the proceedings shall have the right to file a petition with the superior court or the department of safety bureau of hearings to request a review of the final order of the board within 30 days of the date of the final [decision]order.

(b) For appeals through the bureau of hearings, the bureau of hearings shall review the record as developed before the board, together with any written legal argument presented to the bureau at the earliest practical time. Based on that review, the bureau may affirm or reverse the decision of the board or order that oral argument be held. As justice may require, the bureau [may]shall remand the case to the board for further findings and rulings. The petition for appeal shall set forth all the grounds upon which the final order is sought to be overturned. Issues not raised by the appellant before the board shall not be raised before the bureau of hearings. The burden of proof shall be on the appellant to show that the decision of the board was unreasonable or unlawful.

(c) No new or additional evidence shall be introduced in the bureau of hearings, but the case shall be determined upon the record and evidence transferred, except that in any

case, if justice requires the review of evidence which by reason of accident, mistake, or misfortune could not have been offered before the board, the bureau of hearings shall remand the case to the board to receive and consider such additional evidence.

PART Saf-Mec 213 SETTLEMENTS

Saf-Mec 213.01 Settlement of Disciplinary Disputes.

(a) Any licensee or certificate holder having a dispute with the board over a disciplinary matter shall have the opportunity to settle some or all of the issues if there is no dispute between the board and the licensee or certificate holder about the material facts underlying the issues.

(b) To be effective, an agreement to settle shall be:

- (1) In writing;
- (2) Signed by the licensee or certificate holder and a member of the board; and
- (3) After the signing, finalized as an order issued by the board.

(c) The signing by the licensee or certificate holder of an agreement to settle shall constitute a waiver of the right of the licensee or certificate holder to a hearing of the issues resolved by the agreement.

PART Saf-Mec 214 RULEMAKING

Saf-Mec 214.01 Petitions for Rulemaking.

(a) Any person may seek the adoption, amendment or repeal of a rule by submitting to the board a petition pursuant to RSA 541-A:4.

(b) Each petition for rulemaking shall contain:

- (1) The name and address of the individual petitioner or, if the request is that of an organization or other entity, the identity of such organization or entity and the name and address of the representative authorized by the entity to file the petition;
- (2) A statement of the purpose of the petition, whether the adoption, amendment or repeal of a rule;
- (3) If amendment or adoption of a rule is sought, the text proposed;

(4) If amendment or repeal of a rule is sought, identification of the current rule sought to be amended or repealed;

(5) Reference to the statutory provision that authorizes or supports the rulemaking petition; and

(6) Information or argument useful to the board when deciding whether to begin the rulemaking process.

Saf-Mec 214.02 Disposition of Petitions for Rulemaking.

(a) The board shall request additional information or argument from the petitioner for rulemaking or from others if such additional information or argument is required to reach a decision.

(b) The board shall grant the petition for rulemaking unless the adoption, amendment or repeal sought would result in:

(1) A rule that is not within the rulemaking authority of the board;

(2) Duplication of a rule or of a statutory provision;

(3) Inconsistency between the existing rules and the statutory mandate of the board;

(4) Inconsistency of administrative rules one with another; or

(5) Excessive burden upon the board in terms of cost or a reduction in efficiency or effectiveness.

(c) Within 30 days of receipt of a sufficient petition the board shall dispose of it in the following manner:

(1) By notifying the petitioner that the petition is granted and beginning rulemaking proceedings as required by RSA 541-A:4; or

(2) By notifying the petitioner in writing that the petition is denied and the reasons for its denial.

(d) The denial of a petition for rulemaking shall not entitle the petitioner to a hearing.

PART Saf-Mec 215 PUBLIC COMMENT HEARINGS

Saf-Mec 215.01 Purpose. The purpose of this part is to provide uniform procedures for the conduct of public comment hearings held pursuant to RSA 541-A:11.

Saf-Mec 215.02 Public Access and Participation.

(a) Public comment hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the limitations of Saf-Mec 215.03.

(b) People who wish to testify shall be asked to write on the speaker's list:

(1) Their full names and addresses; and

(2) The names and addresses of organizations, entities or other persons whom they represent, if any.

(c) Written comments, which may be submitted in lieu of or in addition to oral testimony, shall be accepted for 10 days after the adjournment of a hearing or after the adjournment of a postponed or continued hearing.

Saf-Mec 215.03 Limitations on Public Participation. The board's chair or other person designated by the board to preside over a hearing shall:

(a) Refuse to recognize for speaking or revoke the recognition of any person who:

(1) Speaks or acts in an abusive or disruptive manner;

(2) Fails to keep comments relevant to the proposed rules that are the subject matter of the hearing; or

(3) Restates more than once what he or she has already stated; and

(b) Limit presentations on behalf of the same organization or entity to no more than 3, provided that all those representing such organization or entity may enter their names and addresses into the record as supporting the position of the organization or entity.

Saf-Mec 215.04 Media Access. Public comment hearings shall be open to print and electronic media, subject to the following limitations when such limitations are necessary to allow a hearing to go forward:

(a) [Limitation of the number of media representatives when their number together with the number of members of the public present exceeds the capacity of the hearing room;

(b)] Limitation on the placement of cameras to specific locations within the hearing room; or

[(c)](b) Prohibition of interviews conducted within the hearing room before or during the hearing.

Saf-Mec 215.05 Conduct of Public Comment Hearings.

(a) Public comment hearings shall be attended by a quorum of the board.

(b) Public comment hearings shall be presided over by the board chair or a board member knowledgeable in the subject area of the proposed rules who has been designated by the board to preside over the hearing.

(c) The chair or other person presiding over a hearing shall:

(1) Call the hearing to order;

(2) Identify the proposed rules that are the subject matter of the hearing and provide copies of them upon request;

(3) Cause a recording of the hearing to be made;

(4) Recognize those who wish to be heard;

(5) If necessary, establish limits pursuant to Saf-Mec 215.03 and Saf-Mec 215.04;

(6) If necessary to permit the hearing to go forward in an orderly manner, effect the removal of a person who speaks or acts in a manner that is personally abusive or otherwise disrupts the hearing;

(7) If necessary, postpone or move the hearing; and

(8) Adjourn or continue the hearing.

(d) A hearing shall be postponed under the following circumstances:

(1) In accordance with RSA 541-A:11, IV, when:

a. The weather is so inclement that it is reasonable to conclude that members of the public wishing to attend the hearing will be unable to do so;

b. There is no quorum of the board due to illness or unavoidable absence;
or

c. Postponement will facilitate greater participation by the public; or

(2) The board chair or other person designated by the board to preside over the hearing is ill or unavoidably absent.

(e) A hearing shall be moved to another location in accordance with RSA 541-A:11, V when the original location is not able to accommodate the number of people who wish to attend the hearing.

(f) A hearing shall be continued past the scheduled time or to another date in accordance with RSA 541-A:11, III when:

(1) The time available is not sufficient to give each person who wishes to speak a reasonable opportunity to do so; or

(2) The capacity of the room in which the hearing is to be held does not accommodate the number of people who wish to attend and it is not possible to move the hearing to another location.

PART Saf-Mec 216 DECLARATORY RULINGS

Saf-Mec 216.01 Requests for Declaratory Rulings.

(a) Any person may request a declaratory ruling by the board if that person is directly affected by RSA 153:27 through RSA 153:38 or by any administrative rule of the board.

(b) A request for a declaratory ruling shall be in a writing containing:

(1) The name and address of the individual or entity making the request;

(2) The text of the ruling being requested;

(3) The reasons for the request; and

(4) The following declaration signed by the individual making the request, the authorized representative of such individual, or the authorized representative of the entity making the request:

"I declare that I have examined the request for a declaratory ruling, including the accompanying documents, and state that, to the best of my knowledge and belief, the facts presented in support of the requested declaratory ruling are true, correct and complete."

Saf-Mec 216.02 Documents Required to Support Requests for Declaratory Rulings.

(a) A request for a declaratory ruling shall be accompanied by:

(1) A statement citing the statutory law, regulatory law and orders believed to support the ruling being requested;

- (2) A statement of the facts believed to support the ruling being requested; and
- (3) Supplementary material necessary to establish or clarify the facts set forth in the statement of facts.

(b) A request for a declaratory ruling may be accompanied by additional material chosen by the person making the request.

Saf-Mec 216.03 Processing Requests for Declaratory Rulings.

(a) Within 30 days of receiving a request for a declaratory ruling the board shall advise the person requesting it if the ruling will be delayed by the need for additional information or the complexity of the issues presented.

(b) If additional information should be needed, the board shall specify the additional information required and request that it be provided in a statement of additional information that includes the declaration specified in Saf-Mec 214.01(b)(4) and is accompanied by any material necessary to establish or clarify the facts set forth in the statement.

Saf-Mec 216.04 Issuance and Publication of Declaratory Rulings.

(a) When facts sufficient to support a declaratory ruling have been established, the board shall issue a written declaratory ruling which applies all relevant law to the established facts.

(b) When the established facts show that the board lacks subject matter or personal jurisdiction to issue a declaratory ruling, the board shall issue a written decision stating that it lacks jurisdiction to issue a declaratory ruling and identifying the lack of jurisdiction.

(c) Declaratory rulings shall be filed on the day of issuance with the director of legislative services in accordance with RSA 541-A:16, II(b).

Saf-Mec 216.05 Effect of Declaratory Rulings. A declaratory ruling shall apply only to the board and to the person requesting it and shall be confined to the facts presented pursuant to Saf-Mec 216.02(a)(2) and Saf-Mec 216.02(a)(3) and in response to a request of the board made pursuant to Saf-Mec 216.03(b).

PART Saf-Mec 217 EXPLANATION OF ADOPTED RULES

Saf-Mec 217.01 Requests for Explanation of Adopted Rules. Any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the board including:

(a) The name and address of the person making the request; or

(b) If the request is that of an organization or other entity, the name and address of such organization or entity and the name and address of the representative authorized by the organization or entity to make the request.

Saf-Mec 217.02 Contents of Explanation. The board shall, within 90 days of receiving a request in accordance with Saf-Mec 217.01, provide a written response which:

(a) Concisely states the meaning of the rule adopted;

(b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and

(c) States, if the board did so, why the board overruled any arguments and considerations presented against the rule.

APPENDIX

| Rule | Statute Implemented |
|------------------------|------------------------------------------|
| Saf-Mec 101.01 -101.03 | RSA 541-A:16, I(a); RSA 153:27-38 |
| Saf-Mec 102.01 | RSA 153:27, XV |
| Saf-Mec 102.02 | RSA 153:27-a; RSA 153:27, I |
| Saf-Mec 102.03 | RSA 153:27, II |
| Saf-Mec 102.04 | RSA 153:27, V, VI, VII and IX |
| Saf-Mec 102.05 | RSA 153:27, IV |
| Saf-Mec 102.06 | RSA 153:27, V |
| Saf-Mec 102.07 | RSA 153:27, VI |
| Saf-Mec 102.08 | RSA 153:27, VII |
| Saf-Mec 102.09 | RSA 153:27, VIII |
| Saf-Mec 102.10 | RSA 153:27, IX |
| Saf-Mec 102.11 | RSA 153:27, X |
| Saf-Mec 102.12 | RSA 541-A:7 |
| Saf-Mec 102.13 | RSA 153:27, XII |
| Saf-Mec 102.14 | RSA 153:27, XIII |
| Saf-Mec 102.15 | RSA 153:27, XIV |
| Saf-Mec 103.01(a)-(c) | RSA 541:16, I(a); RSA 153:27-a |
| Saf-Mec 103.02(a)-(c) | RSA 541:16, I(a) |
| Saf-Mec 103.02(d) | RSA 541:16, I(a); RSA 153:27-a |
| Saf-Mec 103.02(e)-(f) | RSA 541:16, I(a); RSA 91-A:2; RSA 91-A:3 |
| Saf-Mec 103.02(g) | RSA 541:16, I(a); RSA 153:27-a, IV |
| Saf-Mec 103.02(h) | RSA 541:16, I(a) |
| Saf-Mec 103.02(i) | RSA 541:16, I(a); RSA 153:27-a, VI |
| Saf-Mec 103.03(a) | RSA 91-A:2, II |
| Saf-Mec 103.03(b) | RSA 541:16, I(a) |
| Saf-Mec 103.03(c) | RSA 91-A:2, II; RSA 91-A:4 |
| Saf-Mec 103.04 | RSA 153:27-a, II |
| Saf-Mec 104.01-104.02 | RSA 541-A:16, I(a) |
| Saf-Mec 201.01 | RSA 541-A:16, I(b)(2) |
| Saf-Mec 201.02 | RSA 541-A:7; RSA 541-A:16, I(b)(2) |
| Saf-Mec 201.03-202.01 | RSA 541-A:16, I(b)(2) |
| Saf-Mec 203.01 | RSA 541-A:30-a, III(f) |
| Saf-Mec 204.01 | RSA 541-A:16, I(b)(2) |
| Saf-Mec 204.02 | RSA 541-A:31, I |
| Saf-Mec 205.01(a) | RSA 91-A:2, II |
| Saf-Mec 205.01(b)-(c) | RSA 541-A:16, I(b)(2); RSA 541-A:31, III |
| Saf-Mec 205.02 | RSA 541-A:30, III |
| Saf-Mec 205.03 | RSA 541-A:30-a, III(b) |
| Saf-Mec 205.04 | RSA 541-A:16, I(b)(2); RSA 541-A:31, |

| | |
|--------------------------------|-------------------------------------------------------|
| | V(b), (c) and (d) |
| Saf-Mec 205.05(a) | RSA 541-A:31, VII |
| Saf-Mec 205.05(b) | RSA 541-A:30, III |
| Saf-Mec 205.05(c) | RSA 541-A:16, I(b)(2); RSA 541-A:31, VII |
| Saf-Mec 205.05(d)-(e) | RSA 541-A:16, I(b)(2) |
| Saf-Mec 206.01 | RSA 541-A:16, I(b)(2) |
| Saf-Mec 206.02 | RSA 541-A:30-a, III(k) |
| Saf-Mec 206.03 | RSA 541-A:33, V |
| Saf-Mec 206.04-206.05 | RSA 541-A:16, I(b)(2) |
| Saf-Mec 206.06 | RSA 541-A:30-a, III(j) |
| Saf-Mec 206.07 | RSA 541-A:16, I(b)(2) |
| Saf-Mec 207.01-207.03 | RSA 541-A:30-a, III(a) |
| Saf-Mec 208.01(a)-(d), (f)-(k) | RSA 541-A:16, I(b)(2) |
| Saf-Mec 208.01(e) | RSA 541-A:30-a, III(h) |
| Saf-Mec 209.01-209.02 | RSA 541-A:16, I(b)(2); RSA 541-A:32, I, II and III |
| Saf-Mec 209.03 | RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(g) |
| Saf-Mec 210.01 | RSA 541-A:30-a, III(h) |
| Saf-Mec 210.02 | RSA 541-A:16, I(b)(2) |
| Saf-Mec 211 | RSA 541-A:30-a, III(c) |
| Saf-Mec 212.01 | RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(d) and (e) |
| Saf-Mec 212.02 | RSA 541-A:16, I(b)(2); RSA 541-A:31, IV |
| Saf-Mec 212.03(a) | RSA 541-A:33 |
| Saf-Mec 212.03(b)-(e) | RSA 541-A:16, I(b)(2) |
| Saf-Mec 212.04-212.05 | RSA 541-A:16, I(b)(2) |
| Saf-Mec 212.06 | RSA 541-A:30-a, III(i) |
| Saf-Mec 212.07(a)-(e) | RSA 541-A:16, I(b)(2) |
| Saf-Mec 212.07(f) | RSA 541-A:30-a, III(l) |
| Saf-Mec 212.08 | RSA 541-A:16, I(b)(2) |
| Saf-Mec 212.09 | RSA 153:33 |
| Saf-Mec 213.01 | RSA 541-A:16, I(b)(2); RSA 541-A:38 |
| Saf-Mec 214 | RSA 541-A:4; RSA 541-A:16, I(c) |
| Saf-Mec 215 | RSA 541-A:11; RSA 541-A:16, I(b)(3) |
| Saf-Mec 216 | RSA 541-A:16, I(d); RSA 541-A:16, II(b) |
| Saf-Mec 217 | RSA 541-A:11, VII |