

# **TITLE 18: TRANSPORTATION AND HIGHWAYS**

## **CHAPTER 1: TRANSPORTATION GENERAL PROVISIONS**

### **PART 1: MOTOR TRANSPORTATION - GENERAL PROVISIONS**

#### **18.1.1.1 ISSUING AGENCY:**

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

[4/30/97; 18.1.1.1 NMAC - Rn, 18 NMAC 1.1.1, 11/15/01]

#### **18.1.1.2 SCOPE:**

This part applies to all owners, operators and drivers of commercial motor carrier vehicles.

[4/30/97; 18.1.1.2 NMAC - Rn, 18 NMAC 1.1.2, 11/15/01]

#### **18.1.1.3 STATUTORY AUTHORITY:**

Section 9-11-6.2 NMSA 1978.

[4/30/97; 18.1.1.3 NMAC - Rn, 18 NMAC 1.1.3, 11/15/01]

#### **18.1.1.4 DURATION:**

Permanent.

[4/30/97; 18.1.1.4 NMAC - Rn, 18 NMAC 1.1.4, 11/15/01]

#### **18.1.1.5 EFFECTIVE DATE:**

4/30/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[4/30/97; 18.1.1.5 NMAC - Rn & A, 18 NMAC 1.1.5, 11/15/01]

#### **18.1.1.6 OBJECTIVE:**

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Transportation Act.

[4/30/97; 18.1.1.6 NMAC - Rn, 18 NMAC 1.1.6, 11/15/01]

**18.1.1.7      DEFINITIONS:**

[Reserved.]

[4/30/97; 18.1.1.7 NMAC - Rn, 18 NMAC 1.1.7, 11/15/01]

**18.1.1.8      IMPOSITION OF PENALTY:**

A penalty in the amount of twenty dollars (\$20.00) will be imposed under Section 18.1.1.8 NMAC for each instance in which a check tendered to the department is not paid upon presentment. This penalty is in addition to any other penalty imposed under the Motor Transportation Act. This regulation is applicable to checks tendered on or after January 1, 1995.

[2/10/94, 4/30/97; 18.1.1.8 NMAC - Rn & A, 18 NMAC 1.1.8, 11/15/01]

**PART 2: TRANSPORTATION DIVISION PROCEDURES [REPEALED]**

[This part was repealed on September 1, 2008.]

**PART 3: [RESERVED]**

**PART 4: REQUIREMENTS FOR THE SUBMISSION AND EVALUATIONS  
OF GRANT FUNDING APPLICATIONS FOR TRANSPORTATION  
PLANNING/STUDY PROJECTS FROM LOCAL TRANSPORTATION  
DEVELOPMENT DISTRICTS**

**18.1.4.1      ISSUING AGENCY:**

New Mexico State Transportation Authority.

[Recompiled 11/16/01]

**18.1.4.2      SCOPE:**

The State Transportation Authority and All Transportation Development Districts.

[Recompiled 11/16/01]

**18.1.5.3      STATUTORY AUTHORITY:**

Section 73-23-4B NMSA 1979, as amended.

[Recompiled 11/16/01]

**18.1.4.4 DURATION:**

[Permanent]

[Recompiled 11/16/01]

**18.1.4.5 EFFECTIVE DATE:**

June 30, 1992

[Recompiled 11/16/01]

**18.1.4.6 OBJECTIVE:**

This rule is promulgated pursuant to the Resource Transportation and Passenger Transportation Development Act, Section 73-23-4B NMSA 1978, as amended, to establish procedures for Transportation Development Districts (TDDs) to apply for project funding and for the State Transportation Authority (STA) to evaluate and prioritize such funding requests for planning statewide, regional and local transportation systems to transport passengers or to develop natural resources, including coal, other energy resources and agricultural or other industrial products. This rule to establish procedures for rating and ranking funding of grant applications is limited in application to only planning/study proposals. It shall not be utilized to prioritize construction/operation funding proposals.

[Recompiled 11/16/01]

**18.1.4.7 DEFINITIONS:**

**[RESERVED]**

[Recompiled 11/16/01]

**18.1.4.8 CALLS FOR TDD FUNDING PROPOSALS:**

Pursuant to deadlines, fixed public meeting dates for STA funding approval and other terms and conditions established by formal resolution, the STA shall periodically, as funds are deemed to be available, send written notice to all TDDs (both those fully-formed and those near-completion) calling for funding applications or proposals for TDD-initiated transportation projects. Only fully-formed TDDs can legally apply for and receive STA grant funding. Each project must be justified by the TDD and separately submitted in compliance with [section 10] Section F. of this rule. The applications (one

per project) must be received by the STA no later than the close of business on the deadline date specified in the STA resolution.

[Recompiled 11/16/01]

#### **18.1.4.9 APPLICATION FORMS:**

Each application should be submitted in letter size fileable format, and it must address each of the issues listed below with sufficient information upon which the STA can base an evaluation of the answer.

A. Planning study description: Describe the planning study for which the TDD is currently seeking grant funds. Include a scope of work statement in sufficient detail that it can be used by the STA to evaluate the merits of the grant application. The scope of work should include a schedule for completing the work with major milestones listed. Include the anticipated cost of the planning project and feasible ways to phase" the planning project in the event full funding is not immediately available.

B. Matching Requirements: The applicant TDD must provide a minimum of 10% cash match for the project from local, state, federal or other sources. Applicants may request a partial or full waiver of the cash matching requirement if documentation can be provided which demonstrates both: 1) a detailed description of the "in-kind" services the TDD will provide; 2) the absence of local, state or federal resources to meet the required 10% match. Partial or full waivers may be allowed by STA in cases where the potential benefit of the project is high and the financial hardship of the TDD is shown to be severe and beyond the control of the TDD.

In the event the TDD funding application is approved by the STA, the TDD may be allowed to fully or partially offset its 10% cash match by producing copies of paid invoices to consultants for research and preparation of the TDD's application proposal for STA funding.

C. Certification of notice to other political entities: The TDD must submit as part of its application a resolution from the Board of Directors approving the grant application or applications. The application must also include certifications from either the Board of Directors, or its chief of staff, that all Indian tribes, Indian pueblos and municipalities within the boundaries of the TDD, and all incorporated counties adjacent to the TDD, have been sent a written notice by certified mail (return receipt requested) containing a clear description of the proposed planning study for which grant funding is being requested.

D. Project Justification: Each application for STA grant funding must contain justification on the merits of the project whether in the form of an Impact Analysis or a Scope of Work/Needs Statement. [ ]

(1) Impact Analysis If the planning study contemplates construction or reconstruction of a specific transportation project which will have an actual physical impact on the environment, the TDD must include an Impact Analysis in its funding application. However, this information need not be contained in funding applications for general planning studies that will have no physical impacts on the environment, such as regional anticipated transportation master plans, data gathering, transportation need projections, base mapping and market studies not tied to specific construction.

(2) The STA understands that the project may be in very early or conceptual stages of planning and development and that little or no data are readily available for inclusion in the Impact Analysis. However, the TDD must include its best supported estimate or opinion of each of the following impact factors:

(a) Economic feasibility of the proposed system-

(i) Cost/Revenue projections Provide a comparison of the capital investment (specifically including, where applicable, projected right-of-way acquisition/litigation, including the number of landowners and acres affected, environmental clearance/litigation, archaeological clearance/litigation, engineering, and construction costs) and operating costs with the revenue that will likely be produced as a result of the project;

(ii) Job creation potential Estimate the net number of jobs created in both the state and the region as a result of the project, including jobs created both directly and indirectly;

(iii) Direct revenue enhancement Estimate the net increase in revenue that will come into both the state and the region as a result of the project. Included in this category should be a discussion and analysis of the project's potential for increasing added product value, freight revenue, number of tourists and other revenue enhancement factors.

(b) Necessity of the proposed system

(i) Alleviation of health and welfare threats Describe any serious or immediate threats to the health and welfare of the region that may be alleviated by the project.

(ii) Alleviation of economic depression Describe the region's economy and discuss any economic depression (including joblessness and poverty) that the project may alleviate.

(c) Alternatives to the proposed system

(i) Economic impact of no action" Describe the possible economic impacts of the "no action" alternative, including possible continued degradation or abrupt changes in the regional and state economy that may result from no action.

(ii) Environmental impact of no action" Describe the possible environmental impacts of the "no action" alternative, including possible continued degradation or abrupt changes in the regional and state environment that may result from no action.

(d) Environmental impact of the proposed system

(i) Impact on ecosystem Discuss the possible impact of the proposed system on regional and state air quality, water quality, wildlife (including native, threatened, and endangered species), and aesthetic values (including wilderness and scenic values).

(ii) Social impact Discuss the possible impact of the proposed system on the social well-being of both the region and the state, including possible impacts on the social infrastructure (such as roads, schools, and hospitals) and regional customs and way-of-life. Discuss the relationship of the proposed system to the local and regional land use and transportation-related plans.

(iii) Discuss the likelihood of the need for the exercise of eminent domain (involuntary land acquisition by government authority) and the possible number of landowners that may be affected.

(iv) Archaeological impact Discuss the possible impacts of the proposed system on specific archaeological sites and state and regional archaeological preservation.

E. Scope of Work/Needs Statement If the TDD is applying for funding a planning study which will not have an anticipated physical impact on the environment, the application must contain a well-supported Scope of Work/Needs Statement in lieu of a detailed Impact Analysis.

(1) This Statement is a detailed description of the planning study to be performed, a time schedule for work performance including major mileposts for work completion, and a supported statement showing the regional need and benefits to be derived from the study.

(2) The applicant may partially satisfy this requirement by referring the STA to information contained in the "Study Description" section of the application form. (See Section F.1. above) [see Subsection A., Section 9. of 18.1.4 NMAC above.]

[Recompiled 11/16/01]

#### 18.1.4.10 SCORING PROJECT JUSTIFICATIONS:

A. Scoring the Impact Analysis Based on the quality of justifications submitted in the applications for each of the impact factors listed above, the TDD funding application will be scored by the STA's Technical Review Committee as follows:

0" no justification;			
1" poor justification;			
2" satisfactory justification			
3" excellent justification.			
(Criterion) Factor	Weight (100 pts total)	X	Rating(0 to +3)
1. Economic feasibility (40 pts)			
1. Cost/revenue projections	15 pts	X	(0 to +3)=
2. Job creation potential	15 pts	X	(0 to +3)=
3. Revenue enhancement	10 pts	X	(0 to +3)=
2. Necessity of project (10 pts)			
1. Alleviation of health and welfare threats	5 pts	X	(0 to +3)=
2. Alleviation of economic depression	5 pts	X	(0 to +3)=
3. Alternatives to project (10 pts)			
1. Economic impact of no action"	5 pts	X	(0 to +3)=
2. Environmental impact of no action"	5 pts	X	(0 to +3)=
4. Environmental impact (40 pts)			
1. Impact of ecosystem	15 pts	X	(0 to +3)=
2. Social impact	15 pts	X	(0 to +3)=

3. Archaeological impact	10 pts	X	(0 to +3)=
			Total =

B. Scoring the Scope of Work/Needs Statements The Scope of Work/Needs Statements submitted in applications for general planning studies in lieu of Impact Analyses shall not be formally or numerically scored. Instead, STA staff without participation by the Technical Review Committee shall review the justification quality of the Scope of Work/Needs Statement contained in each general planning study application and recommend full, partial or non-approval to the whole STA.

[Recompiled 11/16/01]

#### **18.1.4.11 STA SELECTION OF TDD GRANTEES:**

A. In preparing and submitting its funding applications, TDDs must comply with the deadlines and other terms and conditions contained in the STA resolution. STA staff shall provide advice and technical assistance to the TDDs in their preparation of the funding applications, but STA STAFF RECOMMENDATIONS ARE NOT BINDING UPON AND DO NOT GUARANTEE FAVORABLE FUNDING APPROVAL BY THE STA.

B. As soon as practicable after receipt of the TDD applications, the STA staff will distribute copies to the STA members and to the 7 appointed members of the Technical Review Committee (TRC). The TRC is a Standing Committee of the STA formed to provide technical expertise in the review of the TDD funding applications. The 7 members of the TRC are: 2 STA staff members appointed by the STA Chairman; 1 employee of the State Land Office appointed by the Commissioner of Public Lands; 1 employee of the Environment Department appointed by its Secretary; 1 employee of the Economic Development Department appointed by its Secretary; 1 employee of the Energy Minerals and Natural Resources Department appointed by its Secretary.

C. For each application, the STA staff shall submit to the full STA: 1) the average Impact Analysis score of the whole TRC committee. 2) the individual Impact Analysis scores from each of the TRC members performing an evaluation. 3) non-numerical recommendations of the project justifications contained in the general planning study funding applications.

D. The STA will review the TRC evaluations and STA staff recommendations and make funding decisions in a public meeting. Applicant TDDs and members of the public will be allowed to make presentation to the STA at this meeting. Notice of the public meeting will be given by the STA through a one-time publication of a display ad in the newspaper of general circulation in the affected region. The ad shall advise the public of its opportunity to appear and/or submit its written comments to the STA.



E. In making its final determination, the STA shall consider: the past performance of the TDD applicant in administering and effectively overseeing previous STA funding grants; the average and individual evaluations and recommendations of the TRC, the independent judgment, education and experience of the STA members, collectively and individually.

F. The STA will make funding determinations by a majority vote of no less than six of its members.

[Recompiled 11/16/01]

#### **18.1.4.12 STATE-INITIATED PROJECTS--REQUIRED NOTICE:**

A. The STA has independent authority, exclusive of the TDDs, to conduct research to determine where transportation systems are most needed in the state and for what purposes, and to conduct research to ascertain the most feasible routes for transportation systems in the state. Accordingly, the STA has the authority to commission its own research studies to provide such needed information. Funding of such STA-initiated research shall be based upon a justified application. If the STA finds, through this research, that a transportation system is needed in an area of the state, it shall give notice of its finding to all entities eligible to form transportation development districts which the STA, in its sole discretion, believes have an interest in the need. The STA shall also give notice to all persons it finds, in its sole discretion, to be interested or affected by the transportation or development of the resource or people giving rise to the need.

B. The notice, both to the governmental entities (interested Indian tribes and pueblos, municipalities and counties) and to affected persons, shall be in the form of a letter detailing the transportation needs. The letters shall be sent by registered mail, return receipt requested.

C. If, after six months from the latest receipt date of these notice letters, the STA finds any of the following conditions exist notwithstanding the notice, it has the option of exercising those powers listed in Section 73-23-4G and proceeding under Sections 73-23-9 through 73-23-13 NMSA 1978 as amended:

- (1) the transportation need still exists;
- (2) persons capable of meeting the need have not acted or proposed to act in a manner capable of meeting the need;
- (3) no entities (affected Indian tribes and pueblos consistent with their sovereign powers, municipalities and counties) have acted;
- (4) the entities that acted do not have the capability to meet the transportation need.

[Recompiled 11/16/01]

## **PART 5: STATE TRANSPORTATION COMMISSION MEETINGS**

### **18.1.5.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department.

[18.1.5.1 NMAC - N, 04-15-2003]

### **18.1.5.2 SCOPE:**

New Mexico State Transportation Commission members and anyone affected by or interested in the business of the New Mexico State Transportation Commission.

[18.1.5.2 NMAC - N, 04-15-2003]

### **18.1.5.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 67-3-10, 67-3-11, and 10-15-1 through 10-15-4.

[18.1.5.3 NMAC - N, 04-15-2003]

### **18.1.5.4 DURATION:**

Permanent.

[18.1.5.4 NMAC - N, 04-15-2003]

### **18.1.5.5 EFFECTIVE DATE:**

April 15, 2003, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[18.1.5.5 NMAC - N, 04-15-2003]

### **18.1.5.6 OBJECTIVE:**

To set forth provisions for State Transportation Commission open meetings notices and commission member participation in meetings by telephone.

[18.1.5.6 NMAC - N, 04-15-2003]

### **18.1.5.7 DEFINITIONS:**

**[RESERVED]**

[18.1.5.7 NMAC - N, 04-15-2003]

#### **18.1.5.8 OPEN MEETINGS NOTICES:**

State Transportation Commission meetings shall be legally noticed in compliance with the Open Meetings Act, NMSA 1978, Sections 10-15-1 to 10-15-4, and in accordance with the State Transportation Commission's legal notice of public meetings policy, which the commission shall determine annually.

[18.1.5.8 NMAC - N, 04-15-2003]

#### **18.1.5.9 TELEPHONE CONFERENCES:**

As authorized by the Open Meetings Act, NMSA 1978, Sections 10-15-1 to 10-15-4, a commission member may participate in a commission meeting by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the commission who speaks during the meeting.

[18.1.5.9 NMAC - N, 04-15-2003]

### **PART 6: LEASING OF REAL PROPERTY FOR COMMERCIAL PURPOSES**

#### **18.1.6.1 ISSUING AGENCY:**

New Mexico Department of Transportation - P.O. Box 1149, Santa Fe, New Mexico 87504-1149.

[18.1.6.1 NMAC - N, 11/15/05]

#### **18.1.6.2 SCOPE:**

General public interested in conducting commercial activities on department land.

[18.1.6.2 NMAC - N, 11/15/05]

#### **18.1.6.3 STATUTORY AUTHORITY:**

This regulation is adopted pursuant to NMSA 1978, Section 67-3-12G and NMSA 1978, Section 67-11-9.

[18.1.6.3 NMAC - N, 11/15/05]

**18.1.6.4 DURATION:**

Permanent.

[18.1.6.4 NMAC - N, 11/15/05]

**18.1.6.5 EFFECTIVE DATE:**

November 15, 2005, unless a later date is cited at the end of a section.

[18.1.6.5 NMAC - N, 11/15/05]

**18.1.6.6 OBJECTIVE:**

The purpose of this regulation is to establish procedures for the conduct, permitting or authorization of commercial enterprises or activities on department land.

[18.1.6.6 NMAC - N, 11/15/05]

**18.1.6.7 DEFINITIONS:**

**A. "Commission"** means the New Mexico state transportation commission.

**B. "Department"** means the New Mexico department of transportation.

**C. "Department land"** means New Mexico state transportation commission or New Mexico department of transportation owned land or land leased to or from the state of New Mexico.

**D. "Determination"** means the written documentation of a decision by the secretary or his or her designee including findings of fact required to support a decision. A determination becomes part of the department record for the commercial enterprise or activity.

**E. "Person"** means any individual, firm, corporation, company, joint venture, voluntary association, partnership, trust, or unincorporated organization, or combination thereof.

**F. "Public entity"** means any entity as defined by NMSA 1978, Section 11-1-2 of the Joint Powers Agreements Act (NMSA 1978, 11-1-1 to 11-1-7).

**G. "Secretary"** means the New Mexico secretary of transportation or his or her designee.

[18.1.6.7 NMAC - N, 11/15/05]

#### **18.1.6.8 COMMERCIAL ENTERPRISES AND ACTIVITIES:**

**A.** This rule provides for commercial enterprises or activities on department land where such development or activities is in the best interest of the department and serves the public interest. Since commercial use of department property generates proceeds or payments which will be deposited into the state road fund and may have other benefits to the department or the public, such uses are transportation, highway or department uses or purposes and do not constitute a determination that the property involved is excess of the department's needs or uses. This rule shall not apply to any lease or agreement between the department and a public entity for non-commercial purposes or use, nor shall it apply to commercial leases of department land made pursuant to acquisition of property for right-of-way purposes under the eminent domain code or special alternative condemnation procedure, for air space agreements, oil and gas leases, employee housing arrangements or residential leases of department property, including leases to security or law enforcement personnel.

**B. Authorized Use:** In furtherance of commercial enterprises or activities on department land for the purpose of providing goods and services to the users of the property or facilities or for generating payments to the state road fund, the department may sell, exchange, or lease department property and may use any other powers granted to it by law. Any commercial enterprise or activity is authorized so long as it is in the department's best interest or serves the public interest. The department shall report all proposed commercial activity to the commission at its regularly scheduled meetings. The commission retains the authority to approve, disapprove and modify all proposed commercial activity.

**C. Determination Required:** Prior to the conduct or authorization of commercial enterprises or activities on department land, the secretary shall determine that the commercial enterprise or activity is in the best interest of the department or serves the public interest. This determination shall be approved by the commission and, once so approved, shall be a final action by the department. This determination shall be in writing and shall include:

- (1) a description of the commercial enterprise or activity to be authorized;
- (2) a description of the department land to be used for the commercial enterprise or activity;
- (3) the form of the commercial enterprise or activity, e.g. whether conducted by the department or by a person through license, permit or other appropriate authorization granted by the department;
- (4) the nature of any agreements into which the department will enter to accomplish the commercial enterprise or activity;

(5) the method of establishing the commercial enterprise or activity, e.g. through competitive proposal process or otherwise;

(6) if the commercial enterprise or activity is not established through a competitive process, the reasons that a competitive process was not chosen; and

(7) a statement as to why the commercial enterprise or activity is in the best interest of the department or serves the public interest.

**D. Competition Favored:** It is the policy of the commission and the department to provide fair access to persons who are able to conduct the commercial enterprises and activities contemplated by this rule. As a result, whenever practicable, the department shall pursue such commercial enterprises and activities through a competitive process. The department may adopt a competitive process for conducting commercial leasing which will be governed by the Procurement Code (NMSA 1978, Section 13-1-28 through Section 13-1-199) and applicable regulations. Otherwise, any other appropriate competitive process may be used. Any competitive process used, other than the Procurement Code and applicable regulations, must contain provision for any aggrieved competitor to protest the final award. When a competitive process is impracticable or otherwise against the best interest of the department, the secretary shall so determine and provide in writing the reasons that a competitive process is not used.

**E. Record of Action:** For each commercial enterprise or activity established pursuant to this rule, the department shall keep a record of action. The record shall contain the determination required in paragraph C and any contracts, agreements, licenses, permits or other authorizations entered into by the department as a result of that determination. This record shall be available for public inspection to the extent required by law.

**F. Proceeds:** Any proceeds or payments that are derived from these activities shall be deposited into the state road fund.

[18.1.6.8 NMAC - N, 11/15/05]

## **CHAPTER 2: MOTOR CARRIER**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: MOTOR CARRIER REGULATION [RESERVED]**

### **PART 3: MOTOR CARRIER SAFETY**

#### **18.2.3.1 ISSUING AGENCY:**

Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504-1628.

[4-30-97; 18.2.3.1 NMAC - Rp 18 NMAC 2.3.1, 6-29-00]

**18.2.3.2 SCOPE:**

This part applies to all owners, operators and drivers of commercial motor carrier vehicles.

[4-30-97; 18.2.3.2 NMAC - Rp 18 NMAC 2.3.2, 6-29-00]

**18.2.3.3 STATUTORY AUTHORITY:**

Section 9-19-6 NMSA 1978 and Section 65-3-4 NMSA 1978.

[4-30-97; 18.2.3.3 NMAC - Rp 18 NMAC 2.3.3, 6-29-00; A, 07-16-07]

**18.2.3.4 DURATION:**

Permanent.

[4-30-97; 18.2.3.4 NMAC - Rp 18 NMAC 2.3.4, 6-29-00]

**18.2.3.5 EFFECTIVE DATE:**

June 29, 2000, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[4-30-97; 18.2.3.5 NMAC - Rp 18 NMAC 2.3.5, 6-29-00]

**18.2.3.6 OBJECTIVE:**

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Transportation Act.

[4-30-97; 18.2.3.6 NMAC - Rp 18 NMAC 2.3.6, 6-29-00]

**18.2.3.7 DEFINITIONS:**

Reserved.

[4-30-97; 18.2.3.7 NMAC - Rp 18 NMAC 2.3.7, 6-29-00]

**18.2.3.8 SPECIAL NOTE:**

All statutory references in 18.2.3 NMAC are to the New Mexico Statutes Annotated, 1978 (NMSA 1978) unless otherwise specified.

[2-3-93; 4-30-97; 18.2.3.8 NMAC - Rp 18 NMAC 2.3.8, 6-29-00]

#### **18.2.3.9 INCORPORATION BY REFERENCE:**

For the purposes of 18.2.3 NMAC, the term "Code of Federal Regulations" means the Code of Federal Regulations published by the office of the federal register, national archives and records administration as presently in effect including subsequent amendments.

A. Appendix A: Code of Federal Regulations, Title 49, Parts 1 to 99, published by the office of the federal register, are incorporated by reference as presently in effect including subsequent amendments.

B. Appendix B: Code of Federal Regulations, Title 49, Parts 100 to 185, published by the office of the federal register, are incorporated by reference as presently in effect including subsequent amendments.

C. Appendix D: Code of Federal Regulations, Title 49, Parts 200 to 399, published by the office of the federal register, are incorporated by reference as presently in effect including subsequent amendments.

[11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.9 NMAC - Rp 18 NMAC 2.3.9, 6-29-00; A, 7/31/02; A, 3/31/03; A, 1/30/04; A, 07-16-07; A, 11-14-08]

#### **18.2.3.10 GENERAL:**

The department of public safety hereby adopts Parts 385, 387, 390 and Appendix F (Commercial Zones) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations. The provisions in these parts are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees with the following amendments:

A. Where the regulations refer to the United States department of transportation (DOT), substitute the New Mexico department of public safety.

B. Where the regulations refer to the federal motor carrier safety administration, substitute the New Mexico department of public safety.

C. Where the regulations refer to the secretary of the United States department of transportation, substitute the New Mexico secretary of the department of public safety.

D. Where the regulations refer to a special agent of the federal motor carrier safety administration, substitute all personnel safety certified and approved by the director of the motor transportation division of the department of public safety.



E. Part 385.13(a) is amended to read "Generally, a motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the department of public safety on the internet at <http://www.dps.nm.org> or by telephone at (505) 827-0645."

F. Part 385.13(d) is amended to read "*Penalties*. If a proposed "unsatisfactory" safety rating becomes final, the department of public safety will issue an order placing its intrastate operations out of service. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in Sections 66-2-9 NMSA 1978, 66-5-71 NMSA 1978, 66-5-58 NMSA 1978 and 66-8-7 NMSA 1978."

G. Part 385.14(a) is amended to read "A CMV owner or operator that has failed to pay civil penalties imposed by the taxation and revenue department, or has failed to abide by a payment plan, may be prohibited from operating CMVs in intrastate commerce."

H. Part 385.14(b) is amended to read "A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the taxation and revenue department, or has failed to abide by a payment plan, may be prohibited from operating in intrastate commerce, and its registration may be suspended under the provisions of section 66-2-9 NMSA 1978."

I. Part 385.15(c) is amended to read "The motor carrier must submit its request in writing to the Department of Public Safety, Motor Transportation Division, P.O. Box 1628 Santa Fe, NM 87504."

J. Part 385.17(b) is amended to read "A motor carrier must make this request in writing to the Department of Public Safety, Motor Transportation Division, P.O. Box 1628 Santa Fe, NM 87504."

K. Part 390.5, Definitions, is amended to read:

(1) "*Commercial motor vehicle*" means any self propelled or towed vehicle used on public highways in commerce to transport passengers or property when:

(a) the vehicle is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more whichever is greater; or the vehicle is operated only in intrastate commerce and has a gross vehicle weight rating, or gross combination weight rating or gross vehicle weight or gross combination weight of 26,001 or more pounds whichever is greater; or

(b) is designed or used to transport more than 8 passengers (including the driver); for compensation; or

(c) is designed or used to transport more than 15 passengers, (including the driver) and is not used to transport passengers for compensation; or

(d) is used in transporting material found by the secretary of transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the secretary under 49 CFR, subtitle B, Chapter I, subchapter C;

(2) 390.19 is amended to add: "Intrastate motor carriers operating commercial motor vehicles are required to apply for a New Mexico safety identification number from the motor vehicle division, New Mexico taxation and revenue department."

(3) 390.21 is amended to add: "Intrastate carriers operating commercial motor vehicles are required to mark their vehicles with the assigned New Mexico safety identification number, preceded by the letters USDOT."

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.10 NMAC - Rp 18 NMAC 2.3.10, 6-29-00; A, 7/31/02; A, 1/30/04; A, 07-16-07; A, 11-14-08]

#### **18.2.3.11 QUALIFICATION OF DRIVERS:**

The department of public safety hereby adopts Part 40 and Appendix A to Part 40 of Title 49 of the Code of Federal Regulations (49 CFR 40 - Procedures for Transportation Workplace Drug Testing Programs), Part 391 of Title 49 of the Code of Federal Regulations (49 CFR 391 - Qualification of Drivers), Part 382 of Title 49 of the Code of Federal Regulations (49 CFR 382 -Controlled Substances and Alcohol Use and Testing) and Appendices C (Written Examination for Drivers), D (Table of Disqualifying Drugs and Other Substances, Schedule I) and E (Table of Disqualifying Drugs and Other Substances, Schedules II through V) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations. All provisions set forth in these parts as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with the following amendments:

A. Part 391.2(c) is amended to read: "*Certain farm vehicle drivers*. The rules in this part do not apply to a farm vehicle driver other than a farm vehicle driver who drives an articulated (combination) motor vehicle interstate that has a gross weight, including its load, of more than 10,000 pounds or drives an articulated motor vehicle intrastate that has a gross weight, including its load, of 26,001 pounds or more."

B. Part 391.11(b)(1) is amended to read: "Is at least 21 years old; or is 18 years old and drives only in intrastate commerce operating commercial vehicles that are not required to be placarded for hazardous materials."

C. Part 391.49, Waiver of Certain Physical Defects, is amended to add: "(m) A person who is not physically qualified to drive under 391.41(b)(1) or (2) and who is not eligible for a waiver under the provisions of 391.49 (a) through 391.49(l) and who drives

only intrastate, may apply for a waiver from the Director, Motor Vehicle Division, New Mexico Taxation and Revenue Department, P.O. Box 1028, Santa Fe, New Mexico, 87504-1028 under 18.19.5.33 NMAC.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.11 NMAC - Rp 18 NMAC 2.3.11, 6-29-00; A, 1/30/04; A, 07-16-07; A, 11-14-08]

#### **18.2.3.12 DRIVING OF MOTOR VEHICLES:**

The department of public safety hereby adopts Part 392 of Title 49 of the Code of Federal Regulations (49 CFR 392 - Driving of Motor Vehicles). All provisions set forth in CFR 49 Part 392 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with no amendments.

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.11 NMAC - Rp 18 NMAC 2.3.11, 6-29-00; A, 07-16-07; A, 11-14-08]

#### **18.2.3.13 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION:**

The department of public safety hereby adopts Part 393 of Title 49 of the Code of Federal Regulations (49 CFR 393 - Parts and Accessories Necessary for Safe Operation). All provisions set forth in CFR 49 Part 393 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and drivers, with no amendments.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.13 NMAC - Rp 18 NMAC 2.3.13, 6-29-00; A, 07-16-07; A, 11-14-08]

#### **18.2.3.14 HOURS OF SERVICE OF DRIVERS:**

The department of public safety hereby adopts Part 395 of Title 49 of the Code of Federal Regulations (49 CFR 395 - Hours of Service of Drivers). All provisions set forth in CFR 49 Part 395 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with the following amendments: Where the regulation refers to 100 air mile radius, and the transportation is intrastate, substitute 150 air mile radius.

[2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.14 NMAC - Rp 18 NMAC 2.3.14, 6-29-00; A, 1/30/04; A, 07-16-07; A, 11-14-08]

#### **18.2.3.15 INSPECTION, REPAIR AND MAINTENANCE:**

The department of public safety hereby adopts Part 396 of Title 49 of the Code of Federal Regulations (49 CFR 396 - Inspection, Repair, and Maintenance) and Appendix G (Minimum Periodic Inspection Standards) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations. All provisions set forth in these parts as adopted are

applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with the following amendments:

A. Part 396.9(a) *Personnel authorized to perform inspections* is amended to add: "If the persons have successfully completed approved training, have met minimum performance standards and have been certified and approved by the director of the division, all personnel of the motor transportation division, police officers and any other state inspectors are authorized to enter upon and perform inspections of motor carriers' vehicles in operation."

B. Part 396.9(b) *Prescribed inspection report* is amended to add: "The driver-vehicle inspection form, MTD-10987 and MTD-10988 or computer-generated facsimile, shall be used to record results of motor vehicle inspections conducted by personnel of the motor transportation division of the department of public safety, police officers or other state inspectors authorized to perform inspections by the director of the motor transportation division."

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.15 NMAC - Rp 18 NMAC 2.3.15, 6-29-00; A, 07-16-07; A, 11-14-08]

#### **18.2.3.16 TRANSPORTATION OF HAZARDOUS MATERIALS - DRIVING AND PARKING RULES:**

The department of public safety hereby adopts Part 397 of Title 49 of the Code of Federal Regulations (49 CFR 397 - Transportation of Hazardous Materials; Driving and Parking Rules). All provisions set forth in CFR 49 Part 397 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with no amendments.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.16 NMAC - Rp 18 NMAC 2.3.16, 6-29-00; A, 07-16-07; A, 11-14-08]

#### **18.2.3.17 ADOPTION OF FEDERAL HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS:**

The department of public safety hereby adopts Parts 107, 171, 172, 173, 177, 178 and 180 of Title 49 of the Code of Federal Regulations (49 CFR 107 - Hazardous Materials Program Procedures, 49 CFR 171 - General Information, Regulations and Definitions, 49 CFR 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications Requirements and Emergency Response Information Requirements, 49 CFR 173 - Shippers - General Requirements for Shipments and Packaging, 49 CFR 177 - Carriage by Public Highway, 49 CFR 178 - Specifications for Packagings and 49 CFR 180 - Continuing Qualification and Maintenance of Packagings). All provisions set forth in these parts as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with no amendments.

[2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.17 NMAC - Rp 18 NMAC 2.3.17, 6-29-00; A, 7/31/02; A, 07-16-07; A, 11-14-08]

## **CHAPTER 3: MOTOR CARRIER GENERAL PROVISIONS**

### **PART 1: GENERAL PROVISIONS**

#### **18.3.1.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.3.1.1 NMAC - Rp, 18.3.1.1 NMAC, 2/13/2015]

#### **18.3.1.2 SCOPE:**

This rule applies to all motor carriers subject to the jurisdiction of the commission.

[18.3.1.2 NMAC - Rp, 18.3.1.2 NMAC, 2/13/2015]

#### **18.3.1.3 STATUTORY AUTHORITY:**

8-8-4 and 65-2A-4 NMSA 1978.

[18.3.1.3 NMAC - Rp, 18.3.1.3 NMAC, 2/13/2015]

#### **18.3.1.4 DURATION:**

Permanent.

[18.3.1.4 NMAC - Rp, 18.3.1.4 NMAC, 2/13/2015]

#### **18.3.1.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited at the end of a section.

[18.3.1.5 NMAC - Rp, 18.3.1.5 NMAC, 2/13/2015]

#### **18.3.1.6 OBJECTIVE:**

The purpose of this rule is to set forth general provisions governing motor carriers in New Mexico.

[18.3.1.6 NMAC - Rp, 18.3.1.6 NMAC, 2/13/2015]

#### 18.3.1.7 DEFINITIONS:

In addition to the definitions in Sections 24-10B-3, 65-2A-3 and 65-6-2 NMSA 1978, as used in these rules:

**A. director** means the director of the transportation division of the New Mexico public regulation commission or his designee;

**B. facilities** includes lands, buildings, and improvements to real property owned, leased, or used in the operations of a motor carrier;

**C. FMCSA** means the federal motor carrier safety administration or any predecessor or successor agency;

**D. hazardous matter** has the meanings given in 49 CFR Section 390.5 for the terms hazardous material, hazardous substance, and hazardous waste;

**E. inspection** means the examination by the commission, the motor transportation division, or other lawful entity of a motor carrier's operations, including the facilities and equipment used in connection with its operations, and all pertinent records;

**F. limousine service** means specialized passenger service providing the unscheduled compensated transportation of passengers in a chauffeur-driven luxury motor vehicle at the exclusive use of one individual or group at a fixed charge for the motor vehicle and chauffeur for a period of time that is not less than 30 minutes by prearrangement and not by soliciting on the streets;

**G. MTD** means the motor transportation division of the New Mexico department of public safety;

**H. non-emergency medical transport service** means a specialized passenger service providing the scheduled medically necessary transportation of passengers not requiring medical monitoring or treatment in a motor vehicle to or from a required medical or therapeutic appointment;

**I. principal place of business** means the mailing address of the motor carrier and the street address and other physical location of a motor carrier's business office and records;

**J. public liability insurance** means automobile bodily injury and property damage liability insurance;

**K. repossession service** means the compensated transportation of a motor vehicle lawfully seized without consent from the owner or operator;

**L. small passenger vehicle means** a passenger vehicle used by a passenger service other than an ambulance service, with a carriage capacity of eight or fewer persons including the driver, and is typically a sedan, SUV or minivan; provided that small passenger vehicle does not include a truck primarily designed to carry property, a stretcher van, wheelchair van, or other vehicle used in non-emergency medical transport service, or an ambulance;

**M. stationing point** means a fixed physical location from which a motor carrier responds to a call for service or stores the vehicles it currently uses to provide service and does not include the point where a vehicle responding to a service call is temporarily located;

**N. these rules** means the rules codified in Title 18, Chapter 3 of the New Mexico Administrative Code;

**O. tour and sightseeing service** means specialized passenger service providing scheduled or unscheduled guided compensated transportation of passengers in motor vehicles to scenic points or other points of interest at rates that apply to each individual passenger;

**P. volunteer driver** means a person who drives for an ambulance or commuter service without remuneration; the provision of or reimbursement for training, equipment, uniforms, and supplies necessary to the performance of driving duties are incidental and do not constitute remuneration for purposes of these rules.

[18.3.1.7 NMAC - Rp, 18.3.1.7 NMAC, 2/13/2015; A, 11/30/2016]

#### **18.3.1.8 COMPLIANCE WITH THE LAW:**

**A.** A motor carrier shall comply with these rules and all applicable state and federal laws and regulations. All operating authorities issued by the commission are subject to these rules as fully as if these rules were set forth verbatim in each operating authority.

**B.** In an emergency, a motor carrier may vary from a specific requirement of these rules when authorized by a law enforcement officer or public safety official.

[18.3.1.8 NMAC - Rp, 18.3.1.8 NMAC, 2/13/2015]

#### **18.3.1.9 COMPLIANCE WITH TERMS OF OPERATING AUTHORITY AND TARIFFS:**

**A.** A motor carrier shall comply with the terms and conditions of its operating authority.

**B.** A motor carrier of persons or household goods, and towing services performing nonconsensual tows, shall comply with the terms and conditions of its tariffs approved by the commission.

**C.** If there is a conflict between the terms and conditions of an operating authority and the terms and conditions of an approved tariff, the operating authority will govern the specific conflict.

**D.** If there is a conflict between these rules and the terms and conditions of a tariff or operating authority approved by the commission, these rules will govern the specific conflict.

[18.3.1.9 NMAC - Rp, 18.3.1.9 NMAC, 2/13/2015]

#### **18.3.1.10 STATIONING POINTS FOR CERTIFICATED PASSENGER SERVICES:**

**A.** The commission shall specify stationing points on the certificate of each certificated passenger service.

**B.** A certificated passenger service may change a stationing point to a new stationing point in the same county by sending written notice to the commission. The commission shall then issue the motor carrier a new certificate reflecting the change in stationing points.

**C.** No change in stationing points will be approved that results in the certificated passenger service having a stationing point in a location not permitted under its operating authority. A certificated passenger service may apply to move a stationing point to a county in which it does not currently have a stationing point by applying for an amendment to its certificate.

[18.3.1.10 NMAC - N, 2/13/2015]

#### **18.3.1.11 FILING CERTAIN DOCUMENTS BY FACSIMILE OR ELECTRONIC MAIL:**

**A.** Persons may call the New Mexico public regulation commission transportation division at (505) 827- 4519 to obtain the facsimile number or electronic mail address for filing certain documents. The director will accept facsimile and electronic mail filings as well as hand-delivered or mailed filings of:

- (1)** appointments of a substitute agent for service of process;
- (2)** change of address reports;
- (3)** reports of fatal accidents; and



(4) other documents the commission or its designee in its discretion permits.

**B. Persons filing documents by facsimile or electronic mail must also mail or deliver the original document to the director.**

**C. The document will be deemed filed on the date of receipt of the facsimile, the electronic mail, the hand-delivered, or mailed document, whichever occurs first.**

[18.3.1.11 NMAC - Rp, 18.3.1.11 NMAC, 2/13/2015]

#### **18.3.1.12 DIRECTOR-PRESCRIBED FORMS:**

**A. Use required.** The director has prescribed forms to carry out certain requirements of these rules. The most current version of a commission form must be used when a form exists for that purpose, unless these rules state otherwise or the commission waives this requirement. Where the commission has not prescribed a form, the motor carrier shall file the information and documents required by these rules in the order in which they are listed in these rules.

**B. How to obtain.** Copies of director-prescribed forms may be obtained in person at the commission or on the commission's website at [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us).

**C. Photocopies permitted.** The commission will accept filings made on photocopies of director-prescribed forms, provided they are legible.

[18.3.1.12 NMAC - Rp, 18.3.1.13 NMAC, 2/13/2015]

#### **18.3.1.13 INSPECTION:**

**A. General authority.** Section 65-2A-4 NMSA 1978 authorizes the commission to inspect a motor carrier's operations. The commission shall provide a written inspection report to a motor carrier within thirty (30) days following a routine inspection containing feedback to the motor carrier and outlining necessary corrective or follow-up actions a motor carrier shall make.

**B. Inspection of cargo under seal.** Section 65-5-1 NMSA 1978 authorizes MTD enforcement employees to inspect cargo.

(1) If an MTD enforcement employee breaks a seal to inspect cargo, the MTD enforcement employee shall:

(a) reseal the load with a seal furnished by MTD; and

(b) give the driver a written acknowledgement, on a form prescribed by MTD, that the MTD enforcement employee broke the seal.

**(2)** No MTD enforcement employee shall break a U.S. government seal.

[18.3.1.13 NMAC - Rp, 18.3.1.14 NMAC, 2/13/2015]

**18.3.1.14 INVESTIGATIONS:**

**A.** The commission or the director may initiate an investigation if an inspection reveals, or the commission or the director otherwise becomes aware of, facts indicating a possible violation of these rules. Upon completion of the investigation, the commission or the director may initiate any further appropriate action.

**B.** The commission may issue to any person it designates as an investigator credentials evidencing the person's authority and bearing the person's photograph.

[18.3.1.14 NMAC - Rp, 18.3.1.15 NMAC, 2/13/2015]

**18.3.1.15 TRANSPORTATION OF HAZARDOUS MATTER:**

All motor carriers transporting hazardous matter in New Mexico shall comply with 18.2.3 NMAC, Motor Carrier Safety, promulgated by MTD.

[18.3.1.15 NMAC - Rp, 18.3.1.16 NMAC, 2/13/2015]

**18.3.1.16 DECEPTIVE ADVERTISING PROHIBITED:**

**A.** No motor carrier of persons or household goods, or towing service performing non-consensual tows, shall make in any manner, orally or in writing, via any medium of advertisement or communication, a statement concerning any aspect of, or payment for, intrastate compensated transportation performed by the motor carrier that is materially false or misleading in part or in whole. A statement shall be deemed materially false or misleading if it omits any material qualification imposed by these rules.

**B.** A motor carrier of persons or household goods, or towing service performing non-consensual tows, shall be subject to potential penalties for violations of this section by unauthorized persons or firms within the control of the motor carrier of persons or household goods, or towing service performing nonconsensual tows.

**C.** A motor carrier of persons or household goods, or towing service performing non-consensual tows, shall advertise and solicit in the legal or "doing business as" name(s) contained in its approved tariff, but may advertise the name of an officially registered agent or, for household goods movers, the national affiliation or principal for interstate carriage for which the carrier is currently an agent, so long as the name of the motor carrier of persons or household goods, or towing service performing nonconsensual tows, is prominently displayed along with the agent's name.

[18.3.1.16 NMAC - Rp, 18.3.1.17 NMAC, 2/13/2015]

#### **18.3.1.17 RULES OF PROCEDURE:**

In all matters before the commission involving motor carriers, the commission shall follow the Public Regulation Commission Rules of Procedure, 1.2.2 NMAC. A specific provision in these rules shall control over a conflicting provision in 1.2.2 NMAC.

[18.3.1.17 NMAC - Rp, 18.3.1.18 NMAC, 2/13/2015]

#### **18.3.1.18 REFERENCES TO OTHER DOCUMENTS:**

Whenever a rule, tariff, or other document issued or approved by the commission relating to motor carriers refers to a federal or state statute, rule, regulation, tariff, or other document, the reference, unless specifically stated to the contrary, is continuous and intended to refer to the most current version of the document.

[18.3.1.18 NMAC - Rp, 18.3.1.19 NMAC, 2/13/2015]

### **PART 2: OPERATING AUTHORITIES**

#### **18.3.2.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.3.2.1 NMAC - Rp, 18.3.2.1 NMAC, 2/13/2015]

#### **18.3.2.2 SCOPE:**

This rule applies to all persons operating as a motor carrier in New Mexico who are subject to the jurisdiction of the commission.

[18.3.2.2 NMAC - Rp, 18.3.2.2 NMAC, 2/13/2015]

#### **18.3.2.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 65-2A-4, and 65-2A-19 NMSA 1978.

[18.3.2.3 NMAC - Rp, 18.3.2.3 NMAC, 2/13/2015]

#### **18.3.2.4 DURATION:**

Permanent.

[18.3.2.4 NMAC - Rp, 18.3.2.4 NMAC, 2/13/2015]

#### **18.3.2.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited at the end of a section.

[18.3.2.5 NMAC - Rp, 18.3.2.5 NMAC, 2/13/2015]

**18.3.2.6 OBJECTIVE:**

The purpose of this rule is to implement Sections 65-2A-5 through 65-2A-13 NMSA 1978.

[18.3.2.6 NMAC - Rp, 18.3.2.6 NMAC, 2/13/2015]

**18.3.2.7 DEFINITIONS:**

See 18.3.1.7 NMAC.

[18.3.2.7 NMAC - Rp, 18.3.2.7 NMAC, 2/13/2015]

**18.3.2.8 OPERATING AUTHORITY REQUIRED:**

The director shall determine which type of operating authority is appropriate based on the attributes of the type of service the applicant proposes to provide. The commission may at any time determine whether an operating authority is appropriate for the type of service a motor carrier is providing.

**A.** A warrant is required for:

- (1) charter services;
- (2) towing services;
- (3) repossession services using towing equipment; or
- (4) transportation of property, except that a person licensed pursuant to the Thanatopractice Act, Section 61-32-1 et seq. NMSA 1978 is not required to obtain a warrant for the transportation of cadavers.

**B.** A certificate or permit is required for:

- (1) municipal or general taxicab services;
- (2) scheduled or general shuttle services;
- (3) ambulance service;
- (4) household goods services; or

(5) specialized passenger services; specialized passenger service includes tour and sightseeing services, non-emergency medical transportation services, and limousine services.

[18.3.2.8 NMAC - Rp, 18.3.2.8 NMAC, 2/13/2015; A, 01/30/2018]

#### **18.3.2.9 LIMITATIONS ON PASSENGER SERVICES:**

##### **A. General shuttle services.** A general shuttle service:

(1) may not provide municipal or general taxicab services, ambulance services, specialized passenger services, or household goods services; and

(2) may use chauffeur-driven luxury motor vehicles to provide general shuttle service.

##### **B. Charter services.** A charter service:

(1) may not hold itself out as a full service or general service motor carrier;

(2) may not provide full service or general service;

(3) may not use the terms bingo bus service, commuter service, limousine service, non-emergency medical transport service, shared ride service, shuttle service, tour and sightseeing service, taxicab service, general service, full service or terminal shuttle service in its business name, markings on motor vehicles, or advertising, except as permitted by Subsection D of Section 65-2A-15 NMSA 1978;

(4) may only provide round-trip transportation of passengers;

(5) may not charge rates that apply to each individual passenger;

(6) may not use chauffeur-driven luxury motor vehicles to provide charter services, except when providing charter service pursuant to contracts with government agencies;

(7) may not solicit business on the streets;

(8) shall enter into a single prearranged written contract for charter services; such contract shall not be arranged, accepted, entered into or paid for with or through the driver of the motor vehicle; and

(9) may only provide charter service to a group of persons (two or more).

##### **C. Limousine service.** A limousine service:

(1) may not provide full services, general shuttle services, general taxicab services, or household goods services;

(2) may not charge rates that apply to each individual passenger;

(3) may not solicit business on the streets; and

(4) shall enter into a contract for limousine service in advance of providing the service; such contract shall not be arranged, accepted, or entered into with or through the driver of the motor vehicle.

**D. Non-emergency medical transport service.** A non-emergency medical transport service:

(1) may not provide full services, general shuttle services, general taxicab services, or household goods services;

(2) may only transport passengers who do not require medical intervention to maintain their level of response, airway, breathing and circulatory status, with the exception of self-administered oxygen not to exceed six liters per minute via a nasal cannula; the oxygen container must be secured in accordance with other state and federal laws; and

(3) may not transport passengers that require medical monitoring or medical intervention.

**E. Scheduled shuttle service.** A scheduled shuttle service:

(1) may not provide ambulance service, municipal or general taxi service, specialized passenger service, or household goods service;

(2) may solicit business at scheduled stops on its regular route or may prearrange to provide service; and

(3) may use chauffeur-driven luxury motor vehicles to provide shuttle service.

**F. Municipal taxicab service.** A municipal taxicab service:

(1) may not provide ambulance service, scheduled or general shuttle service, specialized passenger service, or household goods service;

(2) shall charge metered rates based on one charge for the first person and an additional small fixed charge for each additional person, or may charge, at the passenger's informed option, a predetermined calculated full fare based on dropflag and mileage component rates as provided by tariff, and may use surge pricing as provided by tariff;

(3) shall grant exclusive direction to the first person engaging the taxicab service for metered carriage;

(4) may provide one-way transportation of passengers;

(5) may solicit business on the streets or may prearrange to provide service;

(6) may not use chauffeur-driven luxury motor vehicles to provide taxicab service; and

(7) except for hailed or for pre-arranged service hereby defined as "any call requesting service made 30 minutes or longer before service is required" may only respond to calls for service that are dispatched by the taxicab service.

**G. General taxicab service.** A general taxicab service:

(1) may not provide ambulance service, scheduled or general shuttle service, specialized passenger service, or household goods service;

(2) shall charge metered rates based on one charge for the first person and an additional small fixed charge for each additional person, or may charge, at the passenger's option, a predetermined calculated full fare based on dropflag and mileage component rates as provided by tariff, and may use surge pricing as provided by tariff;

(3) shall grant exclusive direction to the first person engaging the taxicab service for metered carriage;

(4) may provide one-way transportation of passengers;

(5) may solicit business on the streets or may prearrange to provide service;

(6) may not use chauffeur-driven luxury motor vehicles to provide taxicab service; and

(7) except for hailed or pre-arranged service (defined as "any call requesting service made 30 minutes or longer before service is required), may only respond to calls for service that are dispatched by the taxicab service.

**H. Tour and sightseeing service.** A tour and sightseeing service:

(1) may not provide full services, general shuttle services, general taxicab services, or household goods services; and

(2) may use chauffeur-driven luxury motor vehicles to provide tour and sightseeing service.

[18.3.2.9 NMAC - Rp, 18.3.2.9 NMAC, 2/13/2015; A, 11/30/2016; A, 01/30/2018]

#### **18.3.2.10 CONTENTS OF APPLICATIONS FOR A WARRANT:**

An applicant for a warrant shall file with the commission an application containing the following information and documents:

- A.** the applicant's name;
- B.** if the applicant is a sole proprietor or a partnership, the applicant's social security number for purposes of verifying parental responsibility act compliance;
- C.** each and all of the applicant's doing business as (d/b/a) names, if applicable;
- D.** the applicant's principal place of business within the state of New Mexico and mailing address, and, for a towing service, the mailing and physical address of the storage facility and office, if different from those of the principal place of business;
- E.** the applicant's business telephone number;
- F.** the applicant's electronic mail address, if applicable;
- G.** the applicant's combined reporting system (CRS) number obtained from the New Mexico taxation and revenue department;
- H.** if the applicant is a corporation or limited liability company, evidence that the applicant is authorized by the office of the secretary of state to do business in New Mexico and that it is in good standing in New Mexico;
- I.** if the applicant is a towing service providing non-consensual tows, a proposed tariff meeting the requirements of 18.3.6 NMAC and Sections 65-2A-20 and 21 NMSA 1978;
- J.** an appointment of an agent for service of process;
- K.** a list of all equipment to be used by the applicant, including all equipment leases filed with and approved by the commission in accordance with these rules;
- L.** for each piece of equipment, an annual inspection form completed by a qualified inspector within the preceding 12 months that shows that each motor vehicle proposed to be operated by the applicant meets the safety requirements of the federal motor carrier safety regulations;
- M.** a list of drivers and drivers license information for each driver including state of issuance, license number, and class of license; a legible copy of each driver's license; a legible copy of each driver's motor vehicle record received from the driver licensing



agency of the state or states within which the driver is licensed; and a legible copy of each driver's medical examiner's certificate as required by 49 CFR 391.43(g);

**N.** the applicant's written statement certifying that all drivers meet the driver qualifications of 18.3.4 NMAC - Safety Requirements, and that the applicant will maintain driver qualification files on each driver;

**O.** the applicant's U.S. DOT safety rating, if it has one;

**P.** proof of public liability insurance in accordance with 18.3.3 NMAC - Financial Responsibility;

**Q.** if the applicant is a towing service, proof of garage keepers and on the hook liability insurance as required by 18.3.3.11 NMAC;

**R.** a copy of either a certificate of workers' compensation insurance or a certificate of exemption from the workers' compensation administration;

**S.** the applicant's written statement certifying that it has developed a drug and alcohol testing program that will meet the requirements of 49 CFR Parts 40 and 382;

**T.** a copy of the applicant's written preventive maintenance program for its motor vehicles as required by 18.3.4.11 NMAC;

**U.** a contact person, telephone number and email address for the commission to use in the event of a question, inquiry or complaint;

**V.** the verified oath of the applicant pursuant to Subsection MMM of Section 65-2A-3 NMSA 1978 attesting that all statements in the application are true and correct;

**W.** the application fee required by Section 65-2A-36 NMSA 1978; and

**X.** a statement disclosing any other operating authority(ies) owned or operated by the applicant including any partial interest in any other operating authority(ies), and certifying that the operating authority sought in the application does not duplicate the operating authority of the same kind and for the same territory already held by the motor carrier.

[18.3.2.10 NMAC - Rp, 18.3.2.11 NMAC, 2/13/2015; A, 3/14/2017 A, 01/30/2018]

### **18.3.2.11 REVIEW AND APPROVAL OF APPLICATIONS FOR WARRANTS:**

#### **A. Filing requirements.**

**(1) Application required.** Applications for a warrant must be typed or completed in ink on forms prescribed by the director.

**(2) Number of copies.** Applicants for a warrant must file an original application form and every required document as provided in 18.3.2.10 NMAC. If the applicant wishes to have a file stamped copy of the complete application returned to it, it must submit an additional copy of the application form and each document.

**(3) Filing fee.** Applicants shall submit the appropriate application fee with the application in a form of payment approved by the New Mexico public regulation commission.

**B. Review by the director.** Within seven days of receipt of an application, the director will review the application to determine whether it is complete. If the director determines that the application is incomplete, he shall promptly return the application to the applicant along with an initial letter outlining the deficiencies in the application.

**C. Complete applications.**

**(1)** If the application contains all of the information and documents required by 18.3.2.10 NMAC and is in compliance with all other statutory requirements and these rules, the director shall promptly approve the application and issue the warrant.

**(2)** The director will issue a warrant in the name of the person owning the motor carrier, if the motor carrier is a sole proprietorship; in the name of the partners, if the motor carrier is a partnership; in the name of the limited liability company if the motor carrier is a limited liability company; and in the name of the corporation, if the motor carrier is a corporation. No warrant will be issued only in a "d/b/a" name.

**D. Docketing of warrants.** The transportation division shall issue a docket number upon receipt of the complete application, and all required documents. The applicant shall file the complete application and the filing fee with the transportation division of the commission. Issuance of the warrant closes the docket.

[18.3.2.11 NMAC - Rp, 18.3.2.13 NMAC 2/13/2015]

**18.3.2.12 TERMS AND CONDITIONS OF WARRANTS:**

**A. Proof of operating authority.** A copy of the warrant shall be carried in each motor vehicle operated by the motor carrier or commuter service.

**B. Term.** A warrant shall remain in force until suspended or revoked by the commission or until surrendered by the person holding it.

[18.3.2.12 NMAC - Rp, 18.3.2.14 NMAC, 2/13/2015]

**18.3.2.13 CONTENTS OF APPLICATIONS FOR AN ORIGINAL CERTIFICATE OR PERMIT, FOR AMENDMENT OF A CERTIFICATE OR PERMIT, FOR LEASE OF A**

**CERTIFICATE OR PERMIT, AND FOR VOLUNTARY TRANSFER OF A  
CERTIFICATE OR PERMIT:**

**A. For all original certificates and permits.** An applicant for an original certificate or shall file with the commission an application containing the following information and documents:

- (1)** the applicant's name;
- (2)** if the applicant is a sole proprietor or a partnership, the applicant's social security number for purposes of verifying parental responsibility act compliance;
- (3)** the applicant's d/b/a name, if applicable;
- (4)** the applicant's principal place of business within the state of New Mexico and mailing address;
- (5)** the applicant's vehicle stationing point(s);
- (6)** the applicant's electronic mail address, if applicable;
- (7)** the applicant's CRS obtained from the New Mexico taxation and revenue department;
- (8)** if the applicant is a corporation:
  - (a)** evidence that the applicant is authorized by the office of the secretary of state to do business in New Mexico and that it is in good corporate standing in New Mexico; and
  - (b)** the names and addresses of any shareholders who own ten percent or more of the voting stock of the corporation;
- (9)** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the percentage of ownership interest of each, and the date the business entity was created;
- (10)** appointment of an agent for service of process;
- (11)** affidavits or other evidence upon which the applicant intends to rely to show that the applicant is fit and able;
- (12)** a statement of the type of service the applicant intends to operate and a description of the territory it proposes to serve;
- (13)** the application fee required by Section 65-2A-36 NMSA 1978;

(14) a proposed tariff meeting the requirements of 18.3.6 NMAC, Tariffs and Sections 65-2A-20 and 21 NMSA 1978; and

(15) the notarized oath of the applicant attesting that all statements in the application are true and correct.

**B. For all original certificates and permits.** An applicant for an original certificate or permit, except for an applicant for an original permit that already possesses a valid certificate or permit for the same type of service, shall file with the commission the following information and documents:

- (1) the applicant's principal place of business;
- (2) the applicant's business telephone number;
- (3) a list of all equipment to be used by the applicant, including all equipment leases filed with and approved by the commission in accordance with these rules;
- (4) for each piece of equipment, an annual inspection form completed by a qualified inspector within the preceding 12 months that shows that each motor vehicle proposed to be operated by the applicant meets the safety requirements of the federal motor carrier safety regulations;
- (5) a list of drivers and drivers license information for each driver including state of issuance, license number and class of license;
- (6) the applicant's written statement certifying that all drivers meet the driver qualifications of the 18.3.4 NMAC, Safety Requirements, and that the applicant will maintain driver qualification files on each driver;
- (7) the applicant's U.S. department of transportation (DOT) safety rating, if it has one;
- (8) proof of public liability insurance in accordance with 18.3.3 NMAC, Financial Responsibility, and the insurance filing fee;
- (9) a copy of either a certificate of workers' compensation insurance or a certificate of exemption from the workers' compensation administration;
- (10) the applicant's written statement certifying that the motor carrier has developed a drug and alcohol testing program that will meet the requirements of 49 CFR Section 382 and Part 40; and
- (11) a copy of the applicant's written preventive maintenance program for its motor vehicles as required by 18.3.4.12 NMAC.

**C. For all amendments of certificates and permits.** An applicant for an amendment to a certificate or permit shall file an application containing the information required in Subsection A of this section.

**D. For all leases of certificates and permits.** An applicant for a lease of a certificate or permit shall file an application containing the information required in Subsection A of this section with the exception of Paragraph (13) of Subsection A of 18.3.2.15 NMAC. The application shall also contain the following additional information:

- (1) copies of its current certificate or permit and all endorsements;
- (2) a complete description of all operating equipment to be leased;
- (3) a statement that the proposed lease is not being made to avoid any previously incurred taxes or legal obligations, or to circumvent any otherwise applicable requirements of these rules or the Motor Carrier Act; and
- (4) a copy of the proposed lease, containing provisions:
  - (a) stating that the proposed lease may not go into effect until approved by the commission;
  - (b) stating which party to the lease shall be responsible for complying with the qualifying provisions in 18.3.2.13 NMAC; and
  - (c) specifying the term of the lease.

**E. For all voluntary transfers of certificates and permits.** An applicant for transfer of a certificate or permit shall file an application containing the information required in Subsection A of this section. The application shall also contain the following additional information:

- (1) copies of its current certificate and all endorsements or permit;
- (2) a joint affidavit on the form prescribed by the director, executed by the transferor-applicant and the transferee-applicant certifying that all accrued taxes, rents, wages of employees and all other indebtedness incident to the transferor-applicant's operations have been paid in full, or that the transferee-applicant will assume responsibility for paying them if they have not been paid in full;
- (3) a complete description of all operating equipment to be transferred;
- (4) a showing that the proposed transfer is not being made to avoid any previously incurred taxes or legal obligations, or to circumvent any otherwise applicable requirements of these rules or the Motor Carrier Act; and

(5) if all taxes have been paid in full, a tax clearance certificate from the New Mexico taxation and revenue department certifying that all state tax indebtedness incident to the transferor-applicant's operations has been paid in full.

**F. Additional requirements for permits.** An applicant for a permit shall also file with the commission a copy of each contract under which the applicant intends to operate.

**G. Additional requirements for ambulance services.** An applicant for a certificate or a permit as an ambulance service shall also:

- (1) submit an operations plan in accordance with 18.3.14.10 NMAC;
- (2) identify fixed stationing points for all ambulances used within a service's territory or patient catchment area;
- (3) submit affidavits or other evidence upon which the applicant intends to rely to show that the proposed service is or will serve a useful public purpose that is responsive to a public demand or need and that the ambulance service that currently exists in the territory sought in the application is inadequate; and
- (4) submit affidavits or other evidence of the effect that issuance of the certificate would have on existing ambulance service in the territory sought in the application.

**H. Additional requirements for scheduled shuttle service.** An applicant for a certificate or a permit as a scheduled shuttle service shall also submit a daily time schedule as required by Section 65-2A-3(BBB) NMSA 1978.

**I. Additional requirements for municipal taxicab service.** An applicant for a certificate or a permit as a municipal taxicab service shall also:

- (1) specify the portion of its applied for service territory in which it will provide municipal taxicab service and the portion of its applied for service territory in which part it will provide general service; and
- (2) submit a description of how calls for service are centrally dispatched, including the location of the dispatcher(s).

[18.3.2.13 NMAC - Rp, 18.3.2.15 NMAC, 2/13/2015]

#### **18.3.2.14 REVIEW OF APPLICATIONS FOR CERTIFICATES, PERMITS:**

**A. Pre-filing review.** An applicant shall present a single copy of its proposed application for a certificate or permit to the director for pre-filing review. Within seven

days of receipt of such application, the director will review the application to determine if it is complete.

**B. Complete applications.** If the application contains all of the information and documents required by these rules, and is in compliance with all other statutory requirements and these rules, the director shall certify in writing that the application satisfies the 60 day completeness requirement of Subsection E of Section 65-2A-36 NMSA 1978 and notify the applicant that the application is complete. The director's determination of completeness shall not constitute approval of the application. The transportation division shall issue a docket number upon receipt of the complete application, and all required documents. The applicant shall file the complete application and the filing fee with the transportation division of the commission. If the director determines that the application is incomplete, the director shall promptly return the application to the applicant along with an initial letter outlining the deficiencies in the application. . Any comments by the director shall not constitute approval by the commission as to the reasonableness or lawfulness of any application.

[18.3.2.14 NMAC - Rp, 18.3.2.16 NMAC, 2/13/2015]

#### **18.3.2.15 NOTICE:**

**A.** If the director certifies that an application for a certificate or permit or for a change in a certificate or permit is complete, the director shall prepare a notice of application within five business days and post it on the commission's website. Also within five business days, the director shall send an electronic version of the notice via e-mail to all motor carriers, public officials or agencies, or other persons or entities who have previously supplied electronic mail addresses to the commission for the purpose of receiving such notices. If the application is accompanied by an application for temporary authority, the notice shall so state and shall indicate whether the application for temporary authority is pending or has been granted.

**B.** The transportation division shall maintain a list of electronic mail addresses of motor carriers, agencies and other persons interested in receiving notices of applications for certificates or permits, proposed rulemakings, or other orders of the commission of general application. The director shall add or delete an electronic mail address from the list upon request.

**C. Special notice procedure for certain permit and tariff applications.** The director shall promptly, before the pre-filing review is complete, open a docket and post notice on the commission's website of:

(1) an application for a permit for contractual carriage with departments, divisions or agencies of the state of New Mexico or with medicaid managed care program (SALUD) providers or facilities for non-emergency medical carriage;

(2) an application for a tariff change made by any tariffed motor carrier which does not propose to increase an existing rate; and

(3) an application for a tariff change made by a general service motor carrier which proposes an increase to an existing rate.

[18.3.2.15 NMAC - Rp, 18.3.2.17 NMAC, 2/13/2015]

#### **18.3.2.16 CONTESTED APPLICATIONS:**

**A.** If a full service carrier files a protest in an application for an original certificate for passenger service or for a permit for ambulance service or for passenger service pursuant to a public-charge contract or for amendment, lease or transfer of such a certificate or permit, or the director requests a hearing, the commission shall appoint a hearing examiner. The protest shall state how the service territory in the application overlaps with the full service carrier's territory and, except for ambulance service carriers, shall state how the grant of the application will, or presents a reasonable potential to, impair, diminish or otherwise adversely affect its existing provision of full-service passenger service to the public within its full-service territory. If a protester fails to submit the fee required by Section 65-2A-36 NMSA 1978 at the time the protestor files the protest, the protest will be deemed denied. If the protestor does not file the fee within the notice period, the protest is deemed denied.

**B.** The hearing examiner shall, within 30 days of appointment, issue a notice of hearing setting a hearing on the merits to be held within 90 days from the date of appointment. Also within 30 days of appointment, the hearing examiner shall make a determination as to whether any filed protests comply with Subsection (A) of 18.3.2.16 NMAC. The hearing examiner may for good cause extend the time within which a hearing on the merits must be held.

**C.** A person filing an objection will not be granted intervenor status unless the person also files a motion to intervene that complies with 1.2.2.23 NMAC. The hearing examiner shall consider a motion to intervene in accordance with 1.2.2.23 NMAC with the exception that, if the motion to intervene is not acted upon by the date the hearing examiner issues a notice of hearing, the motion to intervene is deemed denied.

**D.** If the commission or hearing examiner denies all protests and motions to intervene or all intervenors withdraw at any time, and staff and the commission or hearing examiner do not object, the commission or hearing examiner shall recommend to the commission that the application be reassigned to staff and processed as an uncontested application.

**E.** The hearing examiner shall issue a recommended decision within 45 days of receipt of the transcript of hearing, or completion of the briefing schedule, whichever is later. The hearing examiner may for good cause extend the time within which a recommended decision must be issued.



[18.3.2.16 NMAC - Rp, 18.3.2.18 NMAC, 2/13/2015]

**18.3.2.17 UNCONTESTED APPLICATIONS:**

If the director does not request a hearing, and no person files a motion to intervene or protest in the application during the notice period, and the director finds that the applicant has met the statutory requirements specified below for each particular type of application, the director shall prepare, within five business days of the end of the notice period, a recommendation to approve the application.

[18.3.2.17 NMAC - Rp, 18.3.2.19 NMAC, 2/13/2015]

**18.3.2.18 CONDITIONAL APPROVAL AND ISSUANCE OF A CERTIFICATE OR PERMIT:**

**A.** The commission may condition approval of a certificate or permit upon any unmet provisions, terms, conditions, or limitations set forth by the commission in its final order. If the applicant fails to timely comply with all qualifying provisions, the commission may dismiss the case and close the docket.

**B.** An applicant for any full service operating authority may omit the information required by Subsection (B) of 18.3.2.13 NMAC in its application. If the commission finds that the applicant for a certificate as a motor carrier of persons has met the statutory requirements in Section 65-2A-8 NMSA 1978 or that the applicant for a certificate as a motor carrier of household goods has met the statutory requirements in Section 65-2A-9 NMSA 1978 or that the applicant for a permit has met the statutory requirements in Section 65-2A-10 NMSA 1978 the commission shall issue an order conditionally approving the application. Then, unless the commission prescribes a different period, the applicant must, within 90 days from the date of the order, submit all information required by Subsection (B) of 18.3.2.13 NMAC.

**C.** Upon determining that the applicant has complied with all qualifying provisions, the director will promptly sign and issue a certificate or permit. If the final order does not contain qualifying provisions, the director will promptly sign and issue a certificate or permit.

[18.3.2.18 NMAC - Rp, 18.3.2.20 NMAC, 2/13/2015]

**18.3.2.19 POSTING OF CONSUMER NOTICE:**

Every passenger service shall post, in a conspicuous place visible to the public, in each of its motor vehicles and at the motor carrier's principal place of business, a notice containing a statement in substantially the following form: "This motor carrier operates pursuant to New Mexico public regulation commission (NMPRC) Operating Authority Number. (insert operating authority number), issued by the New Mexico public regulation commission, and the tariff approved by the commission. If you have any

questions or problems with the service provided by this company, you may contact the management at [insert phone number], and if the problem is not resolved, you may contact the New Mexico Public Regulation Commission, Consumer Relations Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269, 1-888-427-5772, or via email, [crd.complaints@state.nm.us](mailto:crd.complaints@state.nm.us)."

[18.3.2.19 NMAC - Rp, 18.3.2.23 NMAC, 2/13/2015]

#### **18.3.2.20 REQUIREMENTS APPLICABLE TO ALL PASSENGER SERVICE CARRIERS:**

**A. Safe and adequate service, equipment, and facilities.** All passenger services must provide safe and adequate service, equipment, and facilities for the provision of transportation services.

**B. Condition of vehicles.** A passenger service carrier shall use motor vehicles that are safe, dependable, clean, and suitable for the service rendered. A passenger service shall maintain each motor vehicle in good mechanical and operating condition. No passenger service shall operate, or require or permit to be operated, a motor vehicle with any defect or deficiency capable of causing an accident or the mechanical breakdown of the motor vehicle.

**C. Heating and ventilation system.** A passenger service carrier shall ensure that every motor vehicle it operates is equipped with a heating system capable of providing a reasonable level of comfort inside the motor vehicle, and shall have ventilation adequate to prevent the escape of engine fumes into the interior of the motor vehicle.

**D. Transportation of property limited.** No passenger service carrier may transport any property, including parcel freight, cargo or baggage, in any quantity or manner that interferes with the comfort or safety of passengers. Any property carried within the passenger compartment must be secured to prevent the property from obscuring the vision of the driver or endangering the passengers.

[18.3.2.20 NMAC - Rp, 18.3.2.24 NMAC, 2/13/2015]

#### **18.3.2.21 REQUIREMENTS APPLICABLE TO ALL PASSENGER SERVICE CARRIERS EXCEPT AMBULANCE SERVICES:**

**A. Rates to be posted in vehicles.** A taxicab service shall post the rates for metered transportation services in the passenger compartment of the vehicle in a place and manner that is readily accessible and viewable by passengers. A shuttle service shall post the rates for transportation services in the passenger compartment of the vehicle in a place and manner that is readily accessible and viewable by passengers.

**B. Seat belts.** A passenger service carrier shall ensure that each motor vehicle it uses that is capable of transporting 15 or fewer persons is equipped with a separate seat belt assembly for each passenger.

**C. Child restraints.** A passenger service carrier except commuter services shall ensure that each motor vehicle it uses that is capable of transporting 15 or fewer persons complies with all federal and state requirements regarding child restraint systems.

[18.3.2.21 NMAC - Rp, 18.3.2.25 NMAC, 2/13/2015; A, 11/30/2016]

#### **18.3.2.22 ADDITIONAL REQUIREMENT FOR TAXICAB SERVICES:**

Unless expressly requested to do otherwise, a taxicab service shall transport metered-fare passengers over the shortest available route. A predetermined calculated full fare shall be calculated on the basis of the shortest available route.

[18.3.2.22 NMAC - Rp, 18.3.2.26 NMAC, 2/13/2015; A, 11/30/2016]

#### **18.3.2.23 ADDITIONAL REQUIREMENTS FOR SCHEDULED SHUTTLE SERVICES:**

**A. Posting of schedules.** A scheduled shuttle service shall post in a conspicuous place, readily available for public inspection, at each station or place where passengers are regularly received or discharged, at least one copy of its current schedule of arrivals and departures.

**B. Compliance with time schedules required.** A scheduled shuttle service picking up passengers may delay its departure when reserved passengers are delayed as a result of another carrier's late arrival or delayed baggage handling, provided that:

(1) if the particular vehicle has no loaded passengers at the particular time and has no other pickup points on its route, the scheduled shuttle service may delay its departure for any reasonable period of time for late arriving reserved passengers;

(2) if the particular vehicle has other passengers loaded, but has no other pickup points on its route, the shuttle service may delay its departure up to 15 minutes past its scheduled departure time.

**C. Interruption of service.** Each scheduled shuttle service shall promptly report in writing to the commission any interruption in service which is likely to continue for more than 24 hours, stating in detail the cause of the interruption and its expected duration.

[18.3.2.23 NMAC - Rp, 18.3.2.27 NMAC, 2/13/2015]

#### **18.3.2.24 ADDITIONAL REQUIREMENTS FOR CERTIFICATED SERVICE CARRIERS AND PERMITTED SERVICE CARRIERS:**

Each certificated service carrier and permitted service carrier shall obtain a nationwide criminal background report for all employed and contract drivers and for all other persons employed by household goods service carriers who enter private dwellings in the course of household goods service and maintain all such reports in the employee's personnel file.

[18.3.2.24 NMAC - N, 2/13/2015]

#### **18.3.2.25 TEMPORARY AUTHORITY:**

**A. Grant discretionary.** Pursuant to Section 65-2A-11 NMSA 1978 the commission may, in its discretion, but is not required to, grant temporary authority to a person applying for a certificate or permit, amendment of a certificate or permit or for lease or transfer of all or part of a certificate if it finds that the applicant meets the requirements of Section 65-2A-11 NMSA 1978. An application for temporary authority shall be made on the form prescribed by the director.

**B. Original or amended authority.** If the application for temporary authority is made in connection with an application for an original certificate or permit, lease or transfer of all or part of a certificate or permit or for amendment of a certificate or permit, the commission shall not grant temporary authority unless:

(1) the director has certified that the application for permanent operating authority contains all of the information and documents required by 18.3.2.13 NMAC; and

(2) the applicant has shown that the public has an urgent and immediate need for the proposed transportation service by filing affidavits from one or more persons having need of the service; and either:

(a) stating that no other motor carrier is providing the transportation service in the territory the applicant seeks to serve; or

(b) stating that another motor carrier is providing such transportation service, but that such transportation service is inadequate in rates, routes, or service; or

(c) if the application is for non-emergency medical transportation, the applicant may provide a valid New Mexico human services department ("NMHSD") contract, or letter of commitment, that meets all federal and state legal guidelines, in lieu of an affidavit; if the applicant is a subcontractor of a party in privity with NMHSD, then the applicant must submit both a copy of the actual contract of the party in privity with NMHSD, and either applicant's contract, or letter of intent with the subcontracting party, in lieu of an affidavit; and

- (3) the applicant submits the fee required by Section 65-2A-36 NMSA 1978.

**C. Public safety, a governmental program, or a specific public event.** The commission deems that ambulance service directly involves public safety and that nonemergency medical transportation service directly involves a governmental program. The commission shall not grant temporary authority for any transportation service except ambulance and nonemergency medical transportation unless the applicant files at least five affidavits from non-party persons stating the specific governmental program, specific public event or specific threat to public safety that the application addresses and stating how granting the application for temporary authority will address the public's immediate need for the service.

**D. Procedure and notice.** During the notice period, in ruling on an application for temporary authority, the commission shall not consider any objections, protests or other filings made by any protestor or third party. The notice period for any application for a temporary authority shall last until the commission appoints a hearing examiner or 20 days, whichever is longer. If the commission does not rule on an application for temporary authority before the expiration of the notice period, the application shall be deemed denied. After the expiration of the notice period, and provided a hearing has not already been held, the applicant or any protestor may request a hearing on either the grant or denial of the application for temporary authority by complying with all of the following procedures.

(1) The request for hearing must be filed within five days of the expiration of the notice period.

(2) If the commission granted a temporary authority during the notice period, staff or any other party requesting a hearing on the grant of temporary authority must include written direct testimony specifically addressing the accuracy or veracity of information contained in the applicant's application for temporary authority, application for an original certificate or permit, application for lease or transfer of all or part of a certificate or permit or application for amendment of a certificate or permit. Within five days of receipt of the written direct testimony, staff or any other party supporting the grant of temporary authority may file written rebuttal testimony addressing only matters raised in the written direct testimony.

(3) If the commission denied the application for temporary authority during the notice period, staff or any party requesting a hearing on the denial of temporary authority must include written direct testimony containing information addressing any of the Section 65-2A-11 NMSA 1978 criteria for granting a temporary authority. Within five days of receipt of the written direct testimony, staff or any other party supporting the denial of temporary authority may file written rebuttal testimony addressing only matters raised in the written direct testimony.

(4) Provided a hearing on the merits of the application for temporary authority has been held, once the commission has rendered its decision, no further legal

proceedings involving the temporary authority other than extensions of the temporary authority will be considered by the commission.

**E. Director's certification.** The director shall certify to the commission that the application contains the required information and documents and that the required affidavits and fee have been filed, and shall make a recommendation to the commission as to whether or not it should grant the temporary authority.

[18.3.2.25 NMAC - Rp, 18.3.2.29 NMAC, 2/13/2015]

#### **18.3.2.26      SUSPENSION OR REVOCATION OF OPERATING AUTHORITIES:**

**A. For lapse in financial responsibility.** Upon receipt of a form K, the director shall issue a letter notifying a motor carrier that its operating authority has been indefinitely suspended as of the date of the letter, without further notice or a public hearing, until the commission receives a valid form E and, if applicable, a valid form H. The letter shall also state that suspension of the operating authority will not take effect if the commission receives a valid form E and, if applicable, a valid form H, before the motor carrier's financial responsibility coverage expires.

**B. For safety violation.** Upon receipt of sufficient information that a motor carrier's operations endanger the public health or safety, the director shall present to the commission at its next meeting or at an emergency meeting the safety requirement of the Motor Carrier Act or the rules of the commission or motor transportation division (MTD) alleged to have been violated and all facts known to the director concerning the matter. If the commission is satisfied that the facts show that a motor carrier's operations endanger the public health and safety and merit immediate temporary suspension, the commission shall personally serve or mail by certified mail, return receipt requested, an order notifying a motor carrier that its operating authority is temporarily suspended. The order shall set the matter for an expedited hearing. The commission may authorize issuance of the order over the signature of a single commissioner. The motor carrier shall suspend operations immediately upon receipt of the commission's order. If the commission determines after the hearing that the motor carrier's operations prior to the suspension were not endangering the public health or safety, the commission shall vacate the suspension order and the motor carrier shall be allowed to resume operations without applying for reinstatement following involuntary suspension or paying any additional fees. The commission may impose lesser temporary restraints or conditions if it believes that the public health and safety will not be compromised.

**C. For failure to render reasonably continuous and adequate service.** The commission may suspend or revoke the operating authority, or impose a fine, on a full service carrier that does not meet the standards for reasonably continuous and adequate service contained in these rules and in the Motor Carrier Act. In determining whether the size of the fleet deployed by a full-service transportation service meets the requirements for continuous and adequate service, the commission shall consider

competition and the availability of other transportation and the effects of competition by both competing transportation services and competing transportation network company services on the public need, volume of demand and expense of providing full service in the full-service territory.

[18.3.2.26 NMAC - Rp, 18.3.2.30 NMAC, 2/13/2015; A, 11/30/2016]

## **PART 3: FINANCIAL RESPONSIBILITY**

### **18.3.3.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.3.3.1 NMAC - Rp, 18.3.3.1 NMAC, 2-13-15]

### **18.3.3.2 SCOPE:**

**A.** This rule applies to all motor carriers subject to the jurisdiction of the commission.

**B.** This rule also applies to persons who provide a service for which they charge at the time the service is rendered and who transport the public incidentally to providing that service. For purposes of this rule only, such persons are considered motor carriers.

[18.3.3.2 NMAC - Rp, 18.3.3.2 NMAC, 2-13-15]

### **18.3.3.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 65-2A-3.S, 65-2A-4, and 65-2A-18 NMSA 1978.

[18.3.3.3 NMAC - Rp, 18.3.3.3 NMAC, 2-13-15]

### **18.3.3.4 DURATION:**

Permanent.

[18.3.3.41 NMAC - Rp, 18.3.3.4 NMAC, 2-13-15]

### **18.3.3.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited at the end of a section.

[18.3.3.5 NMAC - Rp, 18.3.3.5 NMAC, 2-13-15]

### **18.3.3.6 OBJECTIVE:**

The purpose of this rule is to implement Section 65-2A-18 NMSA 1978.

[18.3.3.6 NMAC - Rp, 18.3.3.6 NMAC, 2-13-15]

#### **18.3.3.7 DEFINITIONS:**

See 18.3.1.7 NMAC.

[18.3.3.7 NMAC - Rp, 18.3.3.7 NMAC, 2-13-15]

#### **18.3.3.8 PROOF OF FINANCIAL RESPONSIBILITY:**

Every motor carrier must file proof of financial responsibility with the commission. The required financial responsibility must be in the exact legal and "doing business as" name of the motor carrier.

**A. Public liability financial responsibility.** The commission will accept the following documents as proof of the required public liability financial responsibility:

(1) a certificate showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to transact insurance business in New Mexico on uniform filing form E for public liability insurance; or

(2) a surety bond issued by a company authorized to do surety business in New Mexico; or

(3) a certified statement from the office of superintendent of insurance that the motor carrier has met all requirements to be self-insured.

**B. Cargo liability financial responsibility.** The commission will accept as proof of the required cargo liability financial responsibility a certificate showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to transact insurance business in New Mexico on uniform filing form H.

[18.3.3.8 NMAC - Rp, 18.3.3.8 NMAC, 2-13-15]

#### **18.3.3.9 INSURANCE FILINGS:**

Insurance companies must mail original uniform filing forms E, H, and K to the New Mexico public regulation commission, transportation division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269. The commission will not accept copies of uniform filings. In lieu of mailing, insurance companies may also electronically transmit uniform filing forms E, H, and K as allowed by the commission. The commission will make available, on its website, information directing insurance companies how to file forms E, H, and K (electronically).

[18.3.3.9 NMAC - Rp, 18.3.3.9 NMAC, 2-13-15]



#### **18.3.3.10 MINIMUM LIMITS OF PUBLIC LIABILITY INSURANCE:**

**A.** Passenger services providing service in vehicles with a seating capacity of sixteen (16) passengers or more must maintain the minimum levels of financial responsibility required by 49 CFR 387.33.

**B.** Passenger services providing service in vehicles with a seating capacity of fifteen (15) passengers or less, excluding taxicab services having a seating capacity of less than seven (7) passengers, must maintain the minimum levels of financial responsibility required by 49 CFR 387.33.

**C.** Taxicab services having a seating capacity of less than seven (7) passengers must maintain a combined single-limit public liability insurance policy of at least one million dollars (\$1,000,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

**D.** Towing services, repossession services, household goods movers, and motor carriers of property with a gross vehicle weight rating of 10,001 pounds or more must maintain the minimum levels of financial responsibility required by 49 CFR 387.9 The minimum level of financial responsibility covers environmental restoration, as required 49 CFR 387.301(a)(1).

**E.** Towing services, repossession services, household goods movers, and motor carriers of property with a gross vehicle weight rating of 10,000 pounds or less must maintain a combined single-limit public liability insurance policy of at least seven hundred and fifty thousand dollars (\$750,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

**F.** Motor carriers of property transporting hazardous matter in intrastate commerce in New Mexico must maintain the minimum levels of financial responsibility required by 49 CFR 387.9 for interstate commerce regardless of gross vehicle weight.

[18.3.3.10 NMAC - Rp, 18.3.3.10 NMAC, 2-13-15]

#### **18.3.3.11 ADDITIONAL SPECIALTY INSURANCE REQUIREMENTS:**

**A.** Towing services must maintain fifty thousand dollars (\$50,000) of both on-the-hook and garage-keepers' liability insurance.

**B.** Household goods carriers must maintain fifty thousand dollars (\$50,000) cargo liability insurance per shipper for loss or damage to cargo of the shipper.

[18.3.3.11 NMAC - Rp, 18.3.3.11 NMAC, 2-13-15]

#### **18.3.3.12 MAXIMUM DEDUCTIBLE:**

No motor carrier insurance policy shall have a deductible in excess of five thousand dollars (\$5,000), except that the commission may approve a higher deductible for a motor carrier that files:

**A.** a surety bond with the commission in an amount equal to the difference between five thousand dollars (\$5,000) and the amount of the higher deductible; or

**B.** a certified statement from the office of superintendent of insurance that the person has met the requirements to be self-insured up to a limit equal to or greater than the amount of the higher deductible.

[18.3.3.12 NMAC - Rp, 18.3.3.12 NMAC, 2-13-15]

#### **18.3.3.13 CANCELLATION OF INSURANCE:**

**A. Required expiration date.** All motor carrier insurance policies must be written or endorsed with an expiration date "until canceled."

**B. Intrastate.** An intrastate motor carrier may cancel its insurance by having its insurance company file with the commission or its designee a uniform filing form K stating that the motor carrier's public liability insurance or cargo insurance will expire in thirty (30) days.

[18.3.3.13 NMAC - Rp, 18.3.3.13 NMAC, 2-13-15]

#### **18.3.3.14 AUTOMATIC SUSPENSION OF OPERATING AUTHORITY:**

The commission shall, in accordance with 18.3.2.26 NMAC, suspend the operating authority of a motor carrier if it fails to continuously maintain the amounts of financial responsibility required by this rule. If a motor carrier's operating authority explicitly authorizes seasonal transportation service, the continuous coverage requirement of this rule shall apply only during the seasonal period during which the motor carrier is authorized to provide service.

[18.3.3.14 NMAC - Rp, 18.3.3.14 NMAC, 2-13-15]

### **PART 4: SAFETY REQUIREMENTS**

#### **18.3.4.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission, Transportation Division.

[18.3.4.1 NMAC - Rp, 18.3.4.1 NMAC, 2/13/2015]

#### **18.3.4.2 SCOPE:**

**A.** This rule applies to all drivers, all motor carriers subject to the jurisdiction of the commission, and all motor vehicles operated by the motor carrier in the course of its operations, subject to the exceptions and limitations stated in particular sections of this rule.

**B.** Whenever this rule prescribes a duty or imposes a prohibition on a driver, the motor carrier that uses, employs, or contracts with the driver shall require its drivers to observe the duty or prohibition.

**C.** A motor carrier who employs himself or herself as a driver must comply with both the rules that apply to motor carriers and the rules that apply to drivers.

**D.** The Commission may waive any specific requirement of this part if it conflicts with a rule or requirement of another state agency, governmental entity, or law enforcement entity or if such an agency requests in writing that the rule be waived.

[18.3.4.2 NMAC - Rp, 18.3.4.2 NMAC, 2/13/2015; A, 01/30/3018]

#### **18.3.4.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 65-2A-4, 65-2A-19.and 65-6-4 NMSA 1978.

[18.3.4.3 NMAC - Rp, 18.3.4.3 NMAC, 2/13/2015]

#### **18.3.4.4 DURATION:**

Permanent.

[18.3.4.4 NMAC - Rp, 18.3.4.4 NMAC, 2/13/2015]

#### **18.3.4.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited at the end of a section.

[18.3.4.5 NMAC - Rp, 18.3.4.5 NMAC, 2/13/2015]

#### **18.3.4.6 OBJECTIVE:**

The purpose of this rule is to implement Sections 65-2A-19 and 65-6-4 NMSA 1978 by establishing safety requirements for drivers, motor vehicles, and motor carriers subject to the jurisdiction of the commission.

[18.3.4.6 NMAC - Rp, 18.3.4.6 NMAC, 2/13/2015; A, 01/30/2018]

#### **18.3.4.7 DEFINITIONS:**

In addition to the definitions in 18.3.1.7 NMAC, as used in this rule:

**A. CDL driver** means a driver who is required by 49 CFR Section 383.3 or Section 66-5-59 NMSA 1978 to have a commercial driver's license;

**B. driver** means a person who drives a motor vehicle as, for, or on behalf of a motor carrier;

**C. MVD** means the motor vehicle division of the New Mexico taxation and revenue department.

[18.3.4.7 NMAC - Rp, 18.3.4.7 NMAC, 2/13/2015; A, 01/30/2018]

#### **18.3.4.8 AVAILABILITY OF CITED MATERIAL:**

The sections of the code of federal regulations cited in this rule may be found on the government printing office website at <http://www.gpoaccess.gov/cfr/>. Printed copies of the cited motor carrier regulations are also available at nominal cost from the New Mexico trucking association, listed in the Albuquerque telephone directory.

[18.3.4.8 NMAC - Rp, 18.3.4.8 NMAC, 2/13/2015]

#### **18.3.4.9 SUBSTITUTION OF TERMS:**

Wherever one of the following terms appears in a part or section of title 49 adopted by reference in this rule, substitute the provided term or phrase:

**A.** for the terms "commerce" and "interstate commerce," substitute "intrastate commerce," as defined in 49 CFR Section 390.5;

**B.** for the terms "commercial motor vehicle," "bus," "truck," and "truck tractor," substitute "motor vehicle," as defined in Section 65-2A-3 NMSA 1978, except in 49 CFR Section 391.21(b)(11). The term "motor vehicle" shall not include any limitations based on gross combination weight rating, gross vehicle weight rating, or passenger seating capacity;

**C.** for the abbreviation "FMCSA," substitute "public regulation commission" or "PRC".

[18.3.4.9 NMAC - Rp, 18.3.4.9 NMAC, 2/13/2015]

#### **18.3.4.10 REQUIREMENTS APPLICABLE TO ALL DRIVERS:**

##### **A. Drug and alcohol testing:**

(1) For drivers of small passenger vehicles.

(a) A transportation service shall implement and enforce a zero-tolerance policy regarding drug and alcohol use by transportation service drivers. The zero-tolerance policy shall prohibit any use or impairment due to intoxicating drugs or liquor while a transportation service driver is driving.

(b) A transportation service shall publish on its website notice of its zero-tolerance policy, as well as procedures for a rider to report a complaint about a driver suspected to have been under the influence of illegal drugs or alcohol during a ride.

(c) A transportation service shall immediately conduct an investigation into every reported complaint of violation of its zero-tolerance policy, and the policy shall include procedures for suspension or termination of transportation service drivers.

(d) A transportation service shall maintain records relevant to the enforcement of the requirements of this section for a period of at least four years from the date that a rider complaint is received by the transportation service.

(e) Passenger services may voluntarily adopt and implement more stringent policies and procedures for drivers of small passenger vehicles, including full or modified forms of federal drug and alcohol testing.

(2) Procedures for transportation workplace drug and alcohol testing programs for drivers other than drivers of small passenger vehicles. This rule adopts by reference title 49, part 40 of the code of federal regulations in its entirety.

(3) Controlled substances and alcohol use and testing for drivers other than drivers of small passenger vehicles. This rule adopts by reference title 49, part 382 of the code of federal regulations, except for sections 382.117 and 382.119.

**B. Hours of service of all drivers except drivers of ambulance services:**

(1) drivers of small passenger vehicles; a driver shall not drive the service vehicle for more than 12 hours out of any 24 hour period;

(2) all other drivers: this rule adopts by reference Title 49, Part 395 of the Code of Federal Regulations, except that section 395.1(e)(1) is amended to add: "or operates in intrastate commerce within a 150 air-mile radius of the normal work reporting location."

**C. Hours of service for drivers of ambulance services:** Ambulance services shall adopt and enforce a policy governing hours of service for their drivers.

[18.3.4.10 NMAC - Rp, 18.3.4.10 NMAC, 2/13/2015; A, 11/30/2016]

**18.3.4.11 REQUIREMENTS APPLICABLE ONLY TO CDL DRIVERS:**

**A. Commercial drivers' licenses.** This rule adopts by reference chapter 66, article 5, part 1A NMSA 1978.

**B. Qualifications of drivers and longer combination vehicle (LCV) driver instructors.** This rule adopts by reference title 49, part 391 of the code of federal regulations with the following changes:

(1) Section 391.11(b)(1) is amended to add: "or is 18 years old and drives only in intrastate commerce motor vehicles that are not required to be placarded for hazardous materials;"

(2) Section 391.15 is not adopted;

(3) Section 391.49(a) is amended to add: "or the director of MVD has granted a waiver to that person pursuant to 18.19.5.33 NMAC."

**C. Driving of commercial motor vehicles.** This rule adopts by reference title 49, part 392 of the code of federal regulations in its entirety.

**D. Parts and accessories necessary for safe operation.** This rule adopts by reference title 49, part 393 of the code of federal regulations in its entirety.

**E. Inspection, repair and maintenance.** This rule adopts by reference title 49, part 396 of the code of federal regulations in its entirety.

**F. Transportation of hazardous material; driving and parking rules.** This rule adopts by reference title 49, part 397 of the code of federal regulations in its entirety.

[18.3.4.11 NMAC – Rp, 18.3.4.11 NMAC, 2/13/2015]

#### **18.3.4.12 REQUIREMENTS APPLICABLE ONLY TO NON-CDL DRIVERS:**

**A. Operators' licenses:** is rule adopts by reference the licensing provisions of the New Mexico motor vehicle code, Sections 66-5-1 through 66-5-48, NMSA 1978.

**B. Qualifications, investigations, inquiries, reporting, records, driving, equipment, inspection repair and maintenance by and for all passenger vehicles and drivers:**

(1) Before allowing a transportation service driver to provide carriage:

(a) the prospective driver shall submit an application to the transportation service that includes the individual's address, age, driver's license number and state, and driving history;

(b) the transportation service shall obtain a local and national criminal background check for the prospective driver that shall include:

(i) multistate or multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation and primary source search; and

(ii) a national sex offender registry; and

(iii) the transportation service shall obtain and review a driving history research report for the prospective driver.

(2) A transportation service shall not permit a person to act as a transportation service driver who:

(a) has had more than three moving violations in the preceding three-year period or one violation in the preceding three-year period involving any attempt to evade law enforcement, reckless driving or driving on a suspended or revoked license;

(b) has been convicted within the past seven years of:

(i) a felony;

(ii) misdemeanor driving under the influence, reckless driving, leaving the scene of an accident or any other driving-related offense or any misdemeanor violent offense or sexual offense; or

(c) more than three misdemeanors of any kind;

(d) is identified by a national sex offender registry;

(e) does not possess a valid license; or

(f) is not at least 21 years old, except as provided in Subparagraph (g) of Paragraph (2) of Subsection B of 18.3.4.12 NMAC; or

(g) with respect to drivers of full-service ambulance services, is not at least 18 years old.

(3) A transportation service shall not use a small passenger vehicle that:

(a) is not in compliance with all federal, state and local laws concerning the operation and maintenance of the motor vehicle;

(b) has fewer than four doors; or

(c) is designed to carry more than eight passengers, including the driver.

(4) A transportation service shall inspect or cause to be inspected every motor vehicle used by a driver to provide transportation services before allowing the driver to use the motor vehicle to provide transportation services and not less than once each year thereafter. The type of inspection required shall follow the commission rules for annual inspections for transportation network company service driver vehicles promulgated as 18.17.1.8 NMAC.

(5) Provided that passenger services may voluntarily adopt and implement other more stringent policies and procedures for small passenger vehicles and drivers of small passenger vehicles, including full or modified forms of federal safety policies and procedures.

**C. Qualifications of drivers:** This rule adopts by reference only the following specific sections of 49 CFR Part 391:

- (1) **general qualifications of drivers:** Section 391.11(b)(8);
- (2) **application for employment:** Section 391.21;
- (3) **investigations and inquiries:** Section 391.23, except that Section 391.23(d)(2) the term "as specified in section 390.15(b)(1) of this chapter" is substitute for this rule by the term, "in the uniform crash report form prescribed by the state of New Mexico";
- (4) **annual inquiry and review of driving record:** Section 391.25, except that:
  - (a) Subsections 391.25(a) and (b) are amended to delete: "Except as provided in subpart G of this part;"
  - (b) Section 391.25 shall not apply to volunteer drivers;
- (5) **record of violations:** Section 391.27, except that section 391.27(a) is amended to delete: "Except as provided in subpart G of this part;"
- (6) **road test:** Section 391.31, except that section 391.31(a) is amended to delete: "Except as provided in subpart G;"
- (7) **equivalent of road test:** Section 391.33; except that an ambulance service may also accept from a person who seeks to drive an ambulance a copy of a certificate of completion from an emergency vehicle operator's course approved by the emergency medical services (EMS) bureau of the department of health (DOH);
- (8) **physical qualifications for drivers:** Section 391.41, except that drivers for ambulance are exempt from Section 391.41(a);



(9) **medical examinations; certificate of physical examination:** Section 391.43, except that for volunteer drivers of ambulance services only, the medical examiner (as defined in 49 CFR Section 390.5) shall perform a medical examination sufficient to enable the medical examiner to certify, in accordance with Subsection C of 18.19.5.33 NMAC, whether or not the driver has a condition that may interfere with the safe operation of an ambulance;

(10) **persons who must be medically examined and certified:** Section 391.45, except that this section shall not apply to volunteer drivers;

(11) **general requirements for driver qualification files:** Section 391.51, except that Subsections 391.51(b)(8) and (d)(5) are not adopted;

(12) **driver investigation history file:** Section 391.53, except that this section shall not apply to commuter services.

**D. Driving of commercial motor vehicles:** This rule adopts by reference the following sections of 49 CFR Part 392:

(1) **ill or fatigued operator:** Section 392.3;

(2) **drugs and other substances:** Section 392.4;

(3) **alcohol prohibition:** Section 392.5;

(4) **emergency equipment, inspection and use:** Section 392.8, except that this section is amended to substitute "Section 66-3-849 NMSA 1978", certain vehicles to carry flares or other warning devices, for the federal reference to "Section 393.95";

(5) **inspection of cargo, cargo securement devices and systems:** Section 392.9, except that this section shall only apply to a motor vehicle with a gross vehicle weight rating of 10,000 pounds or more;

(6) **hazardous conditions; extreme caution:** Section 392.14, except that this section shall not apply to ambulance services;

(7) **use of seat belts:** Section 392.16;

(8) **obscured lamps or reflectors:** Section 392.33;

(9) **ignition of fuel; prevention:** Section 392.50;

(10) **safe operation, buses:** Section 392.62;

(11) **towing or pushing loaded buses:** Section 392.63;

(12) **riding within closed commercial motor vehicles without proper exits:** Section 392;

(13) **carbon monoxide; use of commercial motor vehicle when detected:** Section 392.66;

(14) **radar detectors; use and/or possession:** Section 392.71.

**E. Equipment for vehicles, seatbelts and child restraints:** This rule adopts by reference Sections 66-3-801 through 66-3-901 NMSA 1978. In addition, passenger vehicles capable of transporting 15 or fewer persons including the driver shall provide a separate seat belt assembly for each passenger and shall ensure child restraint systems comply with all federal and state requirements.

**F. Inspection, repair and maintenance for vehicles:** This rule adopts by reference the following sections of 49 CFR Part 396:

(1) **inspection, repair and maintenance:** Section 396.3, but this section shall not apply to commuter services;

(2) **lubrications:** Section 396.5;

(3) **driver vehicle inspection reports:** Section 396.1;

(4) **driver inspection:** Section 396.13;

(5) **periodic inspection:** Section 396.17;

(6) **inspector qualifications:** Section 396.19;

(7) **periodic inspection recordkeeping requirements:** Section 396.21;

(8) **equivalent to periodic inspection:** Section 396.23(a);

(9) **qualifications of brake inspectors:** Section 396.25.

[18.3.4.12 NMAC - Rp, 18.3.4.12 NMAC, 7/1/2024; A/E, 12/23/2024]

#### **18.3.4.13 IDENTIFICATION OF EQUIPMENT:**

**A. Issuance.** The commission shall assign an NMPRC transportation number to each motor carrier or commuter service when it issues an operating authority. Any transportation number issued by the New Mexico state corporation commission shall be changed to an NMPRC transportation number and displayed as required by this rule.

**B. Display.** The letters and numbers must be not less than one-half inch (1/2") wide and not less than two and one half inches (2 1/2") high. The transportation number will be displayed in the following manner: "NMPRC 123".

**(1) Placement on limousines.** The NMPRC transportation number must be distinctly displayed on the front and rear bumpers of each limousine operated in New Mexico.

**(2) Placement on all other motor vehicles.** The name or d/b/a name of the motor carrier or commuter service and the NMPRC transportation number must be distinctly displayed and permanently affixed to the right and left doors, or sides of the power unit, of each motor vehicle operated in New Mexico, except for motor vehicles leased or rented for authorized operations.

**C. Exceptions.**

**(1)** Interstate motor carriers that display a federal transportation number are not required to display the NMPRC transportation number.

**(2)** Intrastate motor carriers that display a New Mexico safety identification number issued by MVD are not required to display the NMPRC transportation number.

[18.3.4.13 NMAC – Rp, 18.3.4.13 NMAC, 2/13/2015]

**18.3.4.14 MINIMUM EQUIPMENT STANDARDS FOR VEHICLES OTHER THAN SMALL PASSENGER VEHICLES:**

A motor carrier shall only use equipment for vehicles other than small passenger vehicles that has been produced and constructed by a manufacturer of such equipment that regularly produces such equipment of guaranteed quality. The director may approve the use of non-guaranteed equipment if the motor carrier submits an application for use of such equipment accompanied by a verified statement from a reputable testing laboratory regularly engaged in the testing of the same equipment certifying that the equipment is appropriate for the purpose for which it will be used. The motor carrier shall bear all costs of testing and certification.

[18.3.4.14 NMAC - N, 2/13/2015; A, 11/30/2016]

**PART 5: OPERATING REQUIREMENTS [REPEALED]**

[This part was repealed on January 1, 2005 and replaced by 18.3.4 NMAC]

**PART 6: TARIFFS**

**18.3.6.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.3.6.1 NMAC - Rp, 18.3.6.1 NMAC, 2/13/2015]

**18.3.6.2 SCOPE:**

This rule applies to tariffed service carriers.

[18.3.6.2 NMAC - Rp, 18.3.6.2 NMAC, 2/13/2015]

**18.3.6.3 STATUTORY AUTHORITY:**

Sections 8-8-4 and 65-2A-4 NMSA 1978.

[18.3.6.3 NMAC - Rp, 18.3.6.3 NMAC, 2/13/2015]

**18.3.6.4 DURATION:**

Permanent.

[18.3.6.4 NMAC - Rp, 18.3.6.4 NMAC, 2/13/2015]

**18.3.6.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited at the end of a section.

[18.3.6.5 NMAC - Rp, 18.3.6.5 NMAC, 2/13/2015]

**18.3.6.6 OBJECTIVE:**

The purpose of this rule is to implement Sections 65-2A-20 and 65-2A-21 NMSA 1978.

[18.3.6.6 NMAC - Rp, 18.3.6.6 NMAC, 2/13/2015]

**18.3.6.7 DEFINITIONS:**

See 18.3.1.7 NMAC.

[18.3.6.7 NMAC - Rp, 18.3.6.71 NMAC, 2/13/2015]

**18.3.6.8 COMMENCEMENT OF OPERATIONS:**

No motor carrier may commence operations or perform any new service under its operating authority until the commission has approved tariffs containing rates, schedules, and terms and conditions for the services to be performed.

[18.3.6.8 NMAC - Rp, 18.3.6.8 NMAC, 2/13/2015]

#### **18.3.6.9 CONTENTS OF TARIFFS:**

**A.** All proposed tariffs shall be in the form approved by the commission and shall include for scheduled shuttle services specific presentment times at each terminal location.

**B.** A motor carrier may not include a provision for mandatory gratuities in a tariff.

**C.** A motor carrier may not limit its liability for negligence through terms and conditions of service in its tariff.

[18.3.6.9 NMAC - Rp, 18.3.6.9 NMAC, 2/13/2015]

#### **18.3.6.10 COMPUTATION OF DISTANCES:**

**A.** A motor carrier shall use the least expensive route when charging by mileage, consistent with existing events and road and weather conditions, unless the passenger or customer directs otherwise.

**B.** A motor carrier other than a taxicab service shall compute actual distances using odometer readings, Global Positioning System (GPS) based data, or the official road map of New Mexico issued by the New Mexico department of transportation.

**C.** Any remaining fraction of less than 1/2 (.5) mile will be omitted; any remaining fraction of 1/2 (.5) mile or greater will be increased to the next whole mile.

[18.3.6.10 NMAC - Rp, 18.3.6.11 NMAC, 2/13/2015]

#### **18.3.6.11 TARIFFS TO BE AVAILABLE:**

A motor carrier subject to this rule shall maintain at its principal place of business and at each of its terminal locations, and make available for inspection to the public at all times the motor carrier is open for business, all of the tariffs containing rates, terms and conditions, and the general schedule of service, and the most current specific schedule of service in effect.

[18.3.6.11 NMAC - Rp, 18.3.6.12 NMAC, 2/13/2015]

#### **18.3.6.12 CHANGES IN TARIFFS:**

**A. Application.** A motor carrier that proposes to change its rates, terms and conditions of service, or general schedule, shall file an application for a change in tariff.

**(1)** An application for amendment of tariff rates that increases any tariff rate to a level greater than that previously approved by the commission for an ambulance service or a towing service providing non-consensual tows shall be submitted to the director for review prior to filing, and shall include:

- (a)** a proposed tariff including the proposed changes in rates;
- (b)** a balance sheet for the preceding fiscal year;
- (c)** an income statement for the preceding fiscal year;
- (d)** all documentary evidence which the applicant believes supports its proposed change in rates; and
- (e)** pre-filed direct testimony explaining why a change in rates is required for the motor carrier to achieve revenue levels that will provide a flow of net income adequate to support reasonable expense levels, including reasonable depreciation expense and repayment of a reasonable level of debt, and permit the raising of needed equity capital.

**(2)** An application for amendment of any tariff rate to a level greater than that previously approved by the commission for a municipal taxicab service carrier, a scheduled shuttle service carrier, or a household goods service carrier shall include:

- (a)** a proposed tariff including the proposed changes in rates;
- (b)** a side-by-side comparison of a household goods service carrier's proposed increased rates and the rates contained in the household goods service carrier's maximum tariff; and
- (c)** a side-by-side comparison of all changes in rates and terms of service for a municipal taxicab service carrier or a scheduled shuttle service carrier.

**(3)** An application for amendment of tariff rates for any motor carrier not listed in Paragraphs (1) and (2) of this Subsection A of 18.3.6.12 NMAC shall include a proposed tariff.

**(4)** An application for a change in terms of service or a change in a daily time schedule for a scheduled shuttle service shall include:

- (a)** a proposed tariff including the proposed changes in terms of service or daily time schedule; and
- (b)** a description of the proposed changes.

**B. Docketing and notice.** The applicant shall file the application with the filing fee and serve on, and email a copy to, the transportation division of the commission on the date filed. The director shall promptly post notice of a filed application on the commission's website. The carrier may implement the tariff's terms of service and rates 20 days after filing pursuant to Subsection F of 65-2A-20 NMSA 1978, unless the director disapproves the application as incomplete, and except for any specific terms of service which the director or commission may disapprove, or any specific rate increases above prior approved rates for a municipal taxicab service or scheduled shuttle service that the director or commission may disapprove. The director shall file any disapproval of completeness or of specific terms of service or rates in the docket within 20 days of the date of filing of the application. The commission may file disapproval of specific terms of service or rates in the docket within 20 days of the date of filing of the application. The commission's filed disapproval means that for purposes of Subsection H of Section 65-2A-20 NMSA 1978 the commission, at that time, does not deem the increase to be reasonable.

[18.3.6.12 NMAC - Rp, 18.3.6.14 NMAC, 2/13/2015; A, 11/30/2016]

## **PART 7: REPORTS, RECORDS AND ACCOUNTS**

### **18.3.7.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.3.7.1 NMAC - Rp, 18.3.7.1 NMAC, 2/13/2015]

### **18.3.7.2 SCOPE:**

**A.** 18.3.7.8 NMAC through 18.3.7.13 NMAC apply to all motor carriers subject to the jurisdiction of the commission other than in the operation of small passenger vehicles, except that ambulance services are exempt from 18.3.7.8, 18.3.7.9, and 18.3.7.13 NMAC.

**B.** 18.3.7.14 NMAC through 18.3.7.16 NMAC apply only to motor carriers operating pursuant to a certificate or a permit other than in the operation of small passenger vehicles.

**C.** The maintenance, inspection and production of documents for carriers providing passenger transportation services through the use of small passenger vehicles is governed by the following provisions:

**(1)** A transportation service shall maintain:

**(a)** individual ride records for at least four years from the date each ride was provided; and

(b) individual records of transportation service drivers for at least four years after the driver's relationship with the transportation service has ended.

(2) In response to a specific complaint, the public regulation commission, its employees or its duly authorized agents may inspect those records held by a transportation service for the investigation and resolution of the complaint.

(3) No more than semiannually and as determined by the public regulation commission, the commission, its employees or its duly authorized agents may, in a mutually agreed setting, inspect those records held by a transportation service whose review is necessary to ensure public safety; provided that such review shall be on an audit rather than a comprehensive basis.

[18.3.7.2 NMAC - Rp, 18.3.7.2 NMAC, 2/13/15; A, 11/30/2016; A, 01/30/2018]

#### **18.3.7.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 65-2A-4, and 65-2A-29 NMSA 1978.

[18.3.7.3 NMAC - Rp, 18.3.7.3 NMAC, 2/13/2015]

#### **18.3.7.4 DURATION:**

Permanent.

[18.3.7.4 NMAC - Rp, 18.3.7.1 NMAC, 2/13/2015]

#### **18.3.7.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited at the end of a section.

[18.3.7.5 NMAC - Rp, 18.3.7.5 NMAC, 2/13/2015]

#### **18.3.7.6 OBJECTIVE:**

The purpose of this rule is to implement Section 65-2A-29 NMSA 1978.

[18.3.7.6 NMAC - Rp, 18.3.7.6 NMAC, 2/13/2015]

#### **18.3.7.7 DEFINITIONS:**

See 18.3.1.7 NMAC.

[18.3.7.7 NMAC - Rp, 18.3.7.7 NMAC, 2/13/2015]

#### **18.3.7.8 ANNUAL REPORT:**



Every motor carrier except ambulance services shall prepare and file with the commission an annual report of its operations.

**A. Date of filing.** Motor carriers shall file reports on or before March 31 of each year for the immediately preceding calendar year.

**B. Form and signature of annual report:** The annual report must be made on the form prescribed by the director. The accuracy of the contents of the report must be affirmed by signature of the owner of the motor carrier, if the motor carrier is a sole proprietorship; of a partner, if the motor carrier is a partnership; of an authorized member, if the motor carrier is a limited liability company; or of the president and secretary, if the motor carrier is a corporation.

**C. Failure to file annual report:** The commission may assess fines or may suspend or revoke the operating authority of a motor carrier for failure to file an annual report by the applicable filing deadline. Failure to timely file an annual report will create a presumption that the motor carrier holding the operating authority has failed to render continuous and adequate service.

[18.3.7.8 NMAC - Rp, 18.3.7.8 NMAC, 2/13/2015]

#### **18.3.7.9 CONTENTS OF ANNUAL REPORT:**

The annual report shall include:

**A.** the motor carrier's operating authority number;

**B.** the motor carrier's name;

**C.** the motor carrier's d/b/a name;

**D.** the motor carrier's principal place of business;

**E.** the motor carrier's business telephone number;

**F.** the applicant's electronic mail address;

**G.** an affirmation by checking a box on the annual report that;

**(1)** the motor carrier certifies that each piece of equipment it uses has passed an annual inspection within the preceding 12 months;

**(2)** the motor carrier certifies that it maintains a file containing a current MVD printout of the driving record and all other information required by these rules for each of its drivers;

(3) the motor carrier certifies that it has received a current certificate of workers' compensation insurance or evidence that the motor carrier is not required to maintain workers' compensation insurance;

H. an updated appointment of an agent for service of process, if applicable; and

I. the signature prescribed by Subsection B of 18.3.7.8 NMAC.

[18.3.7.9 NMAC - Rp, 18.3.7.9 NMAC, 2/13/2015; A, 01/30/2018]

#### **18.3.7.10 CHANGE OF ADDRESS REPORTS:**

A. Every motor carrier shall notify the commission in writing of any change in the mailing address or street address or other physical locations of its business office within 10 business days of the effective date of the change.

B. No change of address will be permitted that has the effect of moving the motor carrier's operations to a location not permitted under its operating authority.

[18.3.7.10 NMAC - Rp, 18.3.7.10 NMAC, 2/13/2015]

#### **18.3.7.11 ACCIDENT REPORTS:**

A. **Report required.** Every motor carrier shall report directly to the commission every accident which occurs in the course of the motor carrier's operations within the state, on either public or private property, that results in the death of a person; injury to a person that requires treatment by a physician; or damage to property belonging to the carrier or any other person to an apparent extent of five thousand dollars (\$5,000.00) or more. Property damage shall include damage to either vehicles or cargo.

B. **Report form.** A motor carrier shall report each accident in writing on the uniform accident report form prescribed by the state of New Mexico. Accident report forms are available from the director and from law enforcement agencies. The uniform accident report filed with the motor vehicle division will satisfy the requirements of this section if a copy of it is timely filed with the commission.

##### **C. Time to file report.**

(1) In the case of an accident resulting in death, the report must be filed within forty-eight (48) hours of the accident.

(2) All other accident reports shall be filed no later than fifteen (15) days after the date the accident occurred.

(3) If a death results from the accident after the filing of a written accident report, the motor carrier shall file an amended report no later than fifteen (15) days after receiving notification of the death.

(4) If an accident results in the release of any hazardous matter, the motor carrier shall inform the New Mexico state police by telephone immediately.

[18.3.7.11 NMAC - Rp, 18.3.7.11 NMAC, 2/13/2015]

#### **18.3.7.12 LOCATION OF RECORDS:**

Every motor carrier shall maintain records at the motor carrier's principal place of business within the state. The commission may, on a showing of good cause, allow the records to be maintained at a location outside the state, provided the motor carrier demonstrates to the satisfaction of the commission that the records will be reasonably accessible for inspection.

[18.3.7.12 NMAC - Rp, 18.3.7.12 NMAC, 2/13/2015]

#### **18.3.7.13 EQUIPMENT LISTS FOR MOTOR CARRIERS EXCEPT AMBULANCES:**

Every motor carrier shall maintain at its principal place of business within the state an updated list of motor vehicles used in its authorized operations. The list shall identify each motor vehicle by make, model, year, VIN, and license plate number and shall state whether the motor vehicle is leased or owned.

[18.3.7.13 NMAC - Rp, 18.3.7.13 NMAC, 2/13/2015]

#### **18.3.7.14 MAINTENANCE, PRESERVATION, AND RETENTION OF RECORDS:**

**A.** Motor carriers operating pursuant to a certificate or permit shall maintain:

- (1) complete accounts;
- (2) records of all services performed for others, such as work orders, invoices, bills of lading, warehouse receipts, dispatch sheets, and claim registers;
- (3) records of numbers of runs made and numbers of passengers transported;
- (4) records of equipment, such as driver inspection reports, repair and maintenance records, equipment lists, titles and registration certificates;
- (5) driver qualification files;
- (6) drivers' records of duty status;

- (7) records and forms evidencing driver drug and alcohol testing;
- (8) copies of equipment leases or leases of certificates;
- (9) records of all complaints indicating dissatisfaction with rates, service, safety, equipment or driving practices; and
- (10) driver contracts as provided by Section 65-2A-24 B and C NMSA 1978.

**B.** Motor carriers operating pursuant to a certificate or permit shall retain records for the previous three complete calendar years.

**C.** All municipal taxicab services must maintain records documenting response times as required by Paragraph (7) and (8) of Subsection G of 18.3.2.9 NMAC.

**D.** All required records are subject to inspection by the commission as provided in Sections 65-2A-4 and 65-2A-29 NMSA 1978, and shall be maintained so that they are reasonably accessible. A motor carrier operating pursuant to a certificate or permit shall take reasonable steps to protect required records from destruction and physical hazards. A motor carrier operating pursuant to a certificate or permit shall notify the commission if records are substantially damaged or destroyed before the end of the retention period.

**E.** If a motor carrier transfers its certificate or permit in accordance with these rules, the transferee of the certificate or permit shall maintain the records of the transferor as required by these rules.

[18.3.7.14 NMAC - Rp, 18.3.7.14 NMAC, 2/13/2015; A/E, 3/2/2015]

#### **18.3.7.15 CLAIMS REGISTER:**

**A.** Every motor carrier operating pursuant to a certificate or permit shall maintain a claims register in which the carrier shall record every claim it receives for overcharge, personal injury, or property damage.

**B.** The record of each claim shall include the:

- (1) claim number;
- (2) date received;
- (3) amount claimed;
- (4) name of the claimant;

(5) date and amount of the claim paid, or the date the claim was disallowed and the reasons for disallowance;

(6) amount of salvage recovered, if any;

(7) amount reimbursed by insurance companies or others; and

(8) amount paid by the carrier.

[18.3.7.15 NMAC - Rp, 18.3.7.15 NMAC, 2/13/2015]

#### **18.3.7.16 ACCOUNTS:**

**A. Maintenance of accounts required.** Every motor carrier operating pursuant to a certificate or permit shall maintain a system of accounts in connection with its intrastate transportation business in New Mexico, and documentation in support of the accounts.

**B. Generally accepted accounting principles.** Every motor carrier operating pursuant to a certificate or permit shall maintain its accounts in conformity with generally accepted accounting principles (GAAP) issued by the financial accounting standards board.

**C. Verification of entries.** Every motor carrier operating pursuant to a certificate or permit shall document all accounting entries and shall file all documentation in an orderly and systematic manner. All expenditures shall be fully supported by vouchers, receipts, canceled checks, or other original memoranda. All revenues shall be supported by invoices or other original memoranda.

**D. Required documentation.** At a minimum, documentation shall include:

- (1) copies of all passenger lists;
- (2) copies of all trip sheets;
- (3) copies of all invoices, vouchers and statements supporting disbursements;
- (4) copies of receipts or memoranda with respect to all petty cash reimbursements;
- (5) all canceled checks;
- (6) all bank statements and deposit slips;
- (7) fuel records; and
- (8) daily dispatch records.

[18.3.7.16 NMAC - Rp, 18.3.7.16 NMAC, 2/13/2015]

## **PART 8: CHANGES IN CERTIFICATES AND PERMITS**

### **18.3.8.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission (NMPRC).

[18.3.8.1 NMAC - Rp, 18.3.8.1 NMAC, 2-13-15]

### **18.3.8.2 SCOPE:**

This rule applies to all motor carriers operating pursuant to a certificate or permit issued by the commission.

[18.3.8.2 NMAC - Rp, 18.3.8.2 NMAC, 2-13-15]

### **18.3.8.3 STATUTORY AUTHORITY:**

Sections 8-8-4 and 65-2A-4 NMSA 1978.

[18.3.8.3 NMAC - Rp, 18.3.8.3 NMAC, 2-13-15]

### **18.3.8.4 DURATION:**

Permanent.

[18.3.8.4 NMAC - Rp, 18.3.8.4 NMAC, 2-13-15]

### **18.3.8.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited at the end of a section.

[18.3.8.5 NMAC - Rp, 18.3.8.5 NMAC, 2-13-15]

### **18.3.8.6 OBJECTIVE:**

The purpose of this rule is to implement Section 65-2A-14 NMSA 1978.

[18.3.8.6 NMAC - Rp, 18.3.8.6 NMAC, 2-13-15]

### **18.3.8.7 DEFINITIONS:**

See 18.3.1.7 NMAC.

[18.3.8.7 NMAC - Rp, 18.3.8.7 NMAC, 2-13-15]

#### **18.3.8.8 TRANSFER BY OPERATION OF LAW OF A CERTIFICATE OR PERMIT:**

This section shall apply whenever the ownership of, or interest in, a certificate or permit passes to another by operation of law, as upon inheritance, bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in performance of the terms of a loan, lease or executory sales contract, or otherwise than by voluntary transfer.

**A.** Notice. A transferee by operation of law shall file a notice of transfer by operation of law with the commission as provided in 18.3.1.11 NMAC. The personal representative, executor, administrator, receiver, trustee, sheriff or other representative or successor-in-interest of the owner of the operating authority shall sign the notice of transfer by operation of law. The notice of transfer by operation of law shall contain:

- (1)** the name of the entity from whom the certificate of public convenience or necessity or permit was transferred;
- (2)** the circumstances resulting in the transfer by operation of law; and
- (3)** a certified copy of a court order or other document admissible as evidence pursuant to the New Mexico rules of evidence, establishing that the transfer by operation of law has occurred; if the document appears to meet these requirements, the commission shall find that the transfer by operation of law has occurred.

**B.** Which application appropriate.

**(1)** Disposal of certificate or permit. If the transferee by operation of law does not wish to continue providing transportation services under the certificate or permit, the transferee by operation of law shall apply for voluntary suspension of the certificate or permit in accordance with 18.3.8.11 NMAC for the period of time needed to dispose of the certificate or permit.

**(2)** Continued provision of transportation service. If the transferee by operation of law wishes to continue providing transportation services under the certificate or permit, the transferee by operation of law shall file an application containing the information required in Subsection E of 18.3.2.13 NMAC.

**C.** Director decision. If the director finds that the transferee by operation of law meets the requirements of this section, the director shall promptly issue a certificate or permit in the name of the transferee by operation of law.

[18.3.8.8 NMAC - Rp, 18.3.8.12 NMAC, 2-13-15]

#### **18.3.8.9 REINSTATEMENT OF A CERTIFICATE OR PERMIT FOLLOWING INVOLUNTARY SUSPENSION:**

**A. Application.** An applicant for reinstatement of a certificate or permit that was suspended by the commission for a safety violation or for failure to render reasonably continuous and adequate service may, upon expiration of the suspension period, file:

- (1) an application on the form prescribed by the director;
- (2) a copy of the commission order imposing involuntary suspension;
- (3) a detailed statement describing how the motor carrier has remedied or will remedy each of the violations stated as grounds for involuntary suspension; and
- (4) the fee required by Section 65-2A-36 NMSA 1978.

**B. Notice.** The director shall promptly review an application for reinstatement of an existing certificate or permit following involuntary suspension. If the director determines that the application is complete, the director will prepare and publish notice of the application pursuant to 18.3.2.15 NMAC.

**C. Procedure for commission review.** Following the expiration of the notice period of Section 65-2A-6 NMSA 1978, the director shall promptly file a recommendation in the docket. The commission may issue an order approving reinstatement of a certificate or permit if the statutory requirements of Section 65-2A-27 NMSA 1978 have been met.

[18.3.8.9 NMAC - Rp, 18.3.8.13 NMAC, 2-13-15]

#### **18.3.8.10 CHANGES IN FORM OF LEGAL ENTITY; NAME; OR CONTROL OF A HOLDER OF THE CERTIFICATE OR PERMIT:**

**A.** An application for a change of name, form of legal entity, or control of a holder of the certificate or permit through issuance or transfer of stock or other legal interest in a holder that is a corporation, partnership, trust or other legal business entity shall be on the form prescribed by the director and shall include:

- (1) the original certificate or permit;
- (2) the fee required by Section 65-2A-36 NMSA 1978;
- (3) the information and documents required by Paragraphs (1), (2), (5) through (8), and (14) of Subsection A of 18.3.2.13 NMAC
- (4) if the application is for a change in name, the applicable insurance filing forms in the new name;
- (5) a showing that the proposed change is not being made to avoid any previously incurred taxes or other legal obligations, or to circumvent any otherwise applicable requirements of these rules or the Motor Carrier Act; and



(6) if the application is for a change in form of legal entity or in control of a holder, a statement that all assets will or will not be transferred to the new entity.

**B.** If the applicant fails to comply with any of the requirements of Subsection A of this section, the director may not approve the application. If the director determines the filing is complete, the director shall promptly issue a new certificate or permit. The new entity shall file copies of all documentation required by 18.3.2.13 NMAC if that documentation is different from that documentation of the old entity.

[18.3.8.10 NMAC - Rp, 18.3.8.14 & 15 NMAC, 2-13-15]

#### **18.3.8.11 CANCELLATION OR VOLUNTARY SUSPENSION NOT EXCEEDING TWELVE CONSECUTIVE MONTHS OF A CERTIFICATE OR PERMIT:**

**A. Application.** An applicant for cancellation or voluntary suspension that does not exceed twelve consecutive months of all or part of its certificate or permit shall file:

- (1) an application on the form prescribed by the director;
- (2) copies of its current certificate or permit and all endorsements it seeks to cancel or voluntarily cancel in whole or in part;
- (3) the date on which the applicant proposes to terminate or suspend all or part of its service and, if applicable, the length of the suspension; and
- (4) if the motor carrier is a full service carrier and is applying for voluntary suspension of a certificate or permit, a statement explaining:
  - (a) why such voluntary suspension is not adverse to the public interest, including whether any other motor carrier is capable of providing the service; and
  - (b) why the applicant is not able to render reasonably continuous and adequate service for the period of time for which voluntary suspension is requested.

**B.** Review of ambulance service carrier applications. The director shall promptly review an application for cancellation or voluntary suspension of a certificate or permit submitted by an ambulance service, publish notice of the application on the commission's website, and file a recommendation in the docket. The commission may issue an order approving the cancellation or voluntary suspension of the ambulance service's certificate or permit if the commission finds that the cancellation or voluntary suspension would not be adverse to the public interest.

**C.** Review of all other motor carriers' applications. If the applicant fails to comply with any of the requirements of Subsection A of this section, the director may not approve the cancellation or voluntary suspension of the certificate or permit. If the

director determines the filing is complete and that the applicant is not an ambulance service, the director shall promptly cancel or suspend the certificate or permit.

[18.3.8.11 NMAC - Rp, 18.3.8.16 NMAC, 2-13-15]

#### **18.3.8.12 REINSTATEMENT OF A CERTIFICATE OR PERMIT FOLLOWING VOLUNTARY SUSPENSION NOT EXCEEDING TWELVE CONSECUTIVE MONTHS:**

**A. Application.** An applicant for reinstatement following a voluntary suspension that did not exceed twelve consecutive months shall file:

- (1) an application on the form prescribed by the director;
- (2) copy of the application for voluntary suspension approved by the director or commission;
- (3) a statement that the applicant is fit and able to render reasonably continuous and adequate service if the reinstatement is approved; and
- (4) the fee required by Section 65-2A-36 NMSA 1978.

**B.** If the director finds that the application for reinstatement meets the requirements of this section, the director shall promptly approve the application.

[18.3.8.12 NMAC - Rp, 18.3.8.18 NMAC, 2-13-15]

#### **18.3.8.13 CONSOLIDATED CERTIFICATES AND PERMITS:**

**A. Amendment.** Any amendment of a certificate or permit granted by the commission will be evidenced by an endorsement to the owner's existing certificate or permit and not by issuance of a separate certificate or permit.

##### **B. Transfers.**

(1) A motor carrier obtaining additional operating authority of a different kind or for a different territory by transfer of an existing certificate or permit from another carrier shall have its own existing certificate or permit endorsed to include the additional operating authority, thereby creating a single consolidated certificate or permit, issued by the director, to be operated under the transferee motor carrier's original (NMPRC) transportation number.

(2) A motor carrier obtaining both additional and duplicate operating authorities by transfer of an existing certificate or permit from another carrier shall have its own existing certificate or permit endorsed to add only the additional operating authority, thereby creating a single consolidated certificate or permit, issued by the director, to be operated under the transferee motor carrier's original NMPRC

transportation number. The director shall extinguish the parts of the transferred certificate or permit that duplicate operating authority already held by the transferee.

(3) A motor carrier transferring part of its certificate or permit to another carrier shall have its existing certificate or permit endorsed by the director to exclude the part of the certificate or permit transferred.

(4) A motor carrier transferring all of its certificate or permit to another carrier shall have its NMPRC transportation number canceled by the director.

### **C. Existing certificates and permits.**

(1) The director shall consolidate to the extent practicable a motor carrier's existing certificate or certificates to reflect the terminology, service territory, and type of transportation service as used in the Motor Carrier Act.

(2) The director shall consolidate to the extent practicable a motor carrier's existing permit or permits to reflect the terminology, service territory, and type of transportation service as used in the Motor Carrier Act.

[18.3.8.13 NMAC - Rp, 18.3.8.19 NMAC, 2-13-15]

## **PART 9: LEASING OF EQUIPMENT**

### **18.3.9.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.3.9.1 NMAC - Rp, 18.3.9.1 NMAC, 2-13-15]

### **18.3.9.2 SCOPE:**

This rule applies to all household goods service carriers and all passenger services, (except charter services and commuter services) leasing equipment.

[18.3.9.2 NMAC - Rp, 18.3.9.2 NMAC, 2-13-15]

### **18.3.9.3 STATUTORY AUTHORITY:**

Sections 8-8-4 and 65-2A-4 NMSA 1978.

[18.3.9.3 NMAC - Rp, 18.3.9.3 NMAC, 2-13-15]

### **18.3.9.4 DURATION:**

Permanent.

18.3.9.4 NMAC - Rp, 18.3.9.4 NMAC, 2-13-15]

**18.3.9.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited at the end of a section.

[18.3.9.5 NMAC - Rp, 18.3.9.5 NMAC, 2-13-15]

**18.3.9.6 OBJECTIVE:**

The purpose of this rule is to implement Section 65-2A-24 NMSA 1978.

[18.3.9.6 NMAC - Rp, 18.3.9.6 NMAC, 2-13-15]

**18.3.9.7 DEFINITIONS:**

See 18.3.1.7 NMAC.

[18.3.9.7 NMAC - Rp, 18.3.9.7 NMAC, 2-13-15]

**18.3.9.8 NOTICE OF LEASE:**

Prior to or within three days of first placing a leased vehicle into use a household goods service carrier or a passenger service carrier (except a charter service or a commuter service) must file a notice of an equipment lease with the commission by mail or hand delivery. The application shall include:

**A.** the date that the vehicle is or was placed in service and the final date that it was used, if known; full identification of the vehicle make, model, model year and VIN number; the state of registration; and the registration license plate number;

**B.** verification that each vehicle leased or to be leased complies with all applicable laws and these rules, including meeting the financial responsibility requirements prescribed in 18.3.3 NMAC, financial responsibility, and the safety requirements prescribed in 18.3.4 NMAC, safety requirements; and

**C.** the fee required by Section 65-2A-36 NMSA 1978.

[18.3.9.8 NMAC - Rp, 18.3.9.8 NMAC, 2/13/2015; A, 11/30/2016]

**18.3.9.9 [RESERVED]**

[18.3.9.9 NMAC - Rp, 18.3.9.9 NMAC, 2/13/15; Repealed, 11/30/2016]

**18.3.9.10 RESPONSIBILITY FOR COMPLIANCE WITH APPLICABLE LAW:**

**A.** The leased vehicle must comply with all applicable laws and these rules before being placed into service, including meeting the financial responsibility requirements prescribed in 18.3.3 NMAC, financial responsibility, and the safety requirements prescribed in 18.3.4 NMAC, safety requirements.

**B.** The authorized motor carrier leasing the vehicle shall be and remain responsible at all times for insuring that the leased vehicle complies with all applicable laws and these rules, including meeting the financial responsibility requirements prescribed in 18.3.3 NMAC, financial responsibility, and the safety requirements prescribed in 18.3.4 NMAC, safety requirements.

**C.** The motor carrier leasing the vehicle shall maintain a copy of the written lease and a record of use of the leased vehicle in its equipment records, including the dates that the vehicle is or was in service; full identification of the vehicle make, model, model year and VIN number; the state of registration; and the registration license plate number.

[18.3.9.10 NMAC - Rp, 18.3.9.10 NMAC, 2/13/2015; A, 11/30/2016]

## **PART 10: PARENTAL RESPONSIBILITY**

### **18.3.10.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.3.10.1 NMAC - N, 12-30-02]

### **18.3.10.2 SCOPE:**

This rule applies to the issuance, renewal, suspension or revocation of any operating authority issued by the commission.

[18.3.10.2 NMAC - N, 12-30-02]

### **18.3.10.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-4 and 40-5A-9.

[18.3.10.3 NMAC - N, 12-30-02; A, 1-1-05]

### **18.3.10.4 DURATION:**

Permanent.

[18.3.10.4 NMAC - N, 12-30-02]

#### **18.3.10.5 EFFECTIVE DATE:**

December 30, 2002, unless a later date is cited at the end of a section.

[18.3.10.5 NMAC - N, 12-30-02]

#### **18.3.10.6 OBJECTIVE:**

The purpose of this rule is to implement the requirements of the Parental Responsibility Act, NMSA 1978 Sections 40-5A-1 et seq.

[18.3.10.6 NMAC - N, 12-30-02; A, 1-1-05]

#### **18.3.10.7 DEFINITIONS:**

In addition to the definitions in NMSA 1978 Section 40-5A-3, as used in this rule:

**A. commission** means the New Mexico public regulation commission;

**B. holder** means a sole proprietorship or partnership that has an operating authority from the commission;

**C. HSD** means the New Mexico human services department;

**D. operating authority** means a certificate, permit, or warrant issued by the commission;

**E. statement of compliance** means a certified statement from HSD stating that an applicant or holder is in compliance with a judgment and order for support.

[18.3.10.7 NMAC - N, 12-30-02; A, 1-1-05]

#### **18.3.10.8 SANCTIONS:**

**A.** If an applicant is subject to, and not in compliance with, a judgment and order for support, the commission shall deny an application for an operating authority.

**B.** If a holder is subject to, and not in compliance with, a judgment and order for support, the commission shall have grounds for suspending or revoking the holder's operating authority.

[18.3.10.8 NMAC - N, 12-30-02]

#### **18.3.10.9 HSD-CERTIFIED LIST:**

Upon receipt of an HSD-certified list of obligors not in compliance with a judgment and order for support, the director shall match the certified list of obligors against the current list of holders. Upon receipt of an application for an operating authority, the director shall match the applicant or holder against the current HSD-certified list. By the end of the month in which the HSD-certified list is received, the director shall report to HSD the names of any applicants and holders who are on the HSD-certified list and the action the director has taken with regard to such applicants and holders.

[18.3.10.9 NMAC - N, 12-30-02]

#### **18.3.10.10 INITIAL ACTION:**

**A.** Upon determination that an applicant or holder appears on the HSD-certified list, the director shall notify the applicant or holder by letter that such individual must provide the director with a statement of compliance within thirty (30) days of the date the director mailed the notification.

**B.** The notice letter to applicants and holders shall advise that failure to timely provide the statement of compliance shall result in commencement of a formal hearing before the commission to determine whether an application should be rejected or an operating authority suspended or revoked.

[18.3.10.10 NMAC - N, 12-30-02]

#### **18.3.10.11 PROCEEDING TO REJECT APPLICATION OR SUSPEND OR REVOKE OPERATING AUTHORITY:**

If an applicant or holder fails to provide the statement of compliance, the director shall file and serve a complaint upon the applicant or holder. If the director's complaint is due solely to the failure of an applicant or holder to comply with a judgment and order for support, and there are no additional grounds based on violations of the Motor Carrier Act or commission rules or orders, the complaint shall state:

**A.** the grounds for the director's proposed rejection of the application or suspension or revocation of the operating authority; and

**B.** that a hearing shall be held before the commission on a date that is at least thirty (30) days after the date the complaint is personally served, unless the respondent applicant or holder provides the director with a statement of compliance prior to the hearing date.

[18.3.10.11 NMAC - N, 12-30-02; A, 1-1-05]

#### **18.3.10.12 EVIDENCE AND PROOF:**

In any hearing under subsection B of 18.3.10.11 NMAC, relevant evidence is limited to the accuracy or veracity of the listing of the applicant or holder's name on the HSD-certified list. The listing of the applicant's or holder's name on the HSD-certified list is conclusive evidence requiring the commission to reject the application or suspend or revoke the operating authority, and is rebuttable only with a statement of compliance. Upon presentation of the statement of compliance, the commission shall dismiss the complaint if it is based solely upon the applicant or holder's failure to comply with a judgment and order for support.

[18.3.10.12 NMAC - N, 12-30-02]

#### **18.3.10.13 ORDER:**

When the commission rejects an application or suspends or revokes an operating authority solely because the applicant or holder is not in compliance with a judgment and order for support, the final order shall state that:

**A.** the respondent whose application has been rejected may reapply for an operating authority at any time by filing a statement of compliance and an application with the commission;

**B.** the respondent whose operating authority has been suspended may have its operating authority reinstated at any time by providing a statement of compliance to the commission; and

**C.** the respondent whose operating authority has been in revoked may reapply for an operating authority at any time by filing a statement of compliance and an application with the commission.

[18.3.10.13 NMAC - N, 12-30-02]

### **PART 11: HOUSEHOLD GOODS CARRIERS**

#### **18.3.11.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission (NMPRC).

[18.3.11.1 NMAC - Rp, 18.3.11.1 NMAC, 2-13-15]

#### **18.3.11.2 SCOPE:**

This rule applies to all household goods carriers (HGCs) and household goods agents subject to the jurisdiction of the commission and is in addition to all other applicable requirements of these rules.

[18.3.11.2 NMAC - Rp, 18.3.11.2 NMAC, 2-13-15]



### **18.3.11.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 65-2A-4, 65-2A-25, and 65-2A-26 NMSA 1978.

[18.3.11.3 NMAC - Rp, 18.3.11.3 NMAC, 2-13-15]

### **18.3.11.4 DURATION:**

Permanent.

[18.3.11.4 NMAC - Rp, 18.3.11.4 NMAC, 2-13-15]

### **18.3.11.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited at the end of a section.

[18.3.11.5 NMAC - Rp, 18.3.11.5 NMAC, 2-13-15]

### **18.3.11.6 OBJECTIVE:**

The purpose of this rule is to implement Sections 65-2A-25 and 65-2A-26 NMSA 1978.

[18.3.11.6 NMAC - Rp, 18.3.11.6 NMAC, 2-13-15]

### **18.3.11.7 DEFINITIONS:**

In addition to the definitions in Section 65-2A-3 and 18.3.1.7 NMAC as used in this rule.

**A. accessorial services** means services such as packing, marking, unpacking, and appliance servicing, assembling, and disassembling that the shipper requests to be performed or are necessary because of special circumstances;

**B. bill of lading** means the receipt for the shipper's household goods and the contract for their transportation;

**C. binding estimate** means an agreement made in advance between the shipper and the HGC that guarantees the total cost of the move based on the quantities and services shown on the estimate;

**D. exclusive use of a vehicle** means an agreement that the shipper's shipment will be moved by itself on the HGC's transporting motor vehicle;

**E. expedited service** means an agreement between the shipper and the HGC to perform transportation by a set date in exchange for a higher charge;

**F. guaranteed pickup and delivery service** means an agreement between the shipper and the HGC to pick up and deliver the shipment on specified dates that provides for the HGC to reimburse the shipper for delays;

**G. inventory** means the detailed descriptive list of the shipper's household goods showing the number and condition of each item;

**H. non-binding estimate** means the carrier's approximation of the cost of the move based on the estimated weight of the shipment and the accessorial services requested; a non-binding estimate is not binding on the carrier and final charges are based on the actual weight and tariff provisions in effect;

**I. storage in transit** means temporary storage of the shipper's shipment pending further transportation.

[18.3.11.7 NMAC - Rp, 18.3.11.7 NMAC, 2-13-15]

#### **18.3.11.8 COST ESTIMATES:**

An HGC may provide a cost estimate upon request of a prospective shipper. A cost estimate must be in writing and must clearly describe the shipment and all services requested. The HGC shall provide a copy of the estimate to the shipper.

##### **A. Binding estimates of total cost.**

- (1) The HGC may charge for providing a binding estimate.
- (2) A shipper shall not be required to pay more than the amount of the binding estimate unless the HGC is asked or required to provide more services than those included in the binding estimate.
- (3) If the shipper agrees to a binding estimate, the shipper must pay the charges due at the time of delivery. If the shipper cannot pay at the time the shipment is delivered, the HGC may place the shipment in storage at the shipper's expense until the charges are paid.
- (4) Whenever the HGC provides a binding estimate and the shipper elects to use the services offered by the HGC, the HGC shall retain a copy of the binding estimate in the HGC's files for a period of three (3) years.

##### **B. Non-binding estimates of approximate cost.**

- (1) An HGC shall not charge for providing a non-binding estimate.
- (2) If the HGC provides a non-binding estimate, the shipper shall not be required to pay more than the amount of the original estimate, plus ten percent (10%),

at the time of delivery. The shipper shall then have thirty (30) days after delivery to pay any remaining charges.

**(3)** If the HGC is asked or required to provide more services than those included in the estimate, the HGC may demand full payment for the added services at the time of delivery.

**(4)** If the shipper cannot pay the required charges at the time the shipment is delivered, the HGC may place the shipment in storage at the shipper's expense until the charges are paid.

**(5)** Whenever the HGC provides a non-binding estimate and the shipper elects to use the services offered by the HGC, the HGC shall retain a copy of the non-binding estimate in the HGC's files for a period of three (3) years.

[18.3.11.8 NMAC - Rp, 18.3.11.8 NMAC, 2-13-15]

#### **18.3.11.9 LIMITATIONS ON SERVICE OPTIONS:**

An HGC may offer the following service options. However, an HGC may not charge for these or any other services unless the charge is included in the HGC's commission-approved tariff.

**A. Space reservation.** The HGC may not enter into an agreement for the shipper to pay for a minimum number of cubic or linear feet in the HGC's transporting vehicle, regardless of how much space is actually occupied by the shipment, when the shipment completely occupies the transporting vehicle.

**B. Expedited service.** An HGC may subject shipments weighing less than the minimums specified in this subsection to reasonable delay for consolidation aboard a single vehicle. When a shipper orders expedited service with a specified delivery date and the HGC is unable to consolidate the shipment with other shipments, the HGC may base transportation charges on the specified minimum weights.

**(1)** Shipments moving zero (0) to fifty (50) miles, three thousand (3,000) pounds minimum;

**(2)** Shipments moving fifty (50) miles to one hundred (100) miles, five thousand (5,000) pounds minimum;

**(3)** Shipments moving one hundred one (101) miles to two hundred (200) miles, eight thousand (8,000) pounds minimum;

**(4)** Shipments moving two hundred one (201) miles to three hundred (300) miles, ten thousand (10,000) pounds minimum;

(5) Shipments moving three hundred one (301) miles and up, twelve thousand (12,000) pounds minimum.

**C. Exclusive use of a vehicle.**

(1) An HGC may require a minimum charge for exclusive use of a vehicle.

(2) An HGC may not enter into an exclusive use of vehicle agreement with a shipper when the shipment completely occupies the transporting vehicle.

**D. Guaranteed pickup and delivery.** The liability provided by a guaranteed pickup and delivery agreement is in addition to and shall in no way limit the liability of the HGC otherwise provided by law.

**E. Storage in transit.**

(1) A shipper may place a shipment that is in transit in storage one or more times for an aggregate of no more than one hundred eighty (180) days.

(2) Upon the expiration of the one hundred eighty (180) day period, the storage facility shall be considered the final destination and all accrued charges shall become due and payable.

(3) The shipper or the shipper's agent may add to or remove goods from storage and the HGC shall adjust the charges to the new weight of the shipment.

**F. Accessorial services.** An HGC shall clearly describe on the bill of lading each accessorial service provided to a shipper.

**G. Advanced charges.** The HGC may bill a shipper for services not performed by the HGC but by a third party at the shipper's request only if such services are clearly described on the bill of lading and supported by a copy of the third party's invoice.

[18.3.11.9 NMAC - Rp, 18.3.11.9 NMAC, 2-13-15]

**18.3.11.10 BILL OF LADING:**

**A.** Before accepting household goods for transport, the HGC shall prepare and deliver to the shipper a complete bill of lading for every shipment it will transport.

**B.** A copy of the bill of lading should accompany the shipment at all times.

**C.** The HGC shall retain a copy of the bill of lading in its files for a period of three (3) years.

**D.** All bills of lading shall comply with, be governed by, and have the consequences stated in the Uniform Commercial Code of New Mexico and any other applicable law.

[18.3.11.10 NMAC - Rp, 18.3.11.10 NMAC, 2-13-15]

#### **18.3.11.11 CONTENTS OF THE BILL OF LADING:**

Use of the uniform bill of lading meets the requirements of this rule. If another form is used, the bill of lading must contain at least the following information:

- A.** the number of the bill of lading;
- B.** the name, address, telephone number and NMPRC transportation number of the issuing HGC;
- C.** the name and address of any other HGCs participating in the shipment, if known;
- D.** the date the shipment was received by the HGC;
- E.** the name, address and, if available, telephone number of the shipper;
- F.** the points of origin and destination;
- G.** a description of the items tendered and received for transportation;
- H.** the weight, volume, or measurement of the items tendered and received for transportation, if applicable to the rating of the freight;
- I.** where applicable, the valuation of the shipment on which the bill of lading was issued;
- J.** if known, the amount of charges, method of payment and, if a cash on delivery (COD) shipment, the amount of the COD charges and the name of the person who is to pay the charges;
- K.** agreed pick-up and delivery date, if any; and
- L.** identification number assigned to the shipment by the HGC, if any.

[18.3.11.11 NMAC - Rp, 18.3.11.11 NMAC, 2-13-15]

#### **18.3.11.12 INVENTORY:**

**A. Required.** The household goods carrier (HGC) shall prepare an inventory of each shipment prior to transport.

(1) The inventory shall consist of a description of each article in the shipment, shall list any damage or unusual wear, and shall indicate which containers were packed or crated by the HGC and which were packed or crated by the shipper.

(2) The HGC and the shipper shall each sign the inventory, and the shipper shall then be solely responsible for its accuracy.

(3) At the time the shipment is delivered, the shipper shall be given the opportunity to check the items delivered against the items listed on the inventory. If new damage is discovered, the shipper shall be given the opportunity to record it on the inventory.

(4) The HGC shall retain a legible copy of the inventory in its files for a period of three (3) years.

**B. Exception.** A shipper may waive in writing the requirement for an inventory if:

(1) the pickup and delivery points for the shipment are no more than thirty (30) miles apart;

(2) the shipment is billed at an hourly rate; and

(3) the shipper has exclusive use of the vehicle.

[18.3.11.12 NMAC - Rp, 18.3.11.12 NMAC, 2-13-15]

#### **18.3.11.13 WEIGHING:**

**A.** The HGC shall follow weighing practices designed to ensure reasonable accuracy.

**B.** Each time a weighing is performed the HGC shall obtain a weight ticket showing the date and place of weighing and the weight obtained. The person who performed the weighing shall sign the ticket.

**C.** The weight of a shipment shall be the difference between the tare weight of the vehicle on which the shipment is loaded and the gross weight of the same vehicle after the shipment is loaded.

**D.** While weighing, the HGC's vehicle shall have full fuel tanks and shall contain the equipment required to transport the shipment, including pads, dollies and ramps.

**E.** Shipments weighing less than one thousand (1,000) pounds may be weighed separately on a certified scale.

**F.** The shipper or its agent has the right to observe all weighing's.

**G.** A shipper or its agent may request a re-weigh prior to the HGC unloading the shipment. Charges shall be based on the re-weigh.

**H.** No HGC shall charge for weighing or re-weighing.

[18.3.11.13 NMAC - Rp, 18.3.11.13 NMAC, 2-13-15]

#### **18.3.11.14 RECEIPT FOR DELIVERY:**

**A.** The HGC shall provide the shipper with a receipt for delivery that includes at a minimum the bill of lading, a copy of the inventory and, if applicable, the weigh tickets.

**B.** No HGC shall require a shipper to sign a receipt that relieves the HGC from all liability for loss or damage to the shipment.

[18.3.11.14 NMAC - Rp, 18.3.11.14 NMAC, 2-13-15]

#### **18.3.11.15 LIABILITY FOR LOSS AND DAMAGE:**

The HGC is required to assume, at a minimum, liability for the released value of the shipper's goods.

##### **A. Released value.**

**(1)** The HGC shall not charge for assuming liability for the released value of a shipment.

**(2)** The HGC shall specify in its tariff a rate per pound for released value liability.

**(3)** The HGC shall settle loss or damage claims based on the pound weight of the lost or damaged article multiplied by the tariffed rate.

**(4)** The shipper must declare acceptance of released value liability on the bill of lading.

##### **B. Declared value.**

**(1)** The HGC shall specify in its tariff a rate per thousand dollars, or fraction thereof, for declared value liability.

**(2)** The shipper must declare a specific dollar amount for the declared value of the shipment.

**(3)** The HGC shall settle loss or damage claims based on the declared value of the lost or damaged items up to the maximum liability for the entire shipment.

(4) The shipper must declare acceptance of declared value liability on the bill of lading.

**C. Replacement value.**

(1) The HGC shall specify in its tariff a rate per thousand dollars, or fraction thereof, for replacement value liability.

(2) The shipper must declare a specific dollar amount for the replacement cost value of the shipment.

(3) The HGC shall settle loss or damage claims based on the replacement cost of the lost or damaged items up to the maximum liability for the entire shipment.

(4) The shipper must declare acceptance of replacement cost liability on the bill of lading.

**D. Articles of extraordinary value.** The HGC may, but is not required to, assume liability for documents, currency, jewelry, precious stones, accounts, bills, deeds, securities, notes, stamp or coin collections, letters, art, or other articles of peculiar inherent value, if the articles are listed on the bill of lading with a specific value for each article. If the HGC refuses to assume such liability, the HGC shall notify the shipper in writing before accepting such articles for shipment.

[18.3.11.15 NMAC - Rp, 18.3.11.15 NMAC, 2-13-15]

**18.3.11.16 CLAIMS:**

**A.** Upon discovery of a claim for loss, damage, overcharge, or any other matter, the shipper shall immediately notify the HGC in writing and give the HGC a reasonable opportunity to inspect the item that is the basis for the claim and the original package, if any. The claim shall be accompanied by the original or a true copy of the bill of lading.

**B.** The HGC shall not be responsible for loss or damage occurring:

(1) after the shipper or the shipper's agent has been given the opportunity to check the items delivered against the items listed on the inventory and has signed the inventory without noting any loss or damage;

(2) when the shipper directs the HGC to deliver the shipment to a place where the shipper or the shipper's agent is not present; or

(3) when the HGC is directed to load a shipment at a place where the shipper or the shipper's agent is not present.



**C.** A HGC shall be responsible for the repair or replacement of a lost or damaged article that is a matched piece or part of a set but shall not be liable for replacing the entire set.

**D.** When liability is measured by weight of a container or carton, and actual weights are unobtainable, the following items shall be deemed to have the following weights, unless specific evidence is presented to the contrary:

- (1) dish-pack drum, 60 pounds;
- (2) cartons less than 1 1/2 cu. ft., 20 pounds;
- (3) cartons 1 1/2 cu. ft. to less than 3 cu. ft., 25 pounds;
- (4) cartons 3 cu. ft. to less than 4 1/2 cu. ft., 30 pounds;
- (5) cartons 4 1/2 cu. ft. to less than 6 cu. ft., 35 pounds;
- (6) cartons 6 cu. ft. to less than 6 1/2 cu. ft., 45 pounds;
- (7) cartons 6 1/2 cu. ft. and over, 50 pounds;
- (8) wardrobe carton, 50 pounds;
- (9) mattress or box spring carton not exceeding 54" X 75", 60 pounds;
- (10) mattress or box spring carton exceeding 54"X 75", 80 pounds;
- (11) crib mattress carton, 22 pounds;
- (12) cartons containing books, phonograph records, tapes or CDs, 50 pounds;
- (13) cartons containing lampshades, 5 pounds; and

(14) items not identified on the inventory as to contents will be settled for the heaviest weight on the schedule for the container.

[18.3.11.16 NMAC - Rp, 18.3.11.16 NMAC, 2-13-15]

#### **18.3.11.17 NOTICE TO PROSPECTIVE SHIPPERS:**

An HGC shall deliver to every shipper a written notice containing a statement in substantially the following form: "This motor carrier operates pursuant to NMPRC Operating Authority No.(insert operating authority number), issued by the New Mexico public regulation commission, and the tariff approved by the Commission. If you have any questions or problems with the service provided by this company, contact the New

Mexico public regulation commission, transportation division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269, 1-800-947-4722."

[18.3.11.17 NMAC - Rp, 18.3.11.17 NMAC, 2-13-15]

#### **18.3.11.18 HOUSEHOLD GOODS AGENTS:**

**A.** Any contract or agreement between an HGC and its agent shall be in writing and shall specify the territory in which the agent is to serve. Each party shall keep a copy of the contract as part of its records at its principal place of business.

**B.** Each HGC shall file a current, accurate list of its agents and their telephone numbers and physical locations and mailing addresses with its annual report. An HGC shall report any additions or deletions from the list to the commission as they occur.

**C.** The HGC's agent shall operate under the trade name of the HGC it represents, shall display the trade name of the HGC prominently in its advertising and shall, in all representations to the public, prominently display the name of the HGC and the fact that the agent is acting as the HGC's agent.

**D.** The HGC's agent shall prominently display the trade name of the HGC principal on all vehicles owned by the agent and used in the pick-up and delivery of intrastate shipments.

**E.** The HGC's agent shall maintain at its place of business for inspection by the public copies of the tariffs under which the HGC operates.

**F.** The HGC's agent shall retain as part of its records for a period of three (3) years all documents relating to every shipment that it negotiates or handles, including but not limited to all estimates, contracts, bills of lading, waybills, and freight bills.

[18.3.11.18 NMAC - Rp, 18.3.11.18 NMAC, 2-13-15]

#### **18.3.11.19 JOINT TRANSPORTATION BETWEEN HGCS:**

**A.** No HGC shall arrange any shipment to, from, or between points it is not authorized to serve.

**B.** An HGC may share in the revenue from a shipment only if it has authority to haul it. All charges for joint transportation shall be collected by the HGC domiciled in New Mexico who booked or transported it and that HGC shall account to all participating HGCs for their share of the charges.

**C.** Each bill of lading, route manifest, and freight bill shall bear the name of every HGC participating in the transportation of the shipment.

[18.3.11.19 NMAC - Rp, 18.3.11.19 NMAC, 2-13-15]

#### **18.3.11.20 PROVISIONS REGARDING SPECIFIC TYPES OF ARTICLES:**

**A. Hazardous matter.** The HGC shall not accept or transport hazardous matter or articles that cannot be taken from the premises without damaging the articles or the premises. When the HGC reasonably believes articles or contents of packages must be inspected for compliance with this rule, the HGC shall make or cause such inspection, and may subsequently require sufficient evidence to determine the actual character of the articles. The shipper shall reimburse the HGC according to labor rates published in the HGC's tariff.

**B. Perishable articles.** The HGC shall not accept perishable articles or articles requiring refrigeration. The HGC may, in its discretion, accept frozen foods under the following conditions:

(1) the food is contained in a regular food freezer and is frozen solid at the time of loading;

(2) both the point of origin and the destination of the shipment are within New Mexico;

(3) no storage or delay is required in transit;

(4) delivery may be accomplished within twenty four (24) hours of the time of loading; and

(5) notwithstanding any other provision of this rule, the HGC shall in no case be liable for the condition or flavor of the food.

[18.3.11.20 NMAC - Rp, 18.3.11.20 NMAC, 2-13-15]

#### **18.3.11.21 IMPRACTICABLE OPERATIONS AND SERVICE:**

No HGC shall be required to perform any service at a place which is inaccessible, or where the operation of motor vehicles or presence of personnel would subject either to unreasonable risk, loss or damage such as, but not limited to, road conditions, buildings, riots, strikes, war, civil disturbances, and all other hazards.

**A.** When, due to inaccessibility or otherwise, a HGC cannot perform pickup, delivery, or other services, the HGC will make the motor vehicle available at the nearest accessible point deemed reasonably safe for its operation and personnel.

**B.** When an HGC, due to inaccessibility or otherwise, cannot operate its motor vehicle to the point of pick-up or delivery, upon permission of the shipper or consignee

the HGC may utilize smaller equipment and more labor to continue the move and may charge additionally as provided in the HGC's tariff.

**C.** When a shipper will not accept delivery at the nearest point of safe approach, the HGC may place the shipment in the nearest public warehouse or storage facility. At that time, the shipment shall be deemed delivered and all charges shall be due and payable immediately. For the purpose of applying this rule, transportation charges shall be computed from origination to the point where the shipment was originally tendered for delivery, and from there to the public warehouse or storage facility, on a continuous mileage or hourly basis, whichever is applicable.

[18.3.11.21 NMAC - Rp, 18.3.11.21 NMAC, 2-13-15]

#### **18.3.11.22 MISCELLANEOUS PROVISIONS:**

**A. Packing and marking.** The HGC shall properly pack fragile or breakable articles and mark the fragile character of the contents on the containers in distinct letters.

**B. Minimum shipment charge.** Unless otherwise provided, shipments moving on a weight or time basis shall be subject to a minimum charge based on one thousand (1,000) pounds or one (1) hour, at rates provided in the HGC's tariff.

**C. Failure to make delivery.** When, through no fault of its own, the HGC is unable to locate a consignee at the address furnished by the shipper, or if the consignee is unable to accept or declines delivery, the HGC shall mail, telephone, or fax notification of failure to make delivery to the shipper or consignee and shall place the shipment in storage. If the shipper requests subsequent delivery, the HGC may assess charges for delivery from storage to the destination in addition to the transportation and storage charges already accrued.

**D. Pickup or delivery at warehouses and docks.** If a shipper orders pickup or delivery at a warehouse, dock or other point which charges a fee for pick up or delivery, the shipper will pay such fee in addition to paying the HGC's rates for loading or unloading at the warehouse dock, door, or other point accessible to the HGC's vehicle.

**E. Reasonable dispatch.** Each HGC accepting shipments of household goods shall transport the shipment with reasonable dispatch, within the time specified in the bill of lading. The HGC shall notify the shipper of any delay as soon as it becomes apparent to the HGC that it will be unable to comply with the anticipated delivery date.

[18.3.11.22 NMAC - Rp, 18.3.11.22 NMAC, 2-13-15]

#### **18.3.11.23 HOUSEHOLD GOODS VOLUNTARY DISPUTE SETTLEMENT PROGRAM:**

A shipper may avail himself or herself of the commission's dispute settlement program by filing an informal complaint with the director of the commission's consumer relations division or the director's designee, as described in 1.2.2.14 NMAC.

**A.** Upon receipt of the informal complaint, the director of the consumer relations division or the director's designee shall request that the HGC submit a response to the informal complaint. The director of the consumer relations division or the director's designee may request any other information from the shipper or the HGC that he or she believes is relevant to the dispute. The director of the consumer relations division or the director's designee shall submit a written decision on the dispute to the shipper and the HGC.

**B.** The decision shall become binding on the parties ten (10) days after it is served on them. If either party disagrees with the decision, it may appeal the decision by filing an "appeal of dispute settlement program decision" with the commission within ten days after the decision has been served on it. The appeal filing shall contain:

(1) a copy of the written decision of the director of the consumer relations division;

(2) a clear and concise statement of the relief sought;

(3) a statement of any facts or legal principles that the appellant alleges the director of the consumer relations division misconstrued;

(4) the mailing address and exact legal and "doing business as"(DBA) name of the HGC; and

(5) the name and mailing address of the shipper.

[18.3.11.23 NMAC - N, 2-13-15]

#### **18.3.11.24 HOUSEHOLD GOODS CARRIERS MAXIMUM TARIFF:**

The maximum tariff for an HGC pursuant to Section 65-2A-4(A)(10) NMSA 1978 shall be the tariff that the HGC had in effect on July 1, 2014, plus a thirty three percent (33%) increase to every rate contained in that tariff.

[18.3.11.24 NMAC - N, 2-13-15]

## **PART 12: TOWING SERVICES**

### **18.3.12.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission (NMPRC).

[18.3.12.1 NMAC - Rp, 18.3.12.1 NMAC, 3/14/2017]

**18.3.12.2 SCOPE:**

This rule applies to all towing services providing non-consensual tows and all repossession services using towing equipment and is in addition to all other applicable requirements of these rules.

[18.3.12.2 NMAC - Rp, 18.3.12.2 NMAC, 3/14/2017]

**18.3.12.3 STATUTORY AUTHORITY:**

Sections 8-8-4 and 65-2A-4 NMSA 1978.

[18.3.12.3 NMAC - Rp, 18.3.12.3 NMAC, 3/14/2017]

**18.3.12.4 DURATION:**

Permanent.

[18.3.12.4 NMAC - Rp, 18.3.12.4 NMAC, 3/14/2017]

**18.3.12.5 EFFECTIVE DATE:**

March 14, 2017, unless a later date is cited at the end of a section.

[18.3.12.5 NMAC - Rp, 18.3.12.5 NMAC, 3/14/2017]

**18.3.12.6 OBJECTIVE:**

The purpose of this rule is to establish requirements for towing services subject to the limitations and policy of 49 U.S.C. 14501. The clearing of public highways and roads is a matter of public safety, which cannot be reasonably accomplished by state and local law enforcement officials, unless uniform maximum rates for service are required for tows requested or directed by law enforcement or other safety officials. Public safety also requires secure storage yards for vehicles and reasonable access to towed vehicles, and particularly requires reasonably rapid access to operable vehicles that have been towed as the result of trespass tows, which may unexpectedly deprive members of the public of transportation as well as the personal items stored in their vehicle. Reasonable proximity of the carrier's office and books and records is required for efficient and effective inspections of safety and financial responsibility requirements, as well as the public's ability to retrieve towed vehicles.

[18.3.12.6 NMAC - Rp, 18.3.12.6 NMAC, 3/14/2017]

**18.3.12.7 DEFINITIONS:**

In addition to the definitions in Section 65-2A-3 NMSA 1978 and 18.3.1.7 NMAC, as used in this rule:

**A. MVD** means the motor vehicle division of the New Mexico taxation and revenue department;

**B. consensual tow** means a motor vehicle tow which has not been directed or requested by a law enforcement official, and for which actual consent has been obtained by the towing service from the owner or operator of the vehicle prior to the tow;

**C. nonconsensual tow** has the meaning given in Subsection JJ of Section 65-2A-3 NMSA 1978 for purposes of this rule, regardless of whether the owner or operator of the towed vehicle has consented to a tow requested or directed by a law enforcement official;

**D. normal business hours** means any eight hours between the hours of 8:00 a.m. to 5:00 p.m. excluding one hour lunch on every weekday excluding state recognized holidays;

**E. owner of a motor vehicle** means a person who holds legal title to a motor vehicle or a person legally entitled to possession of the motor vehicle;

**F. proof of ownership** means a certificate of title, evidence of current registration of a motor vehicle or other legal documentation of ownership including but not limited to the vehicle owner's delegation of the power of attorney, assignment of agent by notarized letter, or a report from MVD or other reliable source identifying the current registered owner, and sufficient other documentation to identify an individual as the person described in the documents or as the person's agent;

**G. public directive tow** means any nonconsensual motor vehicle tow performed at the direction or request of a law enforcement official, including tows assigned by law enforcement agencies through a rotational call system, regardless of whether the owner or operator of the towed vehicle ever consented to the tow;

**H. storage** means the safekeeping of motor vehicles entrusted to the custody of a towing service;

**I. trespass tow** means the nonconsensual tow of a motor vehicle which is illegally parked on property other than a public roadway, for which actual consent has been obtained by the towing service from the owner or lessee of the private property or the owner's or lessee's agent prior to the tow and for which actual consent has not been obtained by the towing service from the owner or operator of the vehicle prior to the tow, but does not include a motor vehicle tow performed at the request or direction of a law enforcement official;

**J. unclaimed motor vehicle** means a vehicle that has been placed in a storage or impound lot to which no owner or lienholder of record has asserted a valid claim after required attempts to contact the owner and lienholder have been made.

[18.3.12.7 NMAC - Rp, 18.3.12.7 NMAC, 3/14/2017]

#### **18.3.12.8 MINIMUM EQUIPMENT STANDARDS:**

A towing service shall use only those winches and towing equipment that have been produced and constructed by a manufacturer of such equipment that regularly produces winches and towing equipment of guaranteed quality.

[18.3.12.8 NMAC - Rp, 18.3.12.8 NMAC, 3/14/2017]

#### **18.3.12.9 CLASSIFICATION OF TOWING EQUIPMENT:**

The standards for each class of towing service shall be determined solely by the manufacturer's specifications for the capabilities of tow and vehicle carrier trucks and towing equipment.

- A.** Class A - operating authority for towing up to 8,000 pounds;
- B.** Class B - operating authority for towing between 8,001 and 12,000 pounds;
- C.** Class C - operating authority for towing between 12,001 and 25,000 pounds;
- D.** Class D - operating authority for towing 25,001 pounds and over.

[18.3.12.9 NMAC - Rp, 18.3.12.9 NMAC, 3/14/2017]

#### **18.3.12.10 CLASS A TOWING EQUIPMENT:**

A class A towing service shall maintain equipment adequate to transport motor vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall not exceed 8,000 pounds.

##### **A. Tow truck specifications.**

- (1)** GVW rating of not less than 10,000 pounds;
- (2)** Minimum of 60" cab to axle length;
- (3)** Automatic or manual transmission;
- (4)** Dual rear wheels.



**B. Towing equipment specifications.**

- (1) Lifting capacity of not less than four tons;
- (2) Winching capacity of not less than four tons, single line pull;
- (3) 3/8" cable for winch;
- (4) Tow bar, cradle, sling attachment, under reach, or roll-back vehicle carrier.

**C. Vehicle carrier truck specifications.**

- (1) GVW of not less than 10,000 pounds;
- (2) Minimum of 96" cab to axle length;
- (3) Dual rear wheels;
- (4) Automatic or manual transmission.

**D. Vehicle carrier bed specifications.**

- (1) Minimum of 17' of length;
- (2) Winching capacity of not less than four tons;
- (3) 3/8" cable for winch.

[18.3.12.10 NMAC - Rp, 18.3.12.10 NMAC, 3/14/2017]

**18.3.12.11 CLASS B TOWING EQUIPMENT:**

A class B towing service shall maintain equipment adequate to transport passenger cars, trailers, semi-trailers, trucks and truck-tractors, provided that the total gross weight of vehicle, special equipment, special bodies and lading shall exceed 8,001 pounds, but shall not exceed 12,000 pounds. Unless otherwise specifically restricted by its operating authority, a class B towing service may also render class A service but must charge the tariffed rates for class A service when it does so and must use class B equipment.

**A. Tow truck specifications.**

- (1) GVW rating of not less than 11,000 pounds;
- (2) Minimum of 60" cab to axle length;
- (3) Dual rear wheels;

- (4) Automatic or manual transmission.

**B. Towing equipment specifications.**

- (1) Lifting capacity of not less than eight tons;
- (2) Winching capacity of not less than eight tons;
- (3) 3/8" cable for winch;
- (4) Tow bar, cradle, or sling attachment, under reach, or roll-back vehicle carrier.

**C. Vehicle carrier truck specifications.**

- (1) GVW of not less than 14,000 pounds;
- (2) Minimum of 108" cab to axle length;
- (3) Dual rear wheels;
- (4) Automatic or manual transmission.

**D. Vehicle carrier bed specifications.**

- (1) Minimum of 17' of length;
- (2) Winching capacity of not less than four tons;
- (3) 3/8" cable for winch.

[18.3.12.11 NMAC - Rp, 18.3.12.11 NMAC, 3/14/2017]

**18.3.12.12 CLASS C TOWING EQUIPMENT:**

A class C towing service shall maintain equipment adequate to transport trailers, semi-trailers, trucks, truck-tractors and other vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall exceed 12,001 pounds, but shall not exceed 25,000 pounds. Unless otherwise specifically restricted by its operating authority, a class C towing service may also render class A or class B service but must charge the tariffed rates for class A or class B service when it does so and must use class C equipment.

**A. Tow truck specifications.**

- (1) GVW rating of not less than 25,000 pounds;

- (2) Dual rear wheels;
- (3) Automatic or manual transmission;
- (4) Full air brakes, constructed so as to lock power wheels upon air failure.

**B. Towing equipment specifications.**

- (1) Lifting capacity of not less than 10 tons;
- (2) Combined winching capacity of not less than 10 tons;
- (3) 7/16" cable for winch;
- (4) Tow bar, cradle or sling attachment, under reach, or roll-back vehicle carrier.

**C. Use of lowboy.** A towing service may use a tractor to tow a trailer when the trailer is part of a damaged or disabled unit. A towing service may use a lowboy when a tractor, trailer, or other class C vehicle cannot be towed by a tractor. A towing service may transport the contents of a damaged or disabled unit by means of a carrier or trailer when appropriate.

[18.3.12.12 NMAC - Rp, 18.3.12.12 NMAC, 3/14/2017]

**18.3.12.13 CLASS D TOWING EQUIPMENT:**

A class D towing service shall maintain equipment adequate to transport trailers, semi-trailers, trucks, truck-tractors and other vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall exceed 25,001 pounds. Unless otherwise specifically restricted by its operating authority, a class D towing service may also render class A, class B, or class C service but must charge the tariffed rates for class A or class B or class C service when it does so and must use class D equipment.

**A. Tow truck specifications.**

- (1) Gross Vehicle Weight (GVW) rating of not less than 49,000 pounds;
- (2) Manual transmission;
- (3) Dual axle (tandem) rear wheels;
- (4) Minimum of 120"cab to axle length;
- (5) Full air brakes constructed so as to lock power wheels upon air failure.

## **B. Towing equipment specifications.**

- (1) Lifting capacity of not less than 25 tons;
- (2) Combined winching capacity of not less than 25 tons;
- (3) 5/8" cable for winch;
- (4) Tow bar, cradle or sling attachment, under reach or roll-back vehicle carrier.

**C. Use of lowboy.** A towing service may use a tractor to tow a trailer when the trailer is part of a damaged or disabled unit. A towing service may use a lowboy when a tractor, trailer, or other class D vehicle cannot be towed by a tractor. A towing service may transport the contents of a damaged or disabled unit by means of a carrier or trailer when appropriate.

[18.3.12.13 NMAC - Rp, 18.3.12.13 NMAC, 3/14/2017]

## **18.3.12.14 AUTHORIZATION AND PROCEDURE FOR MOVING MOTOR VEHICLES:**

**A.** A towing service shall only perform the following tows:

(1) **By consent.** A warranted towing service may perform a consensual tow pursuant to the procedures specified in this rule and other applicable rules.

(2) **By directive.** A warranted towing service may perform a motor vehicle tow explicitly ordered by a law enforcement officer. In the event of a tow explicitly ordered by a law enforcement official, the towing service shall attempt to first obtain written authorization from a law enforcement officer and a written inventory of the contents of the vehicle. If the towing service is unable to first obtain a written authorization and inventory from a law enforcement officer, the towing service shall obtain the name of the officer ordering the tow, the agency that employs the officer, and any other identifying employment information, such as badge number, and shall perform its own inventory of the contents of the vehicle.

(3) **Necessary for public safety.** A warranted towing service may perform a motor vehicle tow necessary for public safety, but only for the distance necessary to remove the hazard to other motor vehicles using the highway and only where:

(a) no law enforcement officer is available within a period of three or more hours; and

(b) the accident or abandonment has occurred at a point on the highway which may be dangerous to other motor vehicles using the highway and it is not possible to detour other motor vehicles around the damaged or disabled motor vehicle.

(4) **Trespass tows.** No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle illegally parked on property other than a public roadway without having first obtained written authorization from the owner or lessee of the property, or the owner's or lessee's agent. Written authorization shall include the name and signature of the owner or lessee of the property or the name and signature of the property owner's or lessee's agent if different, the location of the private property, the amount of time the motor vehicle has been on the property, a description of the vehicle, the date and time the towing service removed the vehicle from the property, and a statement by the owner, lessee or agent that the vehicle is illegally parked.

(a) Before towing a motor vehicle that is illegally parked on private property, the towing service shall take a digital photograph or photographs of the motor vehicle showing its position on the private property.

(b) No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle illegally parked on commercial property or at an apartment unless the property contains visible signs notifying the public that illegally parked motor vehicles may be towed. The visible signs shall specify the exact time periods (starting and ending hours) when the vehicle is determined to be "illegally parked" on commercial property or at an apartment house. Before towing a motor vehicle that is illegally parked on private commercial property or at an apartment, the towing service shall take a digital photograph or photographs of the signage notifying the public that illegally parked motor vehicles may be towed.

**B. Additional requirements.** When towing motor vehicles, a towing service shall:

(1) ensure that at least two wheels of the motor vehicle, front or rear, are clear of the highway;

(2) use a cradle or bar to provide a rigid space between the motor vehicle and the tow truck; and

(3) use a cradle or rigid bar without lifting the front or rear wheels if the total gross weight of the motor vehicle, including lading, exceeds 10,000 pounds.

**C. Prohibitions.** A towing service shall not:

(1) pay or refund, directly or indirectly, any remuneration or anything of value to a private property owner or agent for the ability to perform nonconsensual tows on the private property;

- (2) transport a motor vehicle of any type by pushing;
- (3) transport a disabled motor vehicle on a dolly or other wheeled auxiliary device, except when the auxiliary device is specifically designed for, and used only for, the towing of disabled motor vehicles;
- (4) use a wheeled auxiliary device unless it is necessary to prevent further mechanical damage to the motor vehicle being moved; or
- (5) use a wheeled auxiliary device unless the nature of the existing damage prohibits moving the motor vehicle in any other way.

[18.3.12.14 NMAC - Rp, 18.3.12.14 NMAC, 3/14/2017]

#### **18.3.12.15 SECUREMENT:**

A towing service shall secure every towed motor vehicle to the towing vehicle in accordance with 49 CFR 393, Subpart F, Coupling Devices and Towing Methods, and Subpart I, Protection Against Shifting and Falling Cargo.

[18.3.12.15 NMAC - Rp, 18.3.12.15 NMAC, 3/14/2017]

#### **18.3.12.16 USE OF DOLLY OR SUPPLEMENTARY WHEELS:**

**A.** A towing service shall not use a wheeled auxiliary device when such use could jeopardize the safety of the public.

**B.** Only class A and class B towing services may use dollies or supplementary wheels and then only when necessary.

**C.** Class C and class D towing services may use converter dollies when necessary to transport class C or class D motor vehicles.

**D.** A towing service may use a dolly when both ends of the motor vehicle to be towed are damaged or it is necessary to prevent further damage.

[18.3.12.16 NMAC - Rp, 18.3.12.16 NMAC, 3/14/2017]

#### **18.3.12.17 DISCONNECTION OF DRIVELINE:**

A towing service may disconnect or remove the driveline from a motor vehicle to be towed when:

- A.** it is necessary to prevent mechanical damage to the motor vehicle; or

**B.** the motor vehicle's front end is so damaged, or for some other reason, it cannot be towed by lifting the rear end.

[18.3.12.17 NMAC - Rp, 18.3.12.17 NMAC, 3/14/2017]

#### **18.3.12.18 SAFETY CONSIDERATIONS:**

**A. Unsafe conditions.** A towing service is not obligated to transport shipments when, in the service's judgment, weather or road conditions make it impracticable or unsafe to operate.

**B. Passengers prohibited.** No person, other than an employee of the towing service, shall ride in a disabled motor vehicle while it is being transported.

**C. Chains or cable across highway.** A towing service shall not stretch or place any motor vehicles, cables or chains across any highway unless and until flagmen are placed a minimum distance of three hundred (300) feet from the obstruction in each direction along the highway to stop or warn approaching traffic. A towing service shall equip flagmen with red flags during daylight hours and electric lanterns with red lights during hours of darkness.

[18.3.12.18 NMAC - Rp, 18.3.12.18 NMAC, 3/14/2017]

#### **18.3.12.19 SAFETY EQUIPMENT REQUIREMENTS:**

All towing services must maintain the following safety equipment on each tow truck at all times for the described use:

**A.** flashing blue, amber or a combination of both colors of lights, front and rear, which shall be in operation whenever a towing service is standing on a roadway for the purpose of removing a motor vehicle and at all times while transporting a motor vehicle;

**B.** stop, tail, and turn signals on any motor vehicle in tow that can be operated from the towing vehicle;

**C.** spot lights that are capable of lighting the scene of disability after dark and additional spotlights or work lights positioned behind the cab of the towing service that can be used to illuminate the motor vehicle being serviced;

**D.** one hand axe;

**E.** one wrecking bar at least four feet in length;

**F.** at least one broom, one shovel, and one bag or container for removal of broken glass and debris from highway;

- G.** one 10 unit type first-aid kit;
- H.** at least three triangle-type reflectors;
- I.** at least six electronic fuses, 25 minute flares, or reflective cones;
- J.** at least four red signal flags (minimum dimensions - two feet by two feet (2' x 2'));  
and
- K.** at least one charged fire extinguisher having a minimum capacity of 10 pounds of dry chemical capable of extinguishing class A, B and C fires.

[18.3.12.19 NMAC - Rp, 18.3.12.19 NMAC, 3/14/2017]

#### **18.3.12.20 DEADHEAD MILEAGE:**

Except as otherwise provided in this rule, a towing service may assess deadhead mileage charges when performing a nonconsensual tow of a vehicle, and the owner or operator of the towed vehicle asks or directs the towing service to tow the vehicle to a location other than the towing service's base of operation or storage facility. When calculating deadhead mileage charges in such case, deadhead mileage shall not exceed total mileage less loaded mileage.

**A. Total mileage calculation.** Total mileage shall equal the sum of:

- (1)** the mileage from the base of operation to the loading pick up point;
- (2)** the mileage from the loading pick-up point to the destination; and
- (3)** the mileage from the destination back to the original base of operation.

**B. Loaded mileage calculation.** Loaded mileage shall equal the number of miles from the loading pick-up point to the destination.

**C Excess deadhead mileage charges.** A towing service performing a public directive tow may assess excess deadhead mileage charges for the unloaded mileage from its base of operation to the scene and from the scene back to its base of operation when the vehicle needs to be recovered, but the vehicle is not towed.

[18.3.12.20 NMAC - Rp, 18.3.12.20 NMAC, 3/14/2017]

#### **18.3.12.21 TOWING MULTIPLE MOTOR VEHICLES IN ONE TRIP:**

When a towing service tows two or more disabled motor vehicles during one trip, it may charge the reasonable and appropriate tariff rates for the second and succeeding motor



vehicles as though each were an independent tow, including but not limited to separate charges for hookup, mileage, etc. for each vehicle.

[18.3.12.21 NMAC - Rp, 18.3.12.21 NMAC, 3/14/2017]

#### **18.3.12.22 ALTERED, MUTILATED, OR MISSING VEHICLE IDENTIFICATION NUMBER (VIN):**

A towing service must notify the local law enforcement agency or the New Mexico state police in writing as soon as it discovers an altered, mutilated, or missing VIN on a motor vehicle in its custody, unless the motor vehicle has been impounded by a law enforcement officer aware of the altered, mutilated, or missing VIN.

[18.3.12.22 NMAC - Rp, 18.3.12.22 NMAC, 3/14/2017]

#### **18.3.12.23 STORAGE FACILITIES:**

Towing service includes the storage of motor vehicles. Towing service begins when the motor vehicle is entrusted to the towing service and ends when the towing service delivers the motor vehicle to the owner or the owner's agent. Storage begins when the motor vehicle arrives at the storage facility and ends when the motor vehicle leaves the storage facility.

##### **A. Storage Facility.**

A towing service that performs nonconsensual tows must maintain at least one of the following classes of storage facility:

- (1) Type 1 - a fenced and locked area;
- (2) Type 2 - a fenced, lighted, and locked area; or
- (3) Type 3 - an enclosed, roofed and locked structure.

##### **B. Office Location.**

A towing service that performs nonconsensual tows must have its office located either within or in the immediate vicinity of the storage facility. For purposes of this rule, "immediate vicinity" means the area within one mile measured as the straight line distance between the property line of the storage facility and the property line of the property within which the office is located.

##### **C. Staffing and Access.**

- (1) A towing service that performs trespass tows must have a person working in an office that is within or in the immediate vicinity of the storage facility during normal

business hours who is able to provide the services specified in Subsections A and B of 18.3.12.24 NMAC.

**(2)** A towing service that performs public directive tows must have a person working at, or available to meet with the public at, the storage facility or the office in the immediate vicinity of the storage facility by appointment during normal business hours within two hours from the time of telephone call requesting an appointment, who is able to provide the services specified in Subsections A and B of 18.3.12.24 NMAC.

#### **D. Required Signage.**

**(1)** The office of a towing service shall have prominent signage which may be read by a person in a passing vehicle, providing the name, address and contact telephone number of the towing service. If the office is not located within the storage facility, the office signage shall also include the address of the storage facility.

**(2)** If the storage facility is not located where the towing service office is located, the storage facility shall have prominent signage which may be read by a person in a passing vehicle, providing the name of the towing service, the address of the storage facility, the address of the towing service office, and the contact telephone number of the towing service.

#### **E. Lists or Logs of Nonconsensually Towed Vehicles.**

**(1)** A towing service that performs nonconsensual tows must maintain the following records in addition to all other records required by rule:

**(a)** a list or log of each and all vehicles currently held in the storage yard which were towed to the storage yard as the result of a trespass tow; and

**(b)** a list or log of each and all vehicles currently held in the storage yard which were towed to the storage yard as the result of a public directive tow.

**(2)** Each list or log required in this rule shall be available to provide to an employee of the transportation division of the commission or for transmission to the transportation division of the commission upon the request or directive of an employee of the transportation division of the commission. Each list or log shall contain, for each vehicle required to be listed:

**(a)** a description of the vehicle, including the make, model, model year, color and vehicle identification number;

**(b)** the date that the vehicle was towed to the storage yard;

(c) whether the owner of the vehicle or a representative of the owner has been allowed access to the vehicle, and if so, the name of the person allowed access and the date of each access; and

(d) whether the vehicle has been legally abandoned, surrendered or transferred for charges by the owner, and, if so, the type and date of legal transfer.

[18.3.12.23 NMAC - Rp, 18.3.12.23 NMAC, 3/14/2017]

#### **18.3.12.24 INSPECTION AND RELEASE OF TOWED MOTOR VEHICLES:**

**A. Motor vehicles ordered held for investigation.** If a law enforcement agency orders a towing service to hold a motor vehicle for investigation, the towing service shall not, without specific written authorization of the law enforcement agency:

(1) allow the owner of the motor vehicle, the owner's agent, or a lienholder to inspect the motor vehicle or remove proof of ownership or personal property from the motor vehicle; or

(2) release the motor vehicle to any person, including the owner, the owner's agent, or a lienholder.

#### **B. Motor vehicles not held for investigation.**

(1) If a law enforcement agency does not order a motor vehicle to be held for investigation, the towing service shall allow the owner, the owner's agent, or the lienholder of the motor vehicle without charge, during normal business hours, to:

(a) inspect the motor vehicle;

(b) remove proof of ownership from the motor vehicle; or

(c) remove personal property from the motor vehicle if he or she presents proof of ownership.

(2) The owner, the owner's agent, or the lienholder of a stored motor vehicle that has not been ordered held for investigation may obtain possession of the motor vehicle by paying all just and reasonable charges and providing proof of ownership:

(a) as a matter of right, during normal or extended business hours; or

(b) at the option of the towing service, during non-business hours; if a towing service elects to deliver a motor vehicle during non-business hours, it must assess the tariffed administrative charge for such delivery.

**C.** If the owner, the owner's agent, or the lienholder of a motor vehicle disputes any of the charges for towing or storage, or feels the motor vehicle was illegally towed, the towing service shall furnish to the disputant a written statement containing the name, address, and telephone number of the consumer relations division of the commission and advising the disputant that he or she may file a complaint with the commission as provided by applicable commission rules. The written statement shall be in substantially the following form: "If you have a dispute with the towing service regarding charges for towing or storage, and are not satisfied with the solution offered by the towing service, you may file a complaint with the consumer relations division of the public regulation commission in writing at P.O. Box 1269, Santa Fe, New Mexico, 87504-1269 or by calling the commission's toll-free number 1-888-427-5772, or via email, [crd.complaints@state.nm.us](mailto:crd.complaints@state.nm.us)."

**D.** Towing services shall accept payment in cash. Additionally, towing services shall accept payment by either credit card or check. Towing services shall post in a conspicuous location at their place of business which forms of payment, are accepted. Nothing in this rule shall be deemed to restrict the forms of payment that a towing service may accept.

[18.3.12.24 NMAC - Rp, 18.3.12.24 NMAC, 3/14/2017]

#### **18.3.12.25 [RESERVED]**

#### **18.3.12.26 NOTICE TO OWNERS OF TOWED MOTOR VEHICLES:**

##### **A. Identification of owner.**

**(1) On site.** Before a towing service tows a motor vehicle, it shall request ownership information from the authorizing law enforcement officer on scene.

**(2) From the storage facility.** If a towing service has not already obtained ownership information on a motor vehicle, it shall obtain the name and address of the registered owner and any lienholder of the motor vehicle.

**(a)** If the motor vehicle has New Mexico plates, the towing service shall request ownership information within three business days after the motor vehicle comes into its possession.

**(b)** If the motor vehicle has out-of-state plates or the towing service has other reason to believe that the motor vehicle is registered in a state other than New Mexico, the towing service must request the information from the appropriate agency of that state within three business days after the motor vehicle comes into its possession.

##### **(3) Documentation.**

**(a) Information requested from the Motor Vehicle Division of any state.** A towing service shall retain in its files a photocopy of MVD Form 10705, Vehicle or Hull Identification Number Verification, indicating the date ownership and lienholder information was requested and a copy of any document received in response.

**(b) Information requested from other sources.**

**(i) Electronically.** A towing service shall print out and retain in its files a copy of the ownership and lienholder information shown on the computer screen, notated with the name of the person making the request and the date and time the request was made.

**(ii) By other means.** A towing service shall maintain a record in its files indicating the name of the person requesting ownership and lienholder information, the source from which the information was requested, and the date and time the information was requested, and a copy of any document received from the source in response.

**B. Notification of owner.**

**(1)** Within two business days of receiving information identifying the registered owner or any lienholder of the motor vehicle, the towing service shall notify the registered owner and the lienholder, if any, that the towing service has the motor vehicle in its possession.

**(2)** The towing service shall use MVD Form 10058, notice of mechanic's or landowners's lien, and shall mail the notice by certified mail, return receipt requested, to the registered owner and the lienholder, if any.

**(3)** This requirement applies even if the VIN is altered, mutilated, or missing.

**C. Penalty for failure to comply with this section.** A towing service shall not collect any charges or liens for storage of an unclaimed motor vehicle if it fails to either:

**(1)** request ownership information within three business days after a motor vehicle comes into its possession; or

**(2)** mail notice to the registered owner and any lienholder within two business days of receipt of ownership information.

**D. Exception.** A towing service shall not be required to give the notice required by Subsection B of this section to the owner if, before the notice is required to be sent, the owner of the motor vehicle identifies himself to the towing service and makes any arrangement the towing service deems necessary for the payment of the towing and storage charges. However, the towing service shall still be required to give the notice to the lienholder of the motor vehicle.

[18.3.12.26 NMAC - Rp, 18.3.12.26 NMAC, 3/14/2017]

**18.3.12.27 TOWING SERVICE RESPONSIBILITY:**

A towing service shall be responsible for:

**A.** removing debris at the scene of an accident whether or not specifically directed to do so by law enforcement authorities; and

**B.** the safekeeping and delivery of a motor vehicle and its contents entrusted to it or which come into its custody in the course of its authorized operations.

[18.3.12.27 NMAC - Rp, 18.3.12.27 NMAC, 3/14/2017]

**18.3.12.28 RECORDS:**

A towing service shall maintain for a period of three years complete and permanent records of income, photographs, tow bills, and any other documentation required by this rule for non-consensual tows separate and apart from any other towing services and from any other business conducted by the towing service.

[18.3.12.28 NMAC - Rp, 18.3.12.28 NMAC, 3/14/2017]

**18.3.12.29 TOWING SERVICES WITH MULTIPLE STORAGE FACILITIES:**

A towing service may apply to operate with multiple storage facilities by completing the application form prescribed by the director. The director shall approve the application if it contains the name of the towing service, the warrant number, the mailing address of the new storage facility, the physical address of the new storage facility, and a list of the equipment the towing service will station at the new storage facility. A towing service performing non-consensual tows shall transport towed vehicles to the nearest storage facility.

[18.3.12.29 NMAC - Rp, 18.3.12.29 NMAC, 3/14/2017]

**PART 13: REGISTRATION OF INTERSTATE CARRIERS**

**18.3.13.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.3.13.1 NMAC - N, 12-30-02]

**18.3.13.2 SCOPE:**

This rule applies to interstate motor carriers that choose New Mexico as their base state.

[18.3.13.2 NMAC - N, 12-30-02]

**18.3.13.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 8-8-4 and 65-2A-4.

[18.3.13.3 NMAC - N, 12-30-02; A, 1-1-05]

**18.3.13.4 DURATION:**

Permanent.

[18.3.13.4 NMAC - N, 12-30-02]

**18.3.13.5 EFFECTIVE DATE:**

December 30, 2002, unless a later date is cited at the end of a section.

[18.3.13.5 NMAC - N, 12-30-02]

**18.3.13.6 OBJECTIVE:**

The purpose of this rule is to implement NMSA 1978 Section 65-2A-16.

[18.3.13.6 NMAC - N, 12-30-02; A, 1-1-05]

**18.3.13.7 DEFINITIONS:**

In addition to the definitions in NMSA 1978 Section 65-2A-3 and 18.3.1.7 NMAC, as used in this rule:

**A. FMCSA authorized carrier** means a motor carrier authorized by the federal motor carrier safety administration to engage in compensated transportation as a common or contract carrier in interstate or foreign commerce pursuant to federal law;

**B. single state registration system** means the procedures in 49 CFR Part 367 for the registration of FMCSA authorized carriers with states.

[18.3.13.7 NMAC - Rp, SCC Rule 215.01, 12-30-02; A, 1-1-05]

**18.3.13.8 SINGLE STATE REGISTRATION OF FMCSA AUTHORIZED CARRIERS:**

**A.** The commission has determined that New Mexico is eligible to participate in, and elects to participate in, the single state registration system and agrees to utilize the procedures developed by the national conference of state transportation specialists in accordance with 49 U.S.C. 14504 for the single state registration of FMCSA authorized carriers.

**B.** FMCSA authorized carriers registering in New Mexico shall pay all fees required by NMSA 1978 Section 65-2A-36 in guaranteed funds.

[18.3.13.8 NMAC - Rp, SCC Rule 215.03, 12-30-02; A, 1-1-05]

#### **18.3.13.9 PROOF OF REGISTRATION:**

An FMCSA authorized carrier shall carry a single-state registration receipt in each motor vehicle it operates in New Mexico.

[18.3.13.9 NMAC - Rp, SCC Rule 215.07, 12-30-02]

### **PART 14: AMBULANCE SERVICES**

#### **18.3.14.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission (NMPRC).

[18.3.14.1 NMAC - Rp, 18.3.14.1 NMAC, 2-13-15]

#### **18.3.14.2 SCOPE:**

**A.** This rule applies to all ambulance services subject to the jurisdiction of the commission and is in addition to all other applicable requirements of these rules.

**B.** In addition to the exemptions stated in 65-2A-38 and 65-6-6 NMSA 1978, this rule does not apply to:

(1) agencies of the United States government or

(2) ambulance services authorized in another state or country that are engaged in interstate transportation of patients into or out of New Mexico.

**C.** The director shall determine, on a case-by-case basis, whether this rule applies to New Mexico state agencies operating ambulance services.

[18.3.14.2 NMAC - Rp, 18.3.14.2 NMAC, 2-13-15]

#### **18.3.14.3 STATUTORY AUTHORITY:**



Sections 65-2A-4 and 65-6-4 NMSA 1978.

[18.3.14.3 NMAC - Rp, 18.3.14.3 NMAC, 2-13-15]

**18.3.14.4 DURATION:**

Permanent.

[18.3.14.4 NMAC - Rp, 18.3.14.4 NMAC, 2-13-15]

**18.3.14.5 EFFECTIVE DATE:**

February 13, 2015, unless a later date is cited within a section.

[18.3.14.5 NMAC - Rp, 18.3.14.5 NMAC, 2-13-15]

**18.3.14.6 OBJECTIVE:**

The purpose of this rule is to establish requirements for ambulance services.

[18.3.14.6 NMAC - Rp, 18.3.14.6 NMAC, 2-13-15]

**18.3.14.7 DEFINITIONS:**

In addition to the definitions in Sections 24-10B-3 and 65-6-2, and 7.27.2 NMSA 1978 and 18.3.1 NMAC, as used in this rule:

**A. advanced levels** means emergency medical services above the New Mexico Emergency Medical Technician (EMT) basic level including EMT intermediate, EMT paramedic, and special skills which include enhanced emergency medical services and critical care transport;

**B. critical care transport (CCT)** means the inter-facility ambulance transportation of patients whose needs require the continuation of critical care and medical interventions or equipment ordered by a licensed physician. CCT may be provided only by an ambulance agency that has received special skill approval by the department of health (DOH) emergency medical services (EMS) bureau and EMS medical direction committee for CCT. Examples of critical care include specialized ventilators, multiple medications being monitored via intravenous (IV) pumps, intra-aortic balloon pumps, external pacemakers and other medications and procedures as determined by the department of health EMS bureau and the EMS medical direction committee.

**C. emergency medical technician basic (EMT basic)** means the pre-hospital and inter-facility care and treatment prescribed in the EMS scope of practice found in 7.27.11 NMAC, Supplemental Licensing Provisions, that can be performed by all licensed emergency medical technicians;

**D. emergency medical technician intermediate (EMT intermediate)** means certain advanced pre-hospital and inter-facility care and treatment prescribed in the EMS scope of practice found in 7.27.11 NMAC, Supplemental Licensing Provisions, that may be performed only by a person licensed by the EMS bureau as an EMT intermediate and only under medical direction;

**E. emergency medical services paramedic (EMT paramedic)** means advanced pre-hospital assessment, and inter-facility care and treatment prescribed in the EMS scope of practice found in 7.27.11 NMAC, Supplemental Licensing Provisions, that may be performed only by a person licensed by the EMS bureau as an EMT paramedic and only under medical direction;

**F. emergency** means the sudden occurrence or onset of what reasonably appears to be a traumatic or medical condition that manifests itself by symptoms of sufficient severity, which may include severe pain, that the absence of immediate medical attention could reasonably be expected by a lay person to result in;

- (1) jeopardy of the person's physical and or mental health;
- (2) serious impairment of bodily functions;
- (3) serious dysfunction of any bodily organ or part; or
- (4) disfigurement to the person.

**G. EMS** means emergency medical services.

**H. EMS bureau** is the emergency medical systems bureau in the New Mexico department of health.

**I. inter-facility transfer** means the transportation of a person between health care facilities with the concurrence of a sending and a receiving physician;

**J. mutual aid** means a written agreement between one municipality, county or emergency medical service and other municipalities, counties or emergency medical services for the purpose of ensuring that adequate emergency medical services exist throughout the state;

**K. NEMSIS** means the national emergency medical services information system, the federal EMS data collection system administered by the United State department of transportation national highway traffic safety administration (NHTSA).

**L. patient catchment area** means an area outside the territory authorized by the operating authority issued by the commission that an ambulance service is permitted to serve in emergencies or pursuant to mutual aid agreements;

**M. pre-hospital response time** means the period in minutes that measures from the time a dispatch agency has the necessary information to dispatch an ambulance service until the time an EMS crew arrives at the scene of the emergency;

**N. special event ambulance means** an ambulance staffed with a minimum of two (2) licensed EMT's, working under agreement or contract, in dedicated stand-by status at a special event such as a football game, concert, wildland fire event, rodeo, movie set, or other event that will, under their public regulation commission ((PRC) granted emergency transport authority for the territory/catchment area, transport event participants, attendees, or workers.

[18.3.14.7 NMAC - Rp, 18.3.14.7 NMAC, 2-13-15]

#### **18.3.14.8 DUTY TO PROVIDE SERVICE:**

**A.** It shall be unlawful for an ambulance service, or any of its personnel or agents, to refuse to provide service to a person in need of emergency medical treatment or transportation, or to require advance payment prior to rendering such service. An ambulance service and its personnel or agents may accept a refusal for treatment or transport from a patient who has been informed of the potential consequences of such a refusal.

**B.** When ambulance transport is requested or determined to be necessary, an ambulance service shall transport a patient requiring medical treatment to the closest appropriate facility capable of providing definitive care and treatment, as determined by the service's medical director through local EMS system protocol.

**C.** An ambulance service shall give priority to emergency response calls.

**D.** An ambulance service shall be available twenty four (24) hours a day, three hundred sixty five (365) days a year a year.

[18.3.14.8 NMAC - Rp, 18.3.14.8 NMAC, 2-13-15]

#### **18.3.14.9 MUTUAL AID:**

Ambulance services shall develop mutual aid plans with all appropriate entities that may be implemented anytime an ambulance service cannot respond to a call or if a disaster or emergency occurs. Mutual aid may be provided:

**A.** in an emergency or disaster situation when requested by state or local authorities;

**B.** when requested by another EMS service, an EMT, or healthcare facility during an emergency and in accordance with established mutual aid agreements;

- C. when requested by a law enforcement agency or officer; or
- D. when requested by an official of a political subdivision of the state.

[18.3.14.9 NMAC - Rp, 18.3.14.9 NMAC, 2-13-15]

#### **18.3.14.10 OPERATIONS PLAN:**

Each ambulance service shall have a written operations plan setting forth its policies and procedures. The plan shall be periodically updated and shall be available for inspection by the EMS bureau and the commission at all times. Such a plan shall include at a minimum:

- A. copies of all operational guidelines and medical protocols;
- B. a quality assurance plan;
- C. personnel requirements, to include a policy on drug and alcohol testing for employees reporting for duty impaired or who have been involved in a vehicle accident or other work related event;
- D. copies of all mutual aid agreements;
- E. a disaster or mass casualty plan;
- F. infection control procedures;
- G. a description of emergency medical dispatch capabilities;
- H. standards for personnel duty time and assuring a rested and fit-for-duty-staff; and
- I. anticipated pre-hospital response times in the ambulance service's territory or patient catchment area, and a discussion of factors that can cause delays in meeting anticipated response times. Such factors may include:
  - (1) the geography of the territory;
  - (2) whether the service uses volunteer or paid drivers;
  - (3) whether the territory is urban or rural or both;
  - (4) stationing points for ambulances and crews;
  - (5) weather.

[18.3.14.10 NMAC - Rp, 18.3.14.10 NMAC, 2-13-15]

#### **18.3.14.11 MINIMUM PERSONNEL REQUIREMENTS:**

##### **A. Ambulances:**

(1) A minimum of two licensed EMTs from the ambulance service shall be present at the scene of the emergency, except that two EMTs need not be present at the scene for prearranged transfers of a stable patient or in those situations where there are overlapping calls, disasters, or similar circumstances which result in an insufficient number of EMTs being available.

(2) A minimum of one EMT shall be in the patient compartment at all times during patient care and transport.

##### **B. Exceptions:**

(1) An EMT is required to be aboard the ambulance but is not required in the patient compartment of the ambulance when a member of a neonatal intensive care team is attending a patient in a self-contained newborn intensive care isolette.

(2) Subject to the policies of the service, additional non-EMT medical personnel, functioning within the scope of their licensure and the scope of skills and medications approved for the service by the EMS Bureau and EMS medical direction committee, may accompany a patient in an ambulance patient compartment, as long as one EMT is also present in the patient compartment.

(3) For ambulances with special skill approval as critical care units, one special skill critical care certified paramedic must be in the patient compartment along with at least one other advanced provider; the second advanced provider may be:

(a) a special skill critical care paramedic; or

(b) a nurse with appropriate training as approved by the EMS agency medical director for the scope of skills and medications listed in the critical care special skills application; or

(c) other advanced care provider, such as a physician, certified nurse practitioner, physician assistant, respiratory therapist, or other specially trained advanced caregiver appropriate for the care being delivered, as approved by the ambulance service medical director for the scope of skills and medications listed in the critical care special skills application.

(4) For EMS bureau approved community EMS or advanced paramedic practice programs, at least one caregiver with the appropriate training and certification as determined by the EMS bureau and approved by the service medical director must attend and assess the patient.

**C. Training coordinator required.** Each ambulance service shall designate an individual who shall coordinate the availability of appropriate training programs and continuing education for ambulance service personnel.

**D. Medical director required:** Each ambulance service shall designate a medical director, working under agreement or contract, who is trained and meets the requirements for a medical director prescribed in 7.27.3 NMAC, Medical Direction for Emergency Medical Services. If an ambulance service is temporarily without a medical director, it shall make arrangements to establish temporary medical direction with a local, regional or state EMS medical director. The service shall be limited to the skills and medications allowed to be administered without medical direction by the EMS scope of practice (7.27.11 NMAC) until appropriate medical direction is established.

[18.3.14.11 NMAC - Rp, 18.3.14.11 NMAC, 2/13/2015; A,10/24/2023]

#### **18.3.14.12 VEHICLE LIST:**

**A.** Each ambulance service shall maintain at its operating location a list of ambulances used in its authorized operations. The list shall identify each ambulance by type (I, II, III), manufacturer, serial number, registration number, and other descriptive information sufficient for identification, and shall state whether the ambulance is leased or owned.

**B.** An ambulance service may only use ambulances on the vehicle list for its regulated operations, unless the service is temporarily utilizing a borrowed vehicle due to unusual and unforeseen circumstances (repair of vehicles or other situations).

**C.** An ambulance service shall update the list and submit it to the commission within ten (10) days of the date on which an ambulance is either put into service or taken out of service.

[18.3.14.12 NMAC - Rp, 18.3.14.12 NMAC, 2-13-15]

#### **18.3.14.13 VEHICLE STANDARDS:**

All ambulances purchased, acquired, or placed into service by an authorized EMS service after the effective date of this rule shall meet or exceed the General Services Administration (GSA) standards for operation, crash performance and safety as defined in a national standard approved by the commission.

[18.3.14.13 NMAC - Rp, 18.3.14.13 NMAC, 2-13-15]

#### **18.3.14.14 REQUIRED EQUIPMENT:**

When an ambulance is dispatched, it shall carry and have readily available in good working order:

**A.** one (1) semi-automatic defibrillator for EMT basic and EMT intermediate use or one (1) semi-automatic/manual defibrillator monitor for paramedic use, as specified in the EMS scopes of practice and local medical protocol; (note: these devices require specific training and medical director approval prior to use);

**B.** suction systems, which include:

(1) on-board suction unit that meets GSA standards;

(2) portable, manual - or battery - powered suction unit;

**C.** oxygen delivery and patient ventilation devices, which include:

(1) fixed, on-board oxygen supply which meets GSA specifications;

(2) portable oxygen devices which are capable of delivering at least sixty (60) minutes of oxygen at a flow rate of 10 liters per minute, or at a minimum, two (2) D cylinders; at least one (1) cylinder will be designated primary and configured with a yoke type regulator, liter control and contents supply gauge;

(3) ventilation devices including manual, self-filling, bag-valve-mask (BVM) ventilation devices, in adult, child, infant and neonatal sizes; the BVM shall be equipped with a sufficient supply of see through adult, child, infant, and neonatal masks; electronic or colormetric end tidal carbon dioxide detection equipment for adults and pediatric patients are also required;

**D.** Splints, including as a minimum:

(1) one (1) adult traction splint with limb supporting slings, padded ankle hitch and traction device;

(2) two (2) sets of rigid splinting devices, or equivalents, suitable for the immobilization of upper or lower extremities, in adult, child and infant sizes;

**E.** spine immobilization devices, one (1) half-body device and two (2) full-body devices, with suitable strapping, and head immobilization devices; commercial devices that stabilize head, neck, and back as one (1) unit, may be substituted;

**F.** one (1) commercially available obstetrical kit, or equivalent;

**G.** one (1) sphygmomanometer in adult, child and infant sizes, or one (1) sphygmomanometer capable of accepting various sizes of cuffs (adult, child, and infant); in the latter case, a sufficient supply of cuffs in each of the identified sizes shall be available;

**H.** one (1) stethoscope;

**I.** two (2) double D-cell, or equivalent, flashlights with batteries;

**J.** one (1) all-purpose multi-level ambulance stretcher, with safety straps and crash-resistant locking/securing mechanism; the locking mechanism in the vehicle shall be the mechanism designed for the stretcher being used; locking mechanisms for other stretchers or locally produced mechanisms are not allowed; in addition, the mattress shall be fluid impervious;

**K.** one (1) minimum ten (10)-pound, or two (2) minimum five (5)-pound 1A20BC, or equivalent, fire extinguisher; a current inspection tag will be displayed on all fire extinguishers;

**L.** one (1) two-way mobile radio capable of direct communication between the EMT and the receiving medical facility, on ultra-high frequency, on federal communications commission-designated emergency medical radio service (EMRS) frequencies, and which is compatible with the state emergency medical services radio communications system (EMSCOM), and is approved by the emergency medical services bureau (EMSB) and a copy of the EMSB/DOH "EMS communications system (EMSCOM) manual;"

**M.** scene safety protective equipment including:

**(1)** six (6) highly visible lighted electric or chemical warning devices suitable for nighttime use;

**(2)** reflective apparel meeting American National Standards Institute standards for all personnel;

**(3)** a current edition of the "North American emergency response guidebook," a guidebook for first responders during the initial phase of a hazardous materials/dangerous goods incident;

**N.** uniforms or other apparel or means of identification of a distinct design or fashion to be worn by ambulance service personnel when on duty to identify them as EMS providers and to identify the level of EMS care for which the providers are licensed.

[18.3.14.14 NMAC - Rp, 18.3.14.14 NMAC, 2-13-15]

#### **18.3.14.15 REQUIRED SUPPLIES:**

When an ambulance is dispatched, it shall carry adequate quantities of readily available equipment and supplies to ensure the level of care described in the ambulance service protocols signed by the physician medical director, including but not limited to:

**A.** twelve (12) sterile bandages, soft roller, self-adhering type, or equivalent to a total length of 24 yards;



- B.** six (6) triangular bandages or equivalent product or substitute;
- C.** one (1) box adhesive bandages;
- D.** one (1) pair trauma shears and one (1) penlight (either in the ambulance or on the EMT's person);
- E.** one (1) pair sterile scissors used for cutting the umbilical cord during a delivery; commercially available sterile cutting devices may be substituted;
- F.** six (6) sterile trauma dressings in large and small sizes;
- G.** fifty (50), or adequate supply, sterile 4" x 4", or larger, sponges;
- H.** four (4) rolls of adhesive tape;
- I.** four (4) cold packs and four (4) heat packs;
- J.** two (2) sterile burn sheets, individually wrapped;
- K.** four (4) sterile burn dressings;
- L.** two (2) sets of oropharyngeal airways in sizes zero (0) through five (5) (infant through adult), and one (1) set of nasopharyngeal airways (28FR, 32FR, 34FR, and 36FR, all for adult use);
- M.** three (3) sterile suitable occlusive dressings;
- N.** two (2) sets of rigid cervical collars of plastic, not foam, construction in various sizes for adult, child and infant; commercially available immobilization devices are allowed;
- O.** a sufficient quantity of appropriate airborne and blood-borne infection control supplies, as recommended by the centers for disease control and prevention, including gloves, masks, gowns, caps, eye protection, sharps containers, and other equipment to protect all patient care providers dispatched with the ambulance; in addition, appropriate hand-washing supplies and disinfectant shall be available on the vehicle;
- P.** at least two (2) disposable high-concentration oxygen masks and two (2) disposable nasal cannulas in adult and child sizes and at least two (2) packages of oxygen supply tubing;
- Q.** appropriate large and small bore tip suction catheters (6f-14f), rigid tip suction catheter, and hoses;
- R.** one (1) bulb suction device;

**S.** one (1) emesis basin or large plastic bag;

**T.** two (2) liters of sterile water, normal saline, or other appropriate irrigation solution; and

**U.** two (2) clean sets of linen, including at least two (2) blankets and pillows (or suitable pillow substitutes) at all times.

[18.3.14.15 NMAC - Rp, 18.3.14.15 NMAC, 2-13-15]

#### **18.3.14.16 MEDICATIONS:**

An ambulance service shall adhere to the appropriate EMS scopes of practice for EMS personnel regarding approved medications, provided the medications are listed in the service's treatment guidelines or protocols and approved by the local physician medical director for use by the ambulance service. In some cases the medical direction committee may authorize special skills that allow unique medications not found in the scopes of practice. In such cases, these medications are allowed on the vehicle for use by the authorized personnel, as specified by the special skills approval letter provided by the EMS medical direction committee and the EMS bureau. In all cases, medications shall only be administered under medical direction, as specified in the scopes of practice and any special skills approval letters.

[18.3.14.16 NMAC - Rp, 18.3.14.16 NMAC, 2-13-15]

#### **18.3.14.17 PORTABLE MEDICAL KITS:**

In addition to the equipment and supplies required by this rule, every ambulance shall carry at least one (1) or more portable medical kits, consistent with medical protocol. Each portable medical kit shall contain the items listed below, or their appropriate equivalent, although an ambulance service may add other items based on training levels and local protocols.

**A.** One (1) sphygmomanometer in adult, child and infant sizes, or one (1) sphygmomanometer capable of accepting various sizes of cuffs (adult, child, and infant). In the latter case, a sufficient supply of cuff in each of the identified sizes shall be available.

**B.** one (1) stethoscope;

**C.** four (4) soft roller, self-adhering type bandages;

**D.** three (3) triangular bandages or equivalent product/substitute;

**E.** two (2) trauma dressings;

**F.** ten (10) 4" x 4" gauze sponges;

**G.** one (1) roll adhesive tape;

**H.** one (1) pair of trauma shears (either in the ambulance or on the EMT's person);

**I.** one (1) penlight (either in the ambulance or on the EMT's person);

**J.** two (2) sterile burn dressings;

**K.** one (1) adult-size bag-valve-mask (BVM) ventilation device. Neonate, infant and child BVM must be incorporated in the kit or readily available aboard the vehicle;

**L.** One (1) set of oropharyngeal airways, sizes 0 through 6 (neonatal through adult);

**M.** Two (2) sterile, petroleum gel-impregnated gauze dressings, or other suitable occlusive dressings;

**N.** Multiple pair of disposable assessment and treatment gloves;

[18.3.14.17 NMAC - Rp, 18.3.14.17 NMAC, 2-13-15]

**18.3.14.18 SPECIAL SKILLS; Critical Care Transport (CCT), and PRC certified services providing Advanced Practice/Community EMS:**

An ambulance service wishing to provide special skills of EMS shall:

**A.** For special skills, submit a special skills application to the EMS bureau, as provided in 7.27.2 NMAC, Licensing of Emergency Medical Services Personnel; if the special skills application is approved and changes the potential level of reimbursement sought, for example when a basic EMT ambulance service will now perform an advanced level medical intervention, the service must file an application for a change in tariff with the commission if it seeks reimbursement for advanced levels service. Personnel performing special skills for an ambulance service must be an employee or a volunteer for the service and listed as an employee or volunteer on the annual service report.

**B.** For a service with EMS bureau and EMS medical direction approval to provide CCT, the ambulance service must file an application with the commission for the appropriate tariff(s) to seek reimbursement for CCT.

[18.3.14.18 NMAC - Rp, 18.3.14.18 NMAC, 2-13-15]

**18.3.14.19 ADDITIONAL REQUIREMENTS FOR ADVANCED LEVEL SERVICES:**

**A. Additional requirements.** An ambulance service shall meet the following additional requirements before it provides any advanced level treatments or procedures, including special skills.

(1) If an ambulance service represents itself or labels its vehicles as a provider of service at any level above EMT basic, that advanced level of care and treatment shall be appropriately provided twenty four (24) hours a day, three hundred sixty five (365) days a year, except in those unusual situations where there are overlapping calls, disasters, or similar unforeseen circumstances.

(2) When advanced level care and treatment is provided by an ambulance service, at least one (1) person trained and licensed at that advanced level shall respond to the scene; an advanced provider may be one (1) of the two (2) minimum EMT responders to the emergency, and an advanced level provider must accompany the patient in the patient compartment of the ambulance during transport.

(3) If advanced level services are to be provided, the ambulance shall, in addition to other requirements, carry supplies and equipment appropriate to the level of service and consistent with the relevant EMS scopes of practice and medical director approved local protocols.

**B. Additional supplies and equipment.** The following additional items are required for advanced level ambulance services:

(1) one (1) semi-automatic monitor-defibrillator for EMT intermediate or manual/semi automatic monitor - defibrillator for EMT paramedic, as specified in the EMS scopes of practice and local medical protocol; (note: these devices require specific training and medical director approval prior to use);

(2) assorted arm boards in infant, child and adult sizes;

(3) assorted intravenous catheters in sizes 14-24 gauge;

(4) assorted macro-drip IV devices to infuse intravenous fluids into adults (fifteen (15) drop per cc or better);

(5) assorted micro-drip IV devices to manage IV administration to infants and children; these may be burettes, micro-drip tubing or in-line volume controllers;

(6) two (2) intra-osseous access devices;

(7) one (1) pediatric drug dosage chart or tape; this may include charts listing the drug dosages in milliliters or milligrams per kilogram, pre-calculated doses based on weight, or a tape that generates appropriate equipment sizes and drug doses based on the patient's height or weight;

(8) assorted intravenous (IV) fluids that comply with the EMS scopes of practice; these fluids shall be stored within the manufacturers recommended temperature range at all times until use;

(9) one (1) laryngoscope with straight or curved blades in infant, child and adult sizes; spare bulbs and batteries shall be readily available;

(10) two (2) adult stylets for endotracheal tubes; if service has special skill approval for pediatric (under age 12) intubation, two (2) pediatric stylets must be in stock;

(11) one (1) each pediatric and adult magill forceps;

(12) assorted endotracheal tubes in sizes: uncuffed 2.5-6.0 if service has special skill approval for pediatric (under age twelve (12)) intubation and cuffed 6.0-8.0;

(13) assorted medications and resuscitation medications that are allowed in the EMS scopes of practice and local medical protocol; these medications shall be stored within the manufacturer's recommended temperature range at all times;

(14) adult and pediatric sized supraglottic/laryngeal airways, and multi-lumen airways as approved by service medical director.

[18.3.14.19 NMAC - Rp, 18.3.14.19 NMAC, 2-13-15]

#### **18.3.14.20 NON-EMERGENCY AND SCHEDULED AMBULANCE TRANSPORT SERVICE:**

An ambulance service may provide scheduled pre-hospital or inter-facility transport of patients, including physically or mentally impaired patients or non-ambulatory patients, who cannot be transported by common means of transportation and who require the attending care of qualified medical personnel. Vehicles that are capable of transporting gurneys, but are not certified ambulances, shall not transport recumbent patients requiring medical monitoring. An ambulance service providing such service shall:

**A.** transport patients in ambulances that meet the requirements of this rule; and

**B.** provide, at a minimum, one (1) EMT of the appropriate level for the transport and one qualified driver; the EMT shall be in the patient compartment attending the patient whenever a patient is being cared for or transported.

**C. Stretcher vans; wheelchair vans: use; restrictions:** A stretcher van may transport a person

who:

(1) Needs routine transportation to or from a medical appointment or service if that person is convalescent or otherwise non-ambulatory and does not require medical monitoring en route to the destination, facility, or aid, care or treatment during transport.

(2) Is an inpatient at a facility and needs transportation to another hospital for diagnostic tests if that person's physician authorizes the use of a stretcher van.

**D. A stretcher van or wheelchair van shall not transport a person who:**

(1) Is being administered intravenous fluids.

(2) Needs oxygen unless that person's physician has prescribed oxygen as a self-administered therapy.

(3) **Needs** suctioning.

(4) Demonstrates signs of a visible injury and has not yet been evaluated by a physician.

(5) Is experiencing an acute condition or the exacerbation of a chronic condition.

(6) Needs to be transported from one hospital to another hospital if the destination hospital is the same level or a higher level as the hospital of origin.

(7) Is being medically monitored at the sending facility and will continue to be medically monitored at the destination facility.

[18.3.14.20 NMAC - Rp, 18.3.14.20 NMAC, 2-13-15]

**18.3.14.21 SPECIAL EVENT AMBULANCE:**

**A.** A dedicated special event ambulance working under agreement or contract with the event organizer or event command at an event such as a football game, concert, wildland fire event, rodeo, movie set or other event must be staffed with a minimum of two (2) licensed EMT's and be properly equipped as described in this rule; the ambulance may, under their commission granted emergency transport authority for the territory/catchment area, transport event participants, attendees, or workers. Transports from these events are emergency transports, and may not be considered inter-facility transfers unless the inter-facility transfer definition is met. Dedicated stand-by status ambulances shall not respond to emergency calls off site of the event except in cases of disaster or other unusual medical circumstance where mutual aid is requested and granted. An EMS agency without commission granted emergency transport authority providing stand-by EMS for an event shall work with the area's approved PRC emergency transport ambulance provider to ensure proper transport of patients, or

transport only in the circumstances found in Paragraph (2) of Subsection B of 7.27.10.16.

**B.** Non-dedicated stand-by status units may respond to emergency calls off site of the event.

[18.3.14.21 NMAC - Rp, 18.3.14.21 NMAC, 2-13-15]

#### **18.3.14.22 ANNUAL SERVICE REPORT AND LOCAL FUNDING PROGRAM APPLICATION:**

The EMS bureau will mail an EMS annual service report form including an EMS Fund Act local funding program application to all ambulance services on November 1 each year. Each ambulance service shall complete the form and return it to the EMS bureau no later than January 15 of the following year. The EMS bureau will distribute a copy of the annual service report from each ambulance service to the commission. The annual service report shall contain:

**A.** the names of all individuals serving as EMS personnel, including employed or volunteer status as appropriate, this will include their licensure level and expiration date and the completion date of the emergency vehicle operator's course required by this rule;

**B.** the names of all non-EMT drivers and the completion date of the driving course required by this rule;

**C.** the name and physician license number of the service's medical director; if an ambulance service has not previously submitted the physician's credentials to the EMS bureau, it shall include them with the annual report; any substantial change in these credentials shall be forwarded to the EMS bureau for review by the state EMS medical director;

**D.** the name of the service's training coordinator;

**E.** a description of all ambulances currently being used to transport patients, including their dates of manufacture, makes, license plate numbers and mileage;

**F.** other information as may be required by the EMS bureau or the commission;

**G.** a certification of an annual safety inspection of all ambulances including the date, name and location of the certified mechanic performing the inspection, as outlined in 18.3.4.14 NMAC.

[18.3.14.22 NMAC - Rp, 18.3.14.22 NMAC, 2-13-15]

#### **18.3.14.23 MAINTENANCE, PRESERVATION, AND RETENTION OF RECORDS:**

In addition to the requirements in 18.3.7.14 NMAC, every ambulance service shall maintain accurate and separate records of its services in New Mexico, including but not limited to:

**A.** driver records including current licenses, history of department of transportation (DOT) physical examinations, approved firefighter fitness exam certification, or other approved physician certifications, and emergency vehicle operator training history; ambulance services staffed primarily by volunteers may apply for an exemption to the physical examination requirement if proof of financial hardship is provided to the commission;

**B.** EMS personnel licensure;

**C.** statement of employment or volunteer status, including employment start and stop dates;

**D.** records of equipment, such as reports, repair and maintenance records, equipment lists, vehicle titles, and registration certificates;

**E.** complete accounts;

**F.** organized records of all ambulance runs, including a copy of the patient care record.

[18.3.14.23 NMAC - Rp, 18.3.14.23 NMAC, 2-13-15]

#### **18.3.14.24 QUALITY ASSURANCE:**

Each ambulance service shall have a written quality assurance program, which shall provide for.

**A. patient care records retention:** an ambulance service shall retain pre-hospital patient care records for seven (7) years, as approved by local medical protocol;

**B. reporting:** ambulance services shall complete a patient run report for each patient contacted during an emergency response or inter-facility transport; the minimum data elements from these reports, as identified by the EMS bureau, shall be compiled to the extent possible and submitted to the pre-hospital data collection system at the EMS bureau as prescribed in 7.27.4 NMAC, Emergency Medical Services Fund Act;

**C. minimum patient information required upon patient delivery to the destination facility:** pursuant to ambulance service protocol, an ambulance service shall communicate, electronically or in writing, clinical patient information to the intercepting ambulance or receiving facility at the time of patient transfer or delivery, if available:



- (1) ambulance unit number, EMT name and level of licensure;
- (2) patient age and sex;
- (3) patient's chief complaint or EMT's primary impression;
- (4) a brief history of the present illness, including scene assessment and mechanism of injury;
- (5) major past illnesses;
- (6) patient's mental status;
- (7) patient's baseline vital signs;
- (8) pertinent findings of the physical examination;
- (9) description of emergency medical care that has been provided for the patient, including that provided by any first response units; and
- (10) the patient's response to the emergency medical care received.

**D. completed patient care records:** an ambulance service shall deliver an electronic or written copy of the completed pre-hospital patient care record to the receiving facility emergency department for inclusion in the patient's permanent medical record upon delivery of the patient to the hospital; in the event the unit is dispatched on another call, the patient care record shall be delivered as soon as possible after that call, but not later than the end of a shift or twenty four (24) hours after the transportation and treatment of the patient;

**E. medical protocols and operational guidelines:** the ambulance service medical director shall develop and approve medical protocols and operational guidelines which should include procedures for obtaining on-line medical direction; service medical protocols shall not exceed the New Mexico EMS scope of practice, unless a special skill has been granted; medical protocols and operational guidelines should be developed in collaboration with receiving hospitals and EMS agencies within the territory or patient catchment area; adult and pediatric patient protocols shall be on the unit at all times, in electronic or hard copy form;

**F. medical director review of patient care:** an ambulance service medical director shall review patient care records at least quarterly to determine whether appropriate medical care is being provided; the medical director shall document the steps taken during the review; subsequent reviews will include an evaluation of whether appropriate follow-up has been accomplished; receiving hospitals and other EMS agencies within the patient catchment area should be invited to participate in these reviews when appropriate;

**G. confidentiality of medical records:** an ambulance service may only release patient care records as provided by state and federal law, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA).

[18.3.14.24 NMAC - Rp, 18.3.14.24 NMAC, 2-13-15]

**18.3.14.25 REISSUANCE OF CERTIFICATE:**

Sixty (60) days prior to expiration of its certificate, an ambulance service shall submit to the director an application for reissuance of its ambulance certificate containing the information required by Paragraphs (1) through (10) of Subsection A of 18.3.2.13 NMAC. The director shall prepare a notice of application as provided in 18.3.2.15 NMAC. The director shall reissue the certificate for the period of time prescribed in Section 65-6-5 NMSA 1978 unless staff or an interested person objects. If there is an objection, the director shall process the application in accordance with 18.3.2.16 NMAC.

[18.3.14.25 NMAC - Rp, 18.3.14.25 NMAC, 2-13-15]

**18.3.14.26 TRANSITION TO NEW EQUIPMENT REQUIREMENTS:**

Ambulance services utilizing equipment that does not meet the requirements of this rule shall have thirty (30) days from the effective date of this rule to meet the equipment requirements of this rule or apply for a variance from or waiver of such requirements.

[18.3.14.26 NMAC - Rp, 18.3.14.26 NMAC, 2-13-15]

**PART 15: FUEL SURCHARGE FOR WRECKER SERVICES PERFORMING NON-CONSENSUAL TOWS**

**18.3.15.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.3.15.1 NMAC - Rp. 18.3.15.1, 03/14/2017]

**18.3.15.2 SCOPE:**

This rule applies to all wrecker services performing non-consensual tows.

[18.3.15.2 NMAC - Rp. 18.3.15.2, 03/14/2017]

**18.3.15.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 65-2A-4 and 65-2A-21 NMSA 1978.

[18.3.15.3 NMAC - Rp. 18.3.15.3, 03/14/2017]

#### **18.3.15.4 DURATION:**

Permanent.

[18.3.15.4 NMAC - Rp. 18.3.15.4, 03/14/2017]

#### **18.3.15.5 EFFECTIVE DATE:**

May 15, 2008, unless a later date is cited at the end of a section.

[18.3.15.5 NMAC - Rp. 18.3.15.5, 03/14/2017]

#### **18.3.15.6 OBJECTIVE:**

The purpose of this rule is to establish a procedure providing fair and reasonable voluntary fuel surcharges to wrecker services performing non-consensual tows.

[18.3.15.6 NMAC - Rp. 18.3.15.6, 03/14/2017]

#### **18.3.15.7 DEFINITIONS:**

In addition to the definitions in Sections 24-10B, 65-2A-3, 65-6-2 NMSA 1978, and 18.3.1.7 NMAC, as used in this rule:

**A. EIA reference price** refers to the weekly gasoline or diesel fuel price for the Rocky Mountain region, as published at the United States department of energy's official energy information administration website at <http://tonto.eia.doe.gov/oog/infogdu/gasdiesel.asp>, or such other address on which that same information may be displayed by the energy information administration in the future;

**B. fuel surcharge program** means the procedures and requirements set forth in this rule, by which wrecker services performing non-consensual tows may implement limited increases in their rates, reflecting the changing price of fuel, without a formal proceeding before the commission;

[18.3.15.7 NMAC - Rp. 18.3.15.7, 3/14/2017]

#### **18.3.15.8 TOWING SERVICES PERFORMING NON-CONSENSUAL TOWS:**

Motor carriers performing non-consensual towing services that choose to charge a fuel surcharge under the fuel surcharge program shall comply with the following table and formula:

<i>If Rocky Mountain EIA gas/diesel price is between:</i>	<i>Then, the Fuel Surcharge on total mileage charge is:</i>
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\$2.26 - \$2.50	3.75 percent
\$2.51 - \$2.75	4.25 percent
\$2.76 - \$3.00	4.75 percent
\$3.01 - \$3.25	5.25 percent
\$3.26 - \$3.50	5.75 percent
\$3.51 - \$3.75	6.25 percent
\$3.76 - \$4.00	6.75 percent
\$4.01 - \$4.25	7.25 percent
\$4.26 - \$4.50	7.75 percent
\$4.51 - \$4.75	8.25 percent
\$4.76 - \$5.00	8.75 percent
\$5.01 - \$5.25	9.25 percent
\$5.26 - \$5.50	9.75 percent
\$5.51 - \$5.75	10.25 percent
\$5.76 - \$6.00	10.75 percent
\$6.01 - \$6.25	11.25 percent
\$6.26 - \$6.50	11.75 percent
\$6.51 - \$6.75	12.25 percent
\$6.76 - \$7.00	12.75 percent
\$7.01 - \$7.25	13.25 percent
\$7.26 - \$7.50	13.75 percent

**A.** the fuel surcharge formula is the percentage referenced in the above table based on the current EIA reference price multiplied by the total mileage charge, including all allowed loaded, deadhead, and excess deadhead miles;

**B.** the fuel adjustment shall be stated as a separate charge on the charge ticket or invoice, and shall include the surcharge percentage at the current EIA reference and total miles charged for fuel.

[18.3.15.8 NMAC - Rp. 18.3.15.8, 3/14/2017]

## **CHAPTER 4: MEDICAL TRANSPORTATION [RESERVED]**

## **CHAPTER 5: MOTOR CARRIERS OF PERSONS [RESERVED]**

## **CHAPTER 6: MOTOR CARRIERS OF PROPERTY [RESERVED]**

# **CHAPTER 7: TRANSPORTATION NETWORK COMPANIES**

## **PART 1: GENERAL PROVISIONS**

### **18.7.1.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.7.1.1 NMAC - Rp, 18.7.1.1 NMAC, 8-15-2016]

### **18.7.1.2 SCOPE:**

This rule applies to all transportation network companies subject to the jurisdiction of the commission.

[18.7.1.2 NMAC - Rp, 18.7.1.2 NMAC, 8-15-2016]

### **18.7.1.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Transportation Network Company Services Act; and Section 8-8-4 NMSA 1978.

[18.7.1.3 NMAC - Rp, 18.7.1.3 NMAC, 8-15-2016]

### **18.7.1.4 DURATION:**

Permanent.

[18.7.1.4 NMAC - Rp, 18.7.1.4 NMAC, 8-15-2016]

### **18.7.1.5 EFFECTIVE DATE:**

August 15, 2016.

[18.7.1.5 NMAC - Rp, 18.7.1.5 NMAC, 8-15-2016]

### **18.7.1.6 OBJECTIVE:**

The purpose of this rule is to set forth rules governing permit application processes, vehicle inspections, and proof of financial responsibility for transportation network companies in New Mexico. This rule relates directly to the safety of vehicles to be used in providing transportation services under the Transportation Network Company Services Act (TNCSA).

[18.7.1.6 NMAC - Rp, 18.7.1.6 NMAC, 8-31-2016]

#### **18.7.1.7 DEFINITIONS:**

In addition to the definitions contained in Section 65-7-2 NMSA 1978, as used in this rule:

**A. "Act"** means the Transportation Network Company Services Act, Sections 65-7-1 to 65-7-22 NMSA 1978.

**B. "Commission"** means the New Mexico Public Regulation Commission.

[18.7.1.7 NMAC - N/E, 05-18-16]

#### **18.7.1.8 TRANSPORTATION NETWORK COMPANY VEHICLE INSPECTIONS:**

**A.** A transportation network company shall cause to be inspected, by a mechanic certified by the national institute for automotive service excellence (ASE) or qualified pursuant to the requirements of 49 CFR 396.19 of the code of federal regulations, every motor vehicle used by a driver to provide prearranged rides before allowing the driver to use the motor vehicle to provide prearranged rides and not less than once each year thereafter, as set forth in Subsection C of Section 65-7-13 NMSA 1978.

**B.** The inspection required by Subsection A of 18.7.1.8 NMAC must include, without limitation, an inspection of the foot and emergency brakes, steering, windshield, rear window, other glass, windshield wipers, headlights, taillights, turn indicator lights, braking lights, front seat adjustment mechanisms, doors, horn, speedometer, bumpers, muffler, exhaust, tires, rear view mirrors and safety belts of the vehicle which ensures the proper functioning of each component or an inspection complying with the requirements of 49 CFR 396.17 or 49 CFR 396.23, as well a brake inspection performed by an inspector qualified pursuant to the requirements of 49 CFR 396.25 of the code of federal regulations.

**C.** Records of all inspections performed pursuant to section shall be maintained in accordance with the requirements of Title 49, Section 396.21 of the code of federal regulations and the act.

[18.7.1.8 NMAC - Rp, 18.7.1.8 NMAC, 8-15-2016]

#### **18.7.1.9 TRANSPORTATION NETWORK COMPANY PERMIT APPLICATION PROCESS:**

**A.** A transportation network company shall apply for a transportation network company permit from the commission in writing on the form prescribed by the director of the commission's transportation division in accordance with 18.3.1.12 NMAC.

**B.** An application for a transportation network company permit shall contain the following information and documents:

- (1)** the applicant's name;
- (2)** if the applicant is a sole proprietorship or a partnership, the applicants' social security number(s) for purposes of verifying parental responsibility act compliance;
- (3)** the applicant's d/b/a name, if applicable;
- (4)** the applicant's principal place of business and mailing address;
- (5)** the applicant's electronic mail address;
- (6)** if the applicant is a corporation;
  - (a)** the names and addresses of two principal officers;
  - (b)** evidence that the applicant is authorized by the office of the secretary of state to do business in New Mexico and is in good corporate standing.
- (7)** if the applicant is other than a corporation, a description of the form of ownership and the names and addresses of all principal owners and managers;
- (8)** appointment of an agent for service of process;
- (9)** a statement and general description of the type of services to be performed by the applicant;
- (10)** an annual permit fee of \$10,000 as set forth in Subsection C of Section 65-7-4 NMSA 1978;
- (11)** a copy of the insurance policy that meets the requirements set forth in Section 65-7-8 NMSA 1978;
- (12)** a copy of the insurance coverage disclosures that meets the requirements set forth in Section 65-7-9 NMSA 1978;
- (13)** the applicant's combined reporting system (CRS) number obtained from the New Mexico taxation and revenue department;
- (14)** a certification that the applicant complies or, once permitted in the state, will comply with the requirements of the Transportation Network Company Services Act.

**C.** Upon receipt of a completed application and upon a determination by the director that an applicant meets the requirements for the issuance of a permit, the director will issue a permit to the applicant within 15 calendar days after receipt of the application.

**D.** A permit issued to a transportation network company by the commission shall be effective for one year.

[18.7.1.9 NMAC - Rp, 18.7.1.9 NMAC, 8-15-2016]

#### **18.7.1.10 PROOF OF FINANCIAL RESPONSIBILITY:**

**A.** Each transportation network company must file proof of financial responsibility with the commission in the exact legal and d/b/a names as the name in which the permit is issued demonstrating compliance with Transportation Network Company Services Act, Section 65-7-8 NMSA 1978.

**B.** The commission will accept as proof of the required financial responsibility a completed form t, uniform bodily injury and property damage liability certificate of insurance for use by transportation network companies, showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to do business in the state of New Mexico or with a surplus lines insurer eligible pursuant to the New Mexico insurance code, on uniform filing form t, uniform bodily injury and property damage liability certificate of insurance for use by transportation network companies, available from the office of the commission.

**C.** Cancellation of the insurance policy required under the act may be effected only by giving 30 days' notice in writing to the commission, with such 30 days' notice to commence from the date notice is actually received in the office of the commission.

[18.7.1.10 NMAC - Rp, 18.7.1.10 NMAC, 8-15-2016]

#### **18.7.1.11 NON-EMERGENCY MEDICAL TRANSPORT SERVICES:**

This rule is adopted on an emergency basis pursuant to Section 62-19-21 NMSA 1978 and Section 14-4-5.6 NMSA 1978 to preserve the public peace, health, safety, or general welfare. Non-emergency medical transport services:

**A.** May be provided only to riders who do not require medical intervention to maintain their level of response, airway, breathing and circulatory status, with the exception that self-administered oxygen is not to exceed six liters per minute via a nasal cannula; the oxygen container must be secured in accordance with other state and federal laws; and

**B.** May not be provided to riders who are recumbent (for example, on transport gurneys) or require medical monitoring or medical intervention.



[18.7.1.11 NMAC - N/E, 6/2/2023; A, 11/21/2023]

**PART 2: [RESERVED]**

**PART 3: [RESERVED]**

**PART 4: [RESERVED]**

**CHAPTER 8: MOVERS OF HOUSEHOLD GOODS  
[RESERVED]**

**CHAPTER 9: PARCEL SERVICES [RESERVED]**

**CHAPTER 10: WRECKERS AND TOWING SERVICES  
[RESERVED]**

**CHAPTER 11: AIRPORTS**

**PART 1: GENERAL PROVISIONS [RESERVED]**

**PART 2: AIRCRAFT REGISTRATION**

**18.11.2.1 ISSUING AGENCY:**

The New Mexico State Highway and Transportation Department - Aviation Division: 550 Pacheco Street 87505, P.O. Box 1149, Santa Fe, NM 87504-1149, 505 827-1525, FAX 505 827-1531.

[3/30/96; 18.11.2.1 NMAC - Rn, 18 NMAC 11.2.1, 11/30/02]

**18.11.2.2 SCOPE:**

Registration information for owners and lessees of aircraft based or hangared in New Mexico.

[3/30/96; 18.11.2.2 NMAC - Rn, 18 NMAC 11.2.2, 11/30/02]

**18.11.2.3 STATUTORY AUTHORITY:**

Adoption of these regulations is pursuant to authority granted to the Director of the Aviation Division of the State Highway and Transportation Department under NMSA 1978, Section 64-4-8, as amended.

[12/29/71, 3/30/96; 18.11.2.3 NMAC - Rn, 18 NMAC 11.2.3, 11/30/02]

**18.11.2.4 DURATION:**

Permanent.

[3/30/96; 18.11.2.4 NMAC - Rn, 18 NMAC 11.2.4, 11/30/02]

**18.11.2.5 EFFECTIVE DATE:**

March 30, 1996, unless a later date is cited at the end of a section.

[3/30/96; 18.11.2.5 NMAC - Rn & A, 18 NMAC 11.2.5, 11/30/02]

**18.11.2.6 OBJECTIVE:**

The objective of Part 2, Chapter 11, Title 18 [18.11.2 NMAC] is to explain registration requirements, procedures, penalties, and specialty situations to owners and lessees of aircraft that are based or hangared in the State of New Mexico. These instructions, obligations, and assessments are addressed so that effected individuals have been notified of their responsibilities and of the consequences resulting from improper compliance. This rule is designed to stipulate procedural uniformity within situational variances. This rule is designed to promote administrative expediency, efficiency, and fairness in handling the registration requirements of the numerous aircraft types of owners and lessees. This rule replaces AD Rule 80-4, dated October 9, 1980, issued by the Aviation Division of the Transportation Department.

[10/09/80, 3/30/96; 18.11.2.6 NMAC - Rn, 18 NMAC 11.2.6, 11/30/02]

**18.11.2.7 DEFINITIONS:**

**A.** "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation or flight in the air, except a parachute or other contrivance designed for such navigation, but used primarily as safety equipment.

**B.** "Applicant" means the individual filing for aircraft registration.

**C.** "Registration Fee" means the assessment based on the maximum gross weight of the aircraft, calculated as explained in Section 64-4-11 NMSA 1978.

**D.** "Division" means the Aviation Division of the State Highway and Transportation Department.

**E.** "Director" means the Director of the Division.

[12/29/71, 3/30/96; 18.11.2.7 NMAC - Rn, 18 NMAC 11.2.7, 11/30/02]

#### **18.11.2.8 APPLICANT REQUIREMENTS:**

**A.** An applicant for aircraft registration must be the owner or lessee of an aircraft based or hangared in the State of New Mexico.

**B.** If requested by a representative of the Division, the applicant shall make available for inspection by the Division, any or all of the following information for aircraft based or hangared in the State of New Mexico.

- (1)** Current Federal Aviation Administration Certificate of Aircraft Registration;
- (2)** Federal Aviation Administration Airworthiness Certificate; and
- (3)** Proof of maximum certificated gross weight.

**C.** If takeoff gross weight is different from landing gross weight, the takeoff gross weight shall be used in determining the registration fee.

**D.** The New Mexico Certificate of registration must be kept in the aircraft at all times and presented for inspection upon demand by an Officer of the State of New Mexico or County or City therein, or any agent of the Division or the Federal Aviation Administration.

**E.** The Division shall use the FAA registration number displayed on the aircraft as required by FAA regulations for purposes of identifying whether an aircraft is properly registered.

[12/29/71, 10/09/80, 3/30/96; 18.11.2.8 NMAC - Rn & A, 18 NMAC 11.2.8, 11/30/02]

#### **18.11.2.9 TIME OF REGISTRATION: PENALTY:**

**A.** The owner or lessee of an aircraft, whomever is in possession, shall register the aircraft prior to March 1 of each year.

**B.** Any person who purchases, leases, or otherwise acquires an aircraft or brings one into the State shall register said aircraft within fifteen days of the purchase, lease, acquisition, or entering of the State.

**C.** Any owner or lessee who fails to comply with Subsection A of 18.11.2. 9 NMAC or any person who fails to comply with Subsection B of 18.11.2.9 NMAC shall pay a fine equal to ten percent (10%) of the regular registration fee times each month or portion of a month that the registration fee is past due.

**D.** In determining whether a registration fee paid pursuant to Subsections A or B of 18.11.2.9 NMAC is timely, the Division shall calculate the date the registration fee is paid as follows.

(1) If payment is hand delivered to the Division, the payment date shall be the date the payment is received by the Division, or

(2) If the fee is transmitted to the Division via United States mail or an established shipping business, the payment date shall be the date the external envelope is marked by the shipping organization. No other means of payment delivery shall be considered acceptable.

E. Penalties assessed pursuant to Subsection C of 18.11.2.9 NMAC shall continue until:

(1) The date all fees and penalties are paid in full, or

(2) The date, determined by the Division, that the aircraft became no longer based or hangared in the State of New Mexico, or was found to be no longer airworthy. The owner or lessee shall have the burden of providing documentation or other information, acceptable to the Division, for its determination under this Subsection.

F. Upon determination by the Division that a plane is no longer based or hangared in the State or is no longer airworthy, the Division shall cancel all fees assessed after the date when the plane was no longer based or hangared in the State or was no longer airworthy, and all penalties which may have accrued on those fees.

[3/30/96; 18.11.2.9 NMAC - Rn, 18 NMAC 11.2.9, 11/30/02]

#### **18.11.2.10 HEARING ON UNPAID REGISTRATION FEES:**

Prior to seizing an aircraft for unpaid registration fees pursuant to NMSA 1978, Section 64-4-5.1, as amended, the Division shall conduct an informal hearing as follows:

A. At least twenty days prior to conducting a hearing, the Division shall send a notice of hearing to the last known address of the registered owner of the aircraft and all lienholder of record by certified mail. The notice shall set forth the time, date, and location of the hearing, and a short and plain statement of the reason, and also the legal basis for the hearing.

B. No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

C. The Director, or his designee, shall conduct the informal hearing. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The New Mexico Rules of Evidence shall not apply.

D. Within fourteen (14) days of the date of the hearing, the Director, or his designee, shall issue a decision as to whether the Division will proceed with an action in the

Magistrate Court in which the aircraft was found, to collect the registration fee and accrued penalties by seizure of the aircraft from the person in possession and by sale as provided by NMSA 1978, Section 39-5-1.

[3/30/96; 18.11.2.10 NMAC - Rn, 18 NMAC 11.2.10, 11/30/02]

#### **18.11.2.11 TRANSFER OF TITLE OR INTERESTS:**

Whenever the owner or lessee of a registered aircraft transfers title or interest therein, the registration certificate and number issued for such registration shall remain with the aircraft. Upon transfer or assignment of title or interest, the owner or lessee shall endorse such assignment on the reverse side of the certificate of registration, which statement shall be verified under oath by such owner or lessee. The owner or lessee shall deliver the certificate of registration and the registration number to the purchaser or transferee at the time of delivery of the aircraft. The purchaser or transferee shall, within ten (10) days from the date of transfer, submit the endorsed certificate to the Division. The Division will issue a new certificate at a charge of \$5.00. If an aircraft is not registered at the time of purchase or lease, even though the aircraft may have been purchased within the State, new or used, the purchaser shall register it as provided herein together with all penalties due.

[12/29/71, 10/09/80, 18.11.2.11 NMAC - 3/30/96; Rn, 18 NMAC 11.2.11, 11/30/02]

#### **18.11.2.12 LOSS OR DESTRUCTION OF CERTIFICATE:**

Upon presentation of proof of loss or destruction of the original certificate and payment of the required fee to the Division, a duplicate certificate of registration may be obtained at a charge of \$10.00.

[12/29/71, 10/09/80, 3/30/96; 18.11.2.12 NMAC - Rn, 18 NMAC 11.2.12, 11/30/02]

#### **18.11.2.13 DEALER LICENSES:**

**A.** Dealers holding aircraft for resale may obtain a New Mexico dealer's license. If dealer aircraft are used primarily for charter, flight instruction, or carrying of persons not incidental to the resale of such aircraft, they shall be registered as otherwise provided.

**B.** On a form available from the Division for said purpose, a notarized list of aircraft to be operated under a dealer's license shall be filed with the Division at the time the application is submitted. Dealers shall certify to the fact that such aircraft will be used primarily for resale. Notification must be given to the Division of all changes in dealer aircraft within ten (10) days of such changes. If change in use of dealer aircraft subjects it to regular registration, aircraft must be registered as otherwise provided herein. Dealer license applications shall not be processed without the notarized equipment list.

**C.** The Division shall mail to the dealer a certificate for each aircraft listed on the equipment list. Each certificate shall be affixed to the inside of the left rear window so that the printing is readily visible through the window.

**D.** Dealer certificate shall be conspicuously displayed in the primary place of business of said Dealer.

**E.** Dealer certificate is not transferable.

[12/10/69, 12/29/71, 3/30/96; 18.11.2.13 NMAC - Rn, 18 NMAC 11.2.13, 11/30/02]

#### **18.11.2.14 SPECIALIZED USE LICENSES:**

**A.** Operators of aircraft used solely for the purposes of transporting cargo, crop dusting or spraying, forest fire fighting, powerline and pipeline patrol, or other commercial operations in which passengers are not carried, may apply for a specialized use license.

**B.** On a form available from the Division for said purposes, a notarized list of aircraft to be operated under a special use license shall be filed with the Division at the time the application is submitted. Special users shall certify to the fact that such aircraft will be used only for the purposes stated. Special use applications shall not be processed without the notarized equipment list.

**C.** When the specialized use aircraft list is filed, the Division will mail to the licensee a certificate for each aircraft listed. This certificate shall be affixed to the inside of the left rear window so that the printing is readily visible through the window. Notification must be given to the Division of all changes in specialized use aircraft within ten (10) days of such changes. If changes in use of specialized use aircraft subjects it to regular or dealer registration, said aircraft must be registered as otherwise provided herein.

**D.** The specialized use license shall be conspicuously displayed in the primary place of business of the licensee.

**E.** Specialized use licenses are not transferable.

[12/10/69, 12/29/71, 3/30/96; 18.11.2.14 NMAC - Rn, 18 NMAC 11.2.14, 11/30/02]

### **PART 3: AIR SERVICE ASSISTANCE PROGRAM**

#### **18.11.3.1 ISSUING AGENCY:**

Aviation Division of the New Mexico Department of Transportation, 1120 Cerrillos Rd 87504, P.O. Box 1149 Santa Fe, New Mexico 87504-1149, (505) 827-1525, Fax: (505) 827-1531.

[18.11.3.1 NMAC - Rp, 18.11.3.1 NMAC, 8/15/2023]

**18.11.3.2 SCOPE:**

Municipalities, counties, tribal entities or other public entities located within the state of New Mexico.

[18.11.3.2 NMAC - Rp, 18.11.3.2 NMAC, 8/15/2023]

**18.11.3.3 STATUTORY AUTHORITY:**

Adoption of this regulation is pursuant to authority granted to the aviation division of department of transportation under Section 64-1-13.1 NMSA 1978.

[18.11.3.3 NMAC - Rp, 18.11.3.3 NMAC, 8/15/2023]

**18.11.3.4 DURATION:**

Permanent.

[18.11.3.4 NMAC - Rp, 18.11.3.4 NMAC, 8/15/2023]

**18.11.3.5 EFFECTIVE DATE:**

August 15, 2023, unless a later date is cited at the end of a section or paragraph.

[18.11.3.5 NMAC - Rp, 18.11.3.5 NMAC, 8/15/2023]

**18.11.3.6 OBJECTIVE:**

The objective of 18.11.3 NMAC is to establish eligibility requirements, including the maximum amount a recipient may receive, under the Air Service Assistance Act.

[18.11.3.6 NMAC - Rp, 18.11.3.6 NMAC, 8/15/2023]

**18.11.3.7 DEFINITIONS:**

**A. "Director"** means the director of the division.

**B. "Division"** means the aviation division of the department of transportation.

**C. "Eligible recipient"** means municipalities, counties, tribal entities or other public entities located within the state of New Mexico.

**D. "Hub airports"** means commercial airport facilities located within the southwest United States serving a small, medium, or large air traffic hub listed in the United States

department of transportation publication, *airport activity statistics of certificated route air carriers*.

**E. "Minimum level of airline service" means:**

(1) service for two or more New Mexico municipalities, counties, tribal entities or other public entities to one or more hub airports, by a reliable airline; the minimum number of round trip flights per day and per week provided by the service shall be approved by the division;

(2) flights shall be at reasonable times considering the needs of passengers with connecting flights at the hub airport and at prices that are not excessive compared to the generally prevailing prices of other air carriers for like service between similar places;

[18.11.3.7 NMAC - Rp, 18.11.3.7 NMAC, 8/15/2023]

**18.11.3.8 ELIGIBILITY FOR ASSISTANCE:**

**A.** In order to apply for an air service marketing assistance grant, eligible recipients shall submit a single application to the division in a format provided by the division.

**B.** The division shall provide grants to eligible recipients to market and promote air service.

**C.** The maximum amount of assistance provided to eligible recipients shall be determined the division and may not exceed the amounts available from the state aviation fund per Subsection C of Section 7-1-6.7 NMSA 1978 and Subsection B of Section 64-1-15 NMSA 1978.

[18.11.3.8 NMAC - Rp, 18.11.3.8 NMAC, 8/15/2023]

**18.11.3.9 PROCUREMENT REQUIREMENTS:**

**A.** Eligible recipients that receive assistance shall comply with the requirements of the New Mexico Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978, as amended.

**B.** Eligible recipients exempted from complying with the Procurement Code pursuant to Section 13-1-98K shall comply with their own purchasing ordinances and must provide a copy of those ordinances to the division.

[18.11.3.8 NMAC - Rp, 18.11.3.9 NMAC, 8/15/2023]

**PART 4-6: [RESERVED]**



## **PART 7: REQUIREMENTS GOVERNING THE SALVAGE OF ABANDONED AIRCRAFT**

### **18.11.7.1 ISSUING AGENCY:**

The New Mexico Department of Transportation, Aviation Division.

[11/30/98; 18.11.7.1 NMAC - Rn & A, 18 NMAC 11.7.1, 03/15/04]

### **18.11.7.2 SCOPE:**

All local governments and general public.

[11/30/98; 18.11.7.2 NMAC - Rn, 18 NMAC 11.7.2, 03/15/04]

### **18.11.7.3 STATUTORY AUTHORITY:**

Adoption of these regulations is pursuant to NMSA 1978, Sections 64-5-1 through 64-5-4.

[11/30/98; 18.11.7.3 NMAC - Rn, 18 NMAC 11.7.3, 03/15/04]

### **18.11.7.4 DURATION:**

Permanent.

[11/30/98; 18.11.7.4 NMAC - Rn, 18 NMAC 11.7.4, 03/15/04]

### **18.11.7.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of a section.

[11/30/98; 18.11.7.5 NMAC - Rn & A, 18 NMAC 11.7.5, 03/15/04]

### **18.11.7.6 OBJECTIVE:**

The purpose of this rule is to establish procedures for the implementation of NMSA 1978, Section 64-5-1 through 64-5-4, regulations governing the salvage of abandoned aircraft.

[11/30/98; 18.11.7.6 NMAC - Rn, 18 NMAC 11.7.6, 03/15/04]

### **18.11.7.7 DEFINITIONS:**

A. NMDOT- means the New Mexico department of transportation.

B. Aviation division - means the aviation division of the NMDOT.

[11/30/98; 18.11.7.7 NMAC - Rn & A, 18 NMAC 11.7.7, 03/15/04]

#### **18.11.7.8 APPLICATION:**

A. Application for an aircraft salvage permit shall be made on a form provided by the aviation division and shall include information pertinent to the aircraft location and land owner. The application shall include applicant's certification that the aircraft is abandoned as defined in NMSA 1978, Section 64-5-1; that applicant has not been issued a permit for the same aircraft, has not defaulted on a previous permit and agrees to the terms and conditions of the permit as determined by the division.

B. The date the application is filed and the date land owner is notified shall be entered on the application. The filing date shall be the date that the application is received in the aviation division office. The notification date is the date notice is received by the land owner by certified mail.

[11/30/98; 18.11.7.8 NMAC - Rn & A, 18 NMAC 11.7.8, 03/15/04]

#### **18.11.7.9 ISSUANCE OF PERMIT:**

A permit may be issued if all provisions of NMSA 1978, Section 64-5-2 have been met, provided:

A. the aviation division may, if it determines it is necessary, include special conditions for the issuance of a permit;

B. the aviation division may deny an application if it has reason to believe an applicant cannot or will not meet the terms and conditions of the permit;

C. if a hearing is necessary, the aviation division director shall determine the site of the hearing and shall act as hearing officer or designate a hearing officer; the hearing officer shall prepare a report of the hearing, a finding of fact and his recommendation; the aviation division director shall make the determination as to whether a permit should be issued;

D. the aviation division shall determine the amount of the bond on each application based on the probability of damage to property during salvage and removal operations and the value of the property exposed to damage.

[11/30/98; 18.11.7.9 NMAC - Rn, 18 NMAC 11.7.9, 03/15/04]

#### **18.11.7.10 DEFAULTS:**

If the terms and conditions of a permit have not been met within six months from the date of issuance, the permit shall be automatically terminated and deemed invalid. The aviation division shall not issue a permit to the holder of a prior terminated permit for the same crashed aircraft.

[11/30/98; 18.11.7.10 NMAC - Rn, 18 NMAC 11.7.10, 03/15/04]

## **PART 8: [RESERVED]**

## **PART 9: GOVERNING THE APPROVAL OF GRANTS**

### **18.11.9.1 ISSUING AGENCY:**

The New Mexico Department of Transportation, Aviation Division.

[11/30/98; 18.11.9.1 NMAC - Rn & A, 18 NMAC 11.9.1, 3/15/04]

### **18.11.9.2 SCOPE:**

Municipalities, counties, Indian tribes or tribal organizations as defined in federal law at 25 USC 5304, or other public entities located within the state of New Mexico.

[11/30/98; 18.11.9.2 NMAC - Rn, 18 NMAC 11.9.2, 3/15/2004; A, 2/14/2017]

### **18.11.9.3 STATUTORY AUTHORITY:**

Section 64-1-13 NMSA 1978, as amended, provides in part that the aviation division shall cooperate with all public and private agencies and organizations to encourage and advance aviation in this state. Further, that it shall authorize the expenditure of state money in accordance with division policies and procedures for planning, program administration construction, development and maintenance of certain public-use airport facilities and navigation aids and related facilities. This policy shall govern approval of grants made to airport sponsors pursuant to this authority.

[11/30/98; 18.11.9.3 NMAC - Rn, 18 NMAC 11.9.3, 3/15/2004; A, 2/14/2017]

### **18.11.9.4 DURATION:**

Permanent.

[11/30/98; 18.11.9.4 NMAC - Rn, 18 NMAC 11.9.4, 3/15/04]

### **18.11.9.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of a section.

[11/30/98; 18.11.9.5 NMAC - Rn & A, 18 NMAC 11.9.5, 3/15/04]

#### **18.11.9.6 OBJECTIVE:**

The purpose of this rule is to establish procedures for the implementation of NMSA 1978, Section 64-1-11 through 64-1-17, regulations governing the approval of grants by the NMDOT, aviation division.

[11/30/98; 18.11.9.6 NMAC - Rn & A, 18 NMAC 11.9.6, 3/15/04]

#### **18.11.9.7 DEFINITIONS:**

**A.** NMDOT - means the New Mexico department of transportation.

**B.** Aviation division - means the aviation division of the NMDOT.

**C.** Sponsor - means the authority responsible for the airport for which the grant is requested.

[11/30/98; 18.11.9.7 NMAC - Rn & A, 18 NMAC 11.9.7, 3/15/04]

#### **18.11.9.8 PROJECT ELIGIBILITY:**

Airports with regularly scheduled airline service utilizing aircraft with seating capacity in excess of 100 passengers, or a maximum payload capacity of more than twenty-five thousand pounds are not eligible for state funding. Airports on private land are not eligible for state funding unless the landowner files a written agreement with the aviation division director permitting public use of the facility without limit as to time. Airports receiving state funds shall not charge landing fees for aircraft except for aircraft used in commercial activities for compensation.

[11/30/98; 18.11.9.8 NMAC - Rn & A, 18 NMAC 11.9.8, 3/15/2004; A, 2/14/2017]

#### **18.11.9.9 PROJECT APPLICATION:**

Before being eligible for consideration by the aviation division, a sponsor must submit a request for a project grant to the aviation division in accordance with the process established by the division. The project request shall include an accurate project description and cost of work to be done.

[11/30/98; 18.11.9.9 NMAC - Rn, 18 NMAC 11.9.9, 3/15/2004; A, 2/14/2017]

#### **18.11.9.10 PROJECT APPROVAL:**

The aviation division shall give priority for the award of grants based on the aviation division's determination as to the need for the project. If the aviation division determines

that the project meets all requirements of eligibility, that it meets the existing or future needs of aviation in the state, and that state aid is required to accomplish the project, the aviation division will prepare the grant agreement paperwork to be sent to the sponsor. The aviation division shall require the adoption of an airport maintenance resolution; and may also require the adoption of appropriate airspace and land use zoning ordinances. Copies of any required documentation shall be furnished to the aviation division prior to the full processing of the grant agreement. The grant agreement shall become a legal document upon approval and execution by all required parties.

[11/30/98; 18.11.9.10 NMAC - Rn, 18 NMAC 11.9.10, 3/15/2004; A, 2/14/2017]

#### **18.11.9.11 EXECUTION OF PROJECT:**

The project shall be accomplished in accordance with the provision of the applicable state laws, aviation division policies and procedures, and conditions of the approved grant agreement.

[11/30/98; 18.11.9.11 NMAC - Rn, 18 NMAC 11.9.11, 3/15/2004; A, 2/14/2017]

#### **18.11.9.12 STATE PARTICIPATION:**

The aviation division is not restricted, other than by funds available, to a percentage of total amount of participation in any given project. At the discretion of the division a sponsor may use in kind services for its participating in the project.

[11/30/98; 18.11.9.12 NMAC - Rn, 18 NMAC 11.9.12, 3/15/2004; A, 2/14/2017]

#### **18.11.9.13 SPECIAL PROJECTS:**

The aviation division may occasionally find it prudent and advisable to participate in projects which are not related to a specific airport or which may be beneficial to aviation as a whole in New Mexico. In the event state funds are used for such purposes, the aviation division shall work with the sponsor to assist in the development of all needed documentation.

[11/30/98; 18.11.9.13 NMAC - Rn , 18 NMAC 11.9.13, 3/15/04]

#### **18.11.9.14 PROCUREMENT REQUIREMENTS:**

**A.** Sponsors that receive assistance shall comply with the requirements of the New Mexico Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978, as amended.

**B.** Sponsors exempted from complying with the Procurement Code pursuant to Section 13-1-98K shall comply with their own purchasing ordinances and must provide a copy of those ordinances to the aviation division.

[18.11.9.14 NMAC - N, 2/14/2017]

## **PART 10: RURAL AIR SERVICE ENHANCEMENT GRANT PROGRAM**

### **18.11.10.1 ISSUING AGENCY:**

Aviation Division of the New Mexico Department of Transportation, 3501 Access Road C, Albuquerque, New Mexico 87106.

[18.11.10.1 NMAC - N, 10/26/2021]

### **18.11.10.2 SCOPE:**

Municipalities and counties located within the state of New Mexico who owns and operates an airport which is located either within its jurisdiction or the jurisdiction of any other political subdivision.

[18.11.10.2 NMAC - N, 10/26/2021]

### **18.11.10.3 STATUTORY AUTHORITY:**

Adoption of this regulation is pursuant to authority granted to the aviation division of department of transportation under Section 64-1-13, Sections 67-3-11, 67-3-28 NMSA 1978 and SB 133, Laws 2021, Chapter 47.

[18.11.10.3 NMAC - N, 10/26/2021]

### **18.11.10.4 DURATION:**

Permanent.

[18.11.10.4 NMAC - N, 10/26/2021]

### **18.11.10.5 EFFECTIVE DATE:**

October 26, 2021, unless a later date is cited at the end of a section or paragraph.

[18.11.10.5 NMAC - N, 10/26/2021]

### **18.11.10.6 OBJECTIVE:**

The objective of 18.11.3 NMAC is to establish eligibility requirements, including the maximum amount a recipient may receive, under the Rural Air Service Enhancement Act. The purpose of this regulation is to describe the eligibility requirements of an eligible recipient, and the process for the application, evaluation, awarding of grants under the Rural Air Service Enhancement Act.

[18.11.10.6 NMAC - N, 10/26/2021]

**18.11.10.7 DEFINITIONS:**

**A. Definitions beginning with "A":**

- (1) **"Aircraft"** means airplane.
- (2) **"Air carrier"** has the same meaning as defined in 49 U.S.C §40102 (a) (2).
- (3) **"Air route"** means any scheduled operation or public charter.

**B. Definitions beginning with "B": [RESERVED]**

**C. Definitions beginning with "C": "Charter flight"** means a flight operated under the terms of a charter contract between a direct air carrier and the carrier's customer.

**D. Definitions beginning with "D":**

- (1) **"Department"** has the same meaning as defined in Subsection D of Section 64-1-12 NMSA 1978 (2020).
- (2) **"Director"** has the same meaning as defined in Subsection F of Section 64-1-12 NMSA 1978 (2020).
- (3) **"Division"** has the same meaning as defined in Subsection E of Section 64-1-12 NMSA 1978 (2020).

**E. Definitions beginning with "E":**

(1) **"Eligible recipient"** means a municipality or county located within the state of New Mexico who owns and operates an airport which is located either within its jurisdiction or the jurisdiction of any other political subdivision and have a minimum population of twenty thousand persons residing within a fifty-mile radius of the airport.

(2) **"Enhancement grant"** means an award of financial assistance of rural air service enhancement funds to an eligible entity. Individual grants shall not exceed two million two hundred fifty thousand dollars (\$2,250,000) per year for municipalities or counties with existing scheduled air service; or exceed two million seven hundred fifty thousand dollars (\$2,750,000) per year for municipalities or counties not served by existing scheduled air service.

(3) **"Expanded air route"** means an air route served by the rural air service enhancement grant program that expands passenger capacity or the number of

scheduled operations or public charter flights from what was served at the time a grant was made.

**F. Definitions beginning with "F": [RESERVED]**

**G. Definitions beginning with "G":**

(1) **"Grant"** or **"grant award"** means an award of financial assistance through the rural air service enhancement program.

(2) **"Grant Agreement"** means a legal instrument of financial assistance between the division and an eligible recipient. "Grant agreement" and "agreement" are used interchangeably.

(3) **"Grantee"** or **"grant recipient"** means the direct recipient of a grant award. The grantee is legally accountable to the department for the use of grant funds and is bound by the provisions and terms and conditions of the grant agreement. The grantee is responsible for ensuring that the selected air carrier carrying out activities under the award comply with the provisions and terms and conditions of the grant agreement.

(4) **"Grant term"** means the timeframe for the use of the grant award as set forth in the grant award agreement. Grant awards shall cover a timeframe of at least two years.

**H. Definitions beginning with "H": [RESERVED]**

**I. Definitions beginning with "I": "In-kind contribution"** means any non-monetary contribution. Goods or services offered free or at less than the usual charge are considered in an in-kind contribution. Similarly, when a person or entity pays for services on the committee's behalf, the payment is an in-kind contribution.

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L": "Licensed by the state"** for purposes of the Rural Air Service Enhancement Act means a common carrier who has obtained from the United States department of transportation economic authority from the office of the secretary of transportation in the form of a certificate for interstate or foreign passenger and a safety authority in the form of an air carrier certificate and operations specifications from the federal aviation administration.

**M. Definitions beginning with "M":**

(1) **"Minimum level of airline service"** means:



(a) service for one or more New Mexico municipalities or counties to one or more airports by a reliable airline;

(b) flights that are at reasonable times considering the needs of passengers and at prices that are not excessive compared to the generally prevailing prices of other air carriers for like service between similar places; and

(c) operated by pilots that meet the minimum requirements of the federal aviation administration based on the type of service provided.

**(2) "Minimum revenue guarantee"** means the amount of money guaranteed by a municipality or county to be earned by an airline providing scheduled air services to and from that municipality or county, which is the difference between the minimum flight charge revenue specified in the contract between the municipality or county and the airline and the amount of actual flight charge revenue received by the airline that is less than the contractual amount.

**N. Definitions beginning with "N":** "New air route" means an air route to be served by the rural air service enhancement grant program that was not served prior to January 1, 2021.

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

**(1) "Passenger"** has the same meaning as defined in Subsection C of Section 64-1-12 NMSA 1978 (2020).

**(2) "Pilot"** means any person including a co-pilot participating in the operation of an aircraft while it is in flight.

**(3) "Public charter"** means a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator.

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R": [RESERVED]**

**S. Definitions beginning with "S":** Scheduled air service or "**scheduled operation**" means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier for which the air carrier or its representatives offers in advance the departure location, departure time, and arrival location.

**T. Definitions beginning with "T": [RESERVED]**

**U. Definitions beginning with "U": [RESERVED]**

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": [RESERVED]**

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[18.11.10.7 NMAC - N, 10/26/2021, A, 2/14/2023]

#### **18.11.10.8 ELIGIBILITY FOR ASSISTANCE:**

Applicants shall meet the following minimum criteria to be eligible for a grant:

**A.** the municipality or county shall have a minimum population of 20,000 persons residing within a 50 mile radius of the airport unless the municipality or county has existing scheduled air service;

**B.** the aircraft to be used to service proposed new air routes served by the rural air service enhancement grant program shall have a passenger capacity of not more than 100 persons;

**C.** the route or routes to be served by the program shall be a new air route or routes that were not served at the time the grant was made; and

**D.** the selected air carrier must be licensed by the state.

[18.11.10.8 NMAC - N, 10/26/2021; A, 2/14/2023; A, 10/24/2023]

#### **18.11.10.9 AIR CARRIER PROCUREMENT REQUIREMENTS:**

**A.** In selecting an air carrier, an eligible recipient must comply with:

(1) the requirements of the New Mexico Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978, as amended, or

(2) if exempted from complying with the Procurement Code pursuant to Section 13-1-98K NMSA 1978, their own purchasing ordinances. Such an eligible recipient must provide a copy of those ordinances to the division.

(3) Applicants will be required to provide proof of compliance with the New Mexico Procurement Code or its own purchasing ordinances if exempted from complying with the Procurement Code.

(4) An eligible entity must award a contract only to an air carrier who is licensed by the state.

**B.** The division may make available to eligible recipients upon request suggested forms and documents for use in the procurement of the airline services.

**C.** At a minimum an eligible entity should consider including the following in its solicitation:

(1) a description of the airport or airports that will serve the proposed new scheduled air service or expanded air route;

(2) an estimate of the demand for the proposed new scheduled air service routes;

(3) a description of any existing air service, including the carrier(s) providing the service, service frequency, direct and connecting destinations offered, available fares, and equipment types;

(4) a description of the requested service options for proposed air service routes or a description of the proposed new air routes or expanded air routes to serve the applicant;

(5) a justification for the new proposed scheduled air service routes;

(6) a commitment from the selected air carrier that if a grant is awarded to the municipality or county the air carrier will enter into a written operating agreement with the eligible recipient to provide the air service described;

(7) a draft operating agreement;

(8) a requirement that the air carrier discuss its requested revenue guarantee as well as supporting data for the request, such as traffic assumptions, revenue forecasts, estimated operating costs and potential route profitability.

(9) a requirement that the air carrier provide a description of the aircraft to be used on the new scheduled air service route(s);

(10) a description by the air carrier of its demonstrated reliability in providing scheduled air service;

(11) disclosure on the part of the air carrier of the existence of interline agreements that the air service provider has made with larger carriers to allow passengers and cargo of the air service provider at the hub airport to be transported by the larger carrier(s) through one reservation, ticket, and baggage check in.

[18.11.10.9 - N, 10/26/2021 A, 2/14/2023]

#### **18.11.10.10 AIR CARRIER CONTRACT REQUIREMENTS:**

**A.** The following provisions shall be required in the contract between grant recipient and the air carrier:

(1) Payment to the air carrier shall be made in arrears on a per-flight-completed basis.

(2) The air carrier should submit an invoice at the beginning of each month for the prior month based on the number of flights that it actually completed in conformance with the contract.

(3) Submitted invoices should request an amount in accordance with the allowances stipulated by the parties' contract, detailing the service actually completed, including date of service, aircraft type, routing, and frequency of service, and any actual variations from the service contemplated by the contract.

(4) If a carrier is forced by operational exigencies to make ad hoc service adjustments to its service, such as aircraft type or routing, the carrier should report those deviations on its invoice with the appropriate adjustments. For instance, if the carrier substituted a smaller, less expensive aircraft type than agreed to, due to mechanical or other problems involving the larger aircraft, the subsidy rate should be reduced accordingly.

(5) Flights that did not conform to the terms and stipulations of the contract between the grant recipient and the air carrier will not be compensable unless approved in advance by the grant recipient.

(6) Only completed flights are considered eligible for payment unless otherwise excused under the terms of the contract between the grant recipient and the air carrier. For example, weather conditions may require the aircraft to return to its airport of origin before reaching its scheduled destination.

(7) Flights that never take-off because of weather, mechanical problems, air traffic control issues, crew shortages/flight and duty time issues, are not compensable.

(8) All flights that can be safely operated must be completed to be compensable; flights that overfly points for lack of traffic will not be compensated.

[18.11.10.10 NMAC - N, 10/26/2021]

#### **18.11.10.11 APPLICATION FOR GRANT:**

**A.** In any fiscal year in which funds will be available for distribution from the rural service enhancement fund the director will request applications from eligible recipients interested in receiving a rural air service enhancement grant.

**B.** Two or more communities may enter into a shared or common services arrangements, memorandum of understanding, intergovernmental agreement, joint powers agreements, or other similar agreement to provide air service over a linear route, e.g., community A to community B. The applicant shall submit a fully executed letter of intent together with its application defining the respective responsibilities of the communities in implementing the project and to define the requirements, terms, conditions, type of funds, and considerations attendant upon each party to the agreement. If awarded a grant, prior to the disbursement of any funds by the division, the communities shall execute the agreement in a manner provided by law for entering into binding contractual agreements. Two or more communities entering into such an agreement need to make their own determination of the legality of such a relationship and the form and the content of the agreement.

**C.** Eligible recipients shall submit a single application to the division in a format provided by the division. An applicant shall comply with deadlines and guidelines published by the director. The director shall reject any application that is not submitted by the deadline. Each applicant is solely responsible for soliciting, reviewing and selecting an air carrier for inclusion in the application.

**D.** A grant application shall include the items listed in Section 64-6-4 NMSA 1978.

[18.11.10.11 NMAC - N, 10/26/2021 A, 2/14/2023]

#### **18.11.10.12 ELIGIBLE INFRASTRUCTURE IMPROVEMENTS:**

To be eligible for grant funding for infrastructure improvements, the improvements must be an integral part of, or necessary for the development, or the provision of scheduled air service. Infrastructure grants will be processed in accordance with 18.11.9 NMAC Governing the Approval of Grants.

[18.11.10.12 NMAC - N, 10/26/2021]

#### **18.11.10.13 CRITERIA FOR EVALUATING GRANT APPLICATIONS:**

**A.** The division shall give priority for the award of grants based on the division's determination that the application meets the following criteria and subject to the availability of funds. It should be emphasized that the ranking process does not require

that the director fund projects in order of their ranking. The ranking is a means to help the director generally prioritize projects.

**B.** The minimum criteria is as follows:

- (1) the demand for service on the proposed air routes;
- (2) the economic impact on the eligible recipient of the proposed new air routes; and
- (3) the feasibility of a common carrier licensed by the state servicing the proposed new air routes.
- (4) the amount of the requested enhancement grant and the corresponding matching funds above the minimum requirement to be provided by the applicant; and
- (5) the existence of a plan by the municipality or county to market the service to the community.

**C.** The division will carefully review each application and the staff may contact applicants and discuss their applications if clarification or more information is needed.

**D.** Applicants may amend their applications at any time prior to the division's decision, and those amendments will be considered.

**E.** Applications should be fully thought out and are designed to meet the individualized needs of a community. The division will notify the applicants of the selection results in a timely manner. Projects not selected for funding may be re-submitted in subsequent funding cycles.

**G.** The division retains the discretion to reject outright all unreasonable or unrealistic proposals and solicit a new round of applications. The director's decision will be final.

[18.11.10.13 NMAC - N, 10/26/2021]

#### **18.11.10.14 APPROVAL OF GRANT:**

**A.** If the division approves an application for a grant, the recipient of the grant must enter into an agreement with the division. The agreement must specify:

- (1) The amount of the grant;
- (2) The amount of the matching funds from the eligible recipient. Minimum matching funds shall not be less than:

(a) ten percent if the eligible recipient has no existing scheduled air service at the time of application; and

(b) twenty percent if the eligible recipient has existing scheduled air service at the time of application. In-kind contributions may not be used in satisfying the required minimum matching funds.

(3) the proper use of the money obtained from the grant;

(4) the date on which the division approved the grant;

(5) the specific indicators of performance by which the division and the recipient of the grant will measure the progress of the project;

(6) the projected estimates of costs;

(7) a requirement that the recipient of the grant report to the division on an annual basis.

**B.** If the eligible entity fails to execute and return the grant agreement within 60 days of receiving the notice of award, the project shall be considered lapsed.

[18.11.10.14 NMAC - N, 10/26/2021 A, 2/14/2023]

#### **18.11.10.15 REPORTING:**

Each grant recipient must submit annual reports on the progress made during the previous period in implementing its grant no later than 90 days after the end of the each 12 month period. These reports must include:

(1) a description of the air service, including the frequency of flight operations from the applicant's airport to regional airport hubs, its consistency of service, on-time performance, reliability, and the number of enplanements;

(2) a description of the economic benefit, or any new business opportunities or an expansion of existing business resulting from the availability of the air service; and

(3) a description of the benefits to the community, the convenient travel times for both business and leisure travelers data and quantitative information about the project's impact.

[18.11.10.15 NMAC - N, 10/26/2021]

#### **18.11.10.16 FUNDING RESTRICTIONS:**

Each eligible recipient awarded a grant will be expected to execute a grant agreement with the division before it begins spending funds under a grant award. Applicants should therefore not assume they have received grants, nor obligate or spend local funds, prior to receiving and fully executing grant agreements. Funding from the grant may not be used to pay for expenditures made prior to the execution of the grant agreements. The division may not disburse any money from a grant until approval and execution by all required parties and the division has received a request to draw money from the grant from the recipient of the grant.

[18.11.10.16 NMAC - N, 10/26/2021]

#### **18.11.10.17 GRANT REIMBURSEMENTS:**

**A.** The recipient of a grant must make a request to draw money from the grant on a form prescribed by the director. The division shall reimburse the grantee in accordance with the terms of agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the grantee for the implementation of the grant. The division reserves the right to withhold reimbursement on requests that are incorrect or incomplete. The Final reimbursement request must be received no later than 30 days after the expiration of the grant. The grantee shall not be reimbursed for any costs incurred prior to the full execution of the grant, after the expiration of the grant or in excess of the maximum dollar amount of the grant unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this grant shall revert to the state aviation fund.

**B.** The director shall review and approve or deny a request to draw money from a grant within 10 working days after the date on which the director receives the request. If the director approves a request to draw money from a grant, the director shall cause a check to be issued to the recipient of the grant in the amount requested by the recipient. If the director denies a request to draw money from a grant, the director shall provide the recipient who made the request with a written statement:

- (1) stating the reason for the denial of the request; and
- (2) describing any actions the recipient must take to receive approval of the request from the director.

**C.** If the director awards a grant to a recipient and, after the recipient receives a disbursement of the grant pursuant to this section, the director determines that the recipient no longer needs the grant or any portion of the grant, the director may:

- (1) cease making any further disbursements of the grant to the recipient of the grant; or



- (2) require the recipient of the grant to repay any unused portion of the grant.

[18.11.10.17 NMAC - N, 10/26/2021]

#### **18.11.10.18 PROJECT DOCUMENTATION:**

The eligible entity shall maintain a complete set of project files for a period of not less than six years following the completion of the grant term. The project files shall contain all documents that are specified as required by the grant agreement.

[18.11.10.18 NMAC - N, 10/26/2021]

#### **18.11.10.19 NON-COMPLIANT GRANTEES:**

**A.** The division shall, at its discretion, investigate noncompliant grantees and pursue all appropriate legal means including termination of any grant agreement and any or all items and shall seek remediation for monies expended by the division and received by non-compliant grantee.

**B.** If the division finds that the recipient of a grant is not using money from the grant in accordance with the provisions of the grant agreement, the division will immediately cease providing the recipient with money from the grant and may determine that the agreement is void.

**C.** If the division finds that money from the grant is not used in accordance with the agreement, the division may require the repayment of the grant or any portion of the grant.

**D.** The division reserves the right to audit any rural air service enhancement grant. The eligible entity must make records available for review or audit upon request by the department. The division is entitled to recover amounts based on the results of an audit.

**E.** The department reserves the right to request the eligible entity to submit additional documentation to demonstrate completion of the terms and conditions required by the grant program. It is the responsibility of the eligible entity to comply in full with all such requests and to submit the requested documentation in a timely manner.

[18.11.10.19 NMAC - N, 10/26/2021]

## **CHAPTER 12: COMMERCIAL GARAGES [RESERVED]**

## **CHAPTER 13: VEHICULAR FUEL SYSTEMS [RESERVED]**

# **CHAPTER 14: RAILROADS**

## **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2: RAILROAD SAFETY**

### **18.14.2.1 ISSUING AGENCY:**

Public Regulation Commission.

[18.14.2.1 NMAC - N, 9/30/11]

### **18.14.2.2 SCOPE:**

Except as provided herein, this rule applies to all railroad companies and other common carriers, as provided in Paragraph (3) of Subsection A of Section 63-7-1.1 NMSA 1978 and to all rail safety activities as to which the commission has been delegated authority pursuant to federal railroad safety laws together with regulations promulgated and orders issued under those federal laws.

[18.14.2.2 NMAC - N, 9/30/11; A, 1/15/16]

### **18.14.2.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 8-8-11, 63-3-36, and 63-7-1.1 NMSA.

[18.14.2.3 NMAC - N, 9/30/11]

### **18.14.2.4 DURATION:**

Permanent.

[18.14.2.4 NMAC - N, 9/30/11]

### **18.14.2.5 EFFECTIVE DATE:**

September 30, 2011, unless a later date is cited at the end of a section.

[18.14.2.5 NMAC - N, 9/30/11]

### **18.14.2.6 OBJECTIVE:**

The purpose of this rule is to establish safety requirements for railroad companies and other common carriers operating in New Mexico and to establish basic procedures for use when public grade crossings are sought to be opened or closed.

[18.14.2.6 NMAC - N, 9/30/11; A, 1/15/2016]

#### **18.14.2.7 DEFINITIONS:**

In addition to the definitions set out in 49 CFR Parts 200 to 268 and in the American railway engineering and maintenance-of-way association (AREMA) clearances manual, as used in this rule:

**A. Commission** means the New Mexico public regulation commission.

**B. Private grade crossing** means any railroad crossing of a roadway which is not a public grade crossing, including any at-grade crossing where the highway, road or street is privately owned.

**C. Public grade crossing** means a location within the state, other than a location where one or more railroad tracks cross one or more railroad tracks at-grade, where a public highway, public road, or public street, including any associated public sidewalks and public pathways, crosses one or more railroad tracks at-grade. The term includes a crossing only if any public authorities maintain the roadway on all sides of the crossing.

[18.14.2.7 NMAC - N, 9/30/11; A, 6/14/13; A, 1/15/16]

#### **18.14.2.8 REFERENCES TO OTHER DOCUMENTS:**

Whenever this rule refers to a federal or state statute, rule, or regulation, or to a technical or other document, the reference, unless specifically stated to the contrary, is continuous and is intended to refer to the most current version of the document.

[18.14.2.8 NMAC - N, 9/30/11]

#### **18.14.2.9 ADOPTION OF MINIMUM SAFETY REQUIREMENTS BY REFERENCE:**

The commission adopts by reference as part of this rule, and a railroad company shall comply with the safety requirements set forth in:

**A. Code of federal regulations.** 49 CFR parts 200 to 268; and 23 CFR Part 655, Subpart F;

**B. AREMA clearances manual.** All new construction commenced on or after September 30, 2011 shall comply with Chapter 28, clearances, of the manual for railway engineering published by the American railway engineering and maintenance-of-way association (AREMA); copies may be obtained from AREMA, 10003 Derekwood Lane, Lanham, Maryland 20706.

[18.14.2.9 NMAC - N, 9/30/11; A, 6/14/13, A, 1/15/2016]

#### **18.14.2.10 RENEWAL OF STATE PARTICIPATION AGREEMENT:**

The director of the transportation division, on behalf of the commission, may annually renew the agreement between New Mexico and the federal railroad administration for state participation in the national railroad safety program.

[18.14.2.10 NMAC - N, 9/30/11]

#### **18.14.2.11 GOVERNMENTAL AGREEMENTS:**

The director of the transportation division, with the express approval of the commission, may enter into any agreement with another governmental entity, such as the New Mexico department of transportation, in order to cooperatively enhance railroad safety, promote compliance with the federal railroad safety laws, and implement the benefits of the national railroad safety program.

[18.14.2.11 NMAC - N, 1/15/2016]

#### **18.14.2.12 OPENING AND CLOSING OF PUBLIC GRADE CROSSINGS:**

**A.** Railroad companies are subject to the construction and maintenance requirements set forth in Section 63-3-36 NMSA 1978.

**B.** Exclusion of property owned by New Mexico department of transportation: The New Mexico department of transportation, and not the New Mexico public regulation commission, shall determine whether to open or close a crossing on railroad property owned by the New Mexico department of transportation or on a state highway that crosses a railroad.

**C.** Subject to the exclusion set out in subsection B of 18.14.2 NMAC, any person who believes that an additional public grade crossing is necessary and in the public interest may petition the commission for a determination regarding the need for such a crossing. The transportation division director shall promptly notice the pending petition for public comment, and the commission shall, as soon as practicable consistent with due process, hold a hearing, whereupon it may issue an order prohibiting or permitting the additional public grade crossing.

**D.** Subject to the exclusion set out in subsection B of 18.14.2 NMAC, any person who believes that an existing public grade crossing is unnecessary or not in the public interest may petition the commission for a determination regarding the need for such a public grade crossing. The transportation division director shall promptly notice the pending petition for public comment, and the commission shall, as soon as practicable consistent with due process, hold a hearing, whereupon it may issue an order requiring that the existing public grade crossing be closed, kept open, or modified as needed to conform with current applicable safety standards.

**E.** Subject to the exclusion set out in subsection B of 18.14.2 NMAC, any railroad company contemplating the closure of an existing public grade crossing of a public highway, city, town or village street at grade, must notify the transportation division director at least sixty (60) days prior to any actual closure of such public grade crossing. The transportation division director shall promptly notice the pending closure for public comment, and the commission shall, as soon as practicable consistent with due process, hold a hearing, whereupon it may issue an order prohibiting or permitting the closure.

**F.** Railroad United States department of transportation (USDOT) identifiers shall be posted at each existing railroad crossing in New Mexico.

[18.14.2.12 NMAC - Rp, SCC-85-7, Rule 1, 9/30/11; A, 6/14/13; 18.14.2.12 NMAC - Rn & A, 18.14.2.11 NMAC, 1/15/2016]

#### **18.14.2.13 REPORTS OF ACCIDENTS AND INCIDENTS:**

**A.** Whenever a railroad company is required by 49 CFR 225.9 to report an accident/incident promptly by telephone to the federal railroad administration, the railroad shall promptly report the same accident/incident information by telephone to the transportation division of the public regulation commission at (505) 827-4310.

**B.** A railroad company must immediately report by telephone to the New Mexico state police at (505) 827-9126 and to the New Mexico environment department at (505) 827-9239 or (505) 827-1557 as well as to local law enforcement authorities and tribal police whenever it learns of the occurrence of an accident/incident involving a railroad car carrying hazardous material as provided in 49 CFR 172. Each report must state:

- (1) the name of the railroad;
- (2) the name, title, and telephone number of the person making the report;
- (3) the time, date, and location of the accident/incident;
- (4) the circumstances of the accident/incident;
- (5) the number of fatalities and injuries involved, if any; and
- (6) the specific hazardous commodity, if any, involved in the accident/incident.

**C.** A railroad company shall furnish to the transportation division of the public regulation commission a copy of each monthly accident/incident report it files with the federal railroad administration pursuant to 49 CFR 225. The report shall be filed with the transportation division at the same time it is filed with the federal railroad administration.

**D.** Persons affected by railroad crossing safety issues may follow the commission's informal complaint procedures by contacting the commission's consumer relations division. In addition, they may follow the commission's formal complaint procedures as set forth at 1.2.2 NMAC.

**E.** The furnishing of any report required under Subsections A, B, and C of 18.14.2 NMAC is not intended to constitute a waiver of any evidentiary privilege as to such report provided for by federal or state law.

**F.** The Commission will not exercise any authority with respect to the opening or closing of a private grade crossing.

[18.14.2.13 NMAC - Rp, SCC-85-7, Rule 3, 9/30/11; A, 6/14/13; 18.14.2.13 NMAC - Rn & A, 18.14.2.12 NMAC, 1/15/2016]

#### **18.14.2.14 MAPS AND PROFILES:**

A railroad company shall file with the commission the first January 15 after this rule takes effect a map showing all showing all lines and grade crossings and a list of all grade crossings the railroad has in New Mexico, and on or before January 15 of each year a map showing any changes to its lines and grade crossings in New Mexico since the previous filing and a list of changes to its grade crossings in New Mexico since the previous filing. The furnishing of this information may be accomplished electronically, through the provision of appropriate access to the national highway-rail crossing inventory, obtainable from the federal railroad administration.

[18.14.2.14 NMAC - Rp, SCC 85-7, Rule 7, 9/30/11; A, 6/14/13; 18.14.2.14 NMAC - Rn & A, 18.14.2.13 NMAC, 1/15/2016]

#### **18.14.2.15 NON-APPLICABILITY:**

This rule shall not apply to government owned railroad operations or government owned railroad property. Notwithstanding this provision, railroad companies and other common carriers operating on government owned railroad property or government owned railroad right of way are subject to the provisions of this rule.

[18.14.2.15 NMAC - N, 1/15/2016]

#### **18.14.2.16 WAIVER OF OR VARIANCE FROM RULE REQUIREMENTS:**

**A.** The commission may, in its discretion, waive or vary any state-imposed requirement of these rules whenever the commission finds that such waiver or variance would be in the public interest.

**B.** A railroad company that cannot meet one or more of the state-imposed requirements of these rules may petition the commission for a waiver or variance. The petition shall be in writing and shall include:

(1) a list of those state-imposed requirements which the railroad company wishes to have waived or varied;

(2) an explanation and description of the specific conditions which prevent the requirement from being met; and

(3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.

**C.** The commission may order a hearing on the merits of the petition.

**D.** A railroad company shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one or more of the requirements that are the subject of the petition.

**E.** No waiver or variance of any state-imposed requirement of these rules granted by the commission is transferable.

[18.14.2.16 NMAC - N, 9/30/11; 18.14.2.16 NMAC - Rn & A, 18.14.2.14 NMAC, 1/15/2016]

#### **18.14.2.17 RULES OF PROCEDURE:**

In all hearings before the commission involving railroad companies, the commission shall follow the public regulation commission rules of procedure as codified at 1.2.2.7 NMAC, et seq., except that a specific provision in this rule shall control over a conflicting general provision in the rules of procedure.

[18.14.2.17 NMAC - N, 7/30/11; 18.14.2.17 NMAC - Rn, 18.14.2.15 NMAC, 1/15/2016]

#### **18.14.2.18 FILING OF DOCUMENTS:**

**A. Address for filing pleadings.**

(1) **By mail.** Pleadings to be filed by mail must be sent to public regulation commission, records management bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) **In person.** Pleadings to be filed in person must be delivered to public regulation commission, records management bureau, 1120 Paseo de Peralta, at the corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

(3) **By facsimile.** Pleadings filed by facsimile must be sent to (505) 476-0324.

(4) **By electronic mail.** Call the records management bureau at 505-827-4526 for the correct email address for filing pleadings by electronic mail.

**B. Address for filing all other documents.**

(1) **By mail.** Documents other than pleadings to be filed by mail must be sent to public regulation commission, transportation division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) **In person.** Documents to be filed in person must be delivered to the public regulation commission, transportation division, 1120 Paseo de Peralta, at the corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

(3) **By facsimile.** Documents filed by facsimile must be sent to (505) 827-4417.

(4) **By electronic mail.** Call the chief of the transportation division investigations bureau at 505-827-4393 for the correct email address for filing documents by electronic mail.

**C. Photocopies of forms permitted.** The commission will accept filings made on photocopies of commission forms, provided the copies are legible.

**D. Filing by facsimile.** Persons filing documents by facsimile should also file the original with the commission either by mail or in person. The document will be deemed filed on the date of receipt of either the facsimile or the original, whichever occurs first. The commission will accept filing by facsimile of the following documents:

- (1) change of address reports;
- (2) reports of fatal accidents;
- (3) complaints; and
- (4) other documents the commission, in its discretion, or its designee permits.

[18.14.2.18 NMAC - N, 9/30/11; Rn, 18.14.2.16 NMAC 1/15/16]

**PART 3: [RESERVED]**

**PART 4: GRADE CROSSINGS ON LAND AND RAILROAD TRACKS  
CONTROLLED BY THE DEPARTMENT OF TRANSPORTATION**

**18.14.4.1 ISSUING AGENCY:**



New Mexico Department of Transportation.

[18.14.4.1 NMAC - N, 12/1/2010]

**18.14.4.2 SCOPE:**

All government, private and public entities.

[18.14.4.2 NMAC - N, 12/1/2010]

**18.14.4.3 STATUTORY AUTHORITY:**

Section 67-3-11, 67-3-12, 63-3-35, 63-3-36, 63-3-37, 63-3-38, and 67-3-67 through 67-3-70 NMSA 1978.

[18.14.4.3 NMAC - N, 12/1/2010]

**18.14.4.4 DURATION:**

Permanent.

[18.14.4.4 NMAC - N, 12/1/2010]

**18.14.4.5 EFFECTIVE DATE:**

December 1, 2010, unless a later date is cited at the end of a section.

[18.14.4.5 NMAC - N, 12/1/2010]

**18.14.4.6 OBJECTIVE:**

To create procedures and standards for any new and all existing grade crossings on land and railroad tracks controlled by the department of transportation.

[18.14.4.6 NMAC - N, 12/1/2010]

**18.14.4.7 DEFINITIONS:**

**A. "Active traffic control device"** means those traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, all of which display to motorists positive warning of the approach or presence of a train.

**B. "Agreement"** means a contract between the department as the owner of the railroad and the party or parties who own, use, or have responsibility for a road that cross the rail line that describes responsibility for the grade crossing construction,

repair, maintenance, inspection, and liability for the crossing and other items as may be appropriate at the grade crossing and adjacent traffic control signs. An agreement shall be negotiated between the department and the party or parties when approval for the construction or modification to the crossing has been given by the department secretary. A template agreement will be made available to any party requesting such document, but the final terms of the agreement will be subject to negotiation by the parties thereto.

**C. "Applicant"** means an individual or company or local government or any other entity that submits a request in writing to the department rail manager for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing, and who or which must be an adjacent property owner, the property owner's authorized representative or a governmental agency that maintains the road approaches to a crossing.

**D. "Crossing"** means a general area where a highway and the department's railroad right-of-way cross at the same level, within which are included the railroad tracks, highway or other roadway either publicly or privately owned or pedestrian crossing and any traffic control devices for highway traffic traversing that area. The crossing shall include the area of department owned railroad property from the property boundary on one side of the track to the property boundary on the other side.

**E. "Department"** means the New Mexico department of transportation.

**F. "Diagnostic study"** means a study of a highway railroad grade crossing and any adjacent factors that will have an impact upon the operation at the grade crossing. This study shall be initiated by the department rail manager and shall be conducted by a diagnostic team constituted by the rail manager. Any reports submitted shall be stamped and signed by a registered engineer licensed in the state of New Mexico. A diagnostic study of a crossing shall be based on criteria and standards identified in the reference documents in subsection B of 18.14.4.8 NMAC.

**G. "Diagnostic team"** means a group of knowledgeable representatives of the parties of interest in a railroad highway crossing or a group of crossings. A diagnostic team composition will be determined by the department rail manager and shall have the following members:

(1) a railroad engineering professional (preferably an experienced professional engineer);

(2) a railroad signal professional (or consultant);

(3) a highway engineer from the department as designated by the district engineer for the department district where the highway-railroad grade crossing is located;

(4) a person from an appropriate local government who deals with roadways at the crossing if a local government does maintenance of the road that crosses the department owned tracks;

(5) the rail manager or their designated staff member;

(6) an appropriate regulatory or law enforcement professional from the local government where the crossing is located;

(7) an individual or individuals from any railroad or railroads that operate trains on the department owned track that is being examined;

(8) any additional personnel that may be needed depending on the individual circumstances at a crossing location as determined by the department rail manager.

**H. "FHWA"** means the United States department of transportation federal highway administration.

**I. "FRA"** means the United States department of transportation federal railroad administration.

**J. "Highway, road or roadway"** means a general term denoting a public or private way for purpose of vehicular and other modes of travel. The names usually apply to the entire area within the right of way limits.

**K. "License"** means permission to a revocable non-possessory interest in land which the department grants for specific purposes without being subject to an action and trespass.

**L. "Local government"** means a municipality or county or agency or local authority that has jurisdiction for or control of the road or roadway that crosses or is proposed to cross land and railroad tracks controlled by the department. Local governments shall include Indian tribes or tribal governments as defined in federal law at 25 USC 450b(e) and other sections.

**M. "MUTCD"** means the most current version of the federal highway administration manual on uniform traffic control devices.

**N. "NMDOT"** means the New Mexico department of transportation.

**O. "NMDOT grade crossings"** means crossings of railroad tracks that are owned by the department or the state transportation commission.

**P. "Passive warning traffic control device"** means those types of traffic control devices, including signs, markings and other devices, located at or in advance of grade

crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train.

**Q. "Permit"** means a temporary short or long term document approved by an applicant and the department with terms and conditions (i.e. contract, license or agreements), giving permission to enter department railroad property for a specific purpose and limited period of time to construct or maintain a crossing and for the crossing itself.

**R. "Private crossing"** means a crossing that is not on a public road and was opened by a private railroad or the department under the terms and conditions of an agreement with the department or a private railroad. At private crossings, the roadway is privately owned, as might be found on a farm or within an industrial complex, where the road is not intended for public use and is not maintained by a public entity.

**S. "Public crossing"** means a crossing where a public entity maintains the approach roads to the railroad grade crossing on both sides of the railroad track within the department owned railroad property.

**T. "Rail manager"** means the department rail section manager.

**U. "Second party"** means an individual or company or local government or any other entity that enters into an agreement with the department for a highway-railroad grade crossing of department owned railroad track.

**V. "Secretary"** means the New Mexico department of transportation secretary.

[18.14.4.7 NMAC - N, 12/1/2010]

#### **18.14.4.8 REFERENCES:**

**A.** The reference documents listed in Subsection B of 18.14.4.8 NMAC are supplementary and will be used by the department to evaluate requests for a new crossing or modification to an existing crossing or a request for a change in designation from a private crossing to a public crossing or the closing of a crossing or the grade separation of a crossing or in any diagnostic study of a crossing that is conducted. The most recent edition of each technical reference shall be used.

**B.** Technical reference documents.

(1) FHWA, railroad-highway grade crossing handbook.

(2) FHWA, MUTCD.

(3) Institute of transportation engineers, *geometric design criteria for highway-rail intersections (grade crossings)*.

- (4) Institute of transportation engineers, *traffic engineering handbook*.
- (5) The department railroads and utilities manual, most current version.
- (6) Any applicable department engineering standards.

[18.14.4.8 NMAC - N, 12/1/2010]

#### **18.14.4.9 CROSSING REQUEST PROCESS:**

##### **A. Crossing request general requirements.**

(1) Requests for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing shall be made by any adjacent property owner, the property owner's authorized representative or a local government representative that maintains the road approaches to a crossing.

(2) All requests for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing shall be submitted in writing to the rail manager with proof of ownership of the adjacent property that the crossing will serve. The request shall also contain a description of the crossing that includes a to-scale engineering drawing of the location where the crossing will be constructed or modified at the railroad tracks and the approach roads to the crossing and any other features in the area and will acknowledge that the requestor accepts all liability for the crossing and will pay all maintenance costs for the crossing.

(3) Any request by an applicant for a new crossing, modification to and existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing may be refused by the department if necessary and relevant information is missing. If the request is refused, the department shall notify the applicant within ten (10) working days of receipt of the request and shall indicate the reason or reasons for refusal.

(4) Each applicant understands and agrees as a condition of issuance of any agreement, that if the department determines that any violation of the agreement has or may result in the creation of any safety or traffic hazard, the department may immediately take such action as the department deems necessary to correct, prevent, eliminate or mitigate such hazard, without the need for the completion of any review process.

(5) The review process shall begin with the acceptance of a request by the department rail manager.

**(6)** From the date of acceptance of a written request for modifications to an existing crossing or construction of a new crossing or the grade separation or elimination of a crossing by the rail manager the process time for any request will normally take ninety (90) days. The process may be extended by the department when further action is required by the department. Transmittal of a completed agreement, approved by the department secretary or transmittal of a denied request constitutes action on the request.

**(7)** Upon receipt and review of a written request for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing the rail manager shall form a diagnostic team who will then conduct a diagnostic study of the proposed action. A report of the diagnostic study will then be prepared and submitted to the secretary with a recommendation by the rail manager as to whether the request should be approved or denied.

**(8)** The secretary shall approve or deny any and all crossing requests or proposals regarding crossings on any department owned railroad property.

**(9)** If the secretary approves a request from an applicant, an agreement shall be prepared by the rail manager and transmitted to the applicant who will become the second party to the agreement. If the applicant does not agree to all terms and conditions of the agreement, the agreement shall not be executed.

**(10)** In accepting the agreement, the applicant agrees to all terms and conditions of the agreement. Should the applicant choose to appeal a denied request, or the terms and conditions of an agreement, the appeal shall be filed with the rail manager within sixty (60) days of the date the denial notice or the approved agreement is transmitted.

**(11)** The issue date of the agreement is the date the department secretary signs the agreement.

**(12)** The granting of an agreement for a crossing conveys no rights, title or interest in department property to the applicant. An agreement for a crossing does not entitle the applicant to control or have any rights or interests in any portion of the design, specifications or operation of the rail line, including those portions of the rail line built pursuant to the terms and conditions of the agreement.

**(13)** If the department denies a request, the department rail manager shall provide the applicant a copy of the written request marked "denied" along with any attachments and a written explanation for the decision.

**(14)** Denial of a request for modification to an existing lawful crossing does not constitute a revocation of the existing crossing.

**B. Fees:** The secretary may establish a reasonable schedule of fees for crossing agreements issued pursuant to 18.14.4.12 NMAC.

**C. Appeals of denied requests for crossings.**

(1) If the requestor objects to the denial of a crossing request by the department or objects to any of the terms or conditions of the agreement placed therein by the department, a written appeal may be filed with the rail manager within sixty (60) days of the transmittal of notice of denial or transmittal of the approved agreement. The request shall include reasons for the appeal and may include recommendations by the requestor.

(2) The rail manager will review the appeal and provide a recommendation to the secretary regarding the appeal.

(3) Upon review the secretary will approve or deny the appeal recommendation.

[18.14.4.9 NMAC - N, 12/1/2010]

**18.14.4.10 STANDARDS TO BE USED FOR ALL CROSSINGS OF DEPARTMENT OWNED RAILROAD PROPERTY:**

**A.** All crossings shall be subject to an agreement between the department and a second party.

**B.** An agreement between the department and the second party at the crossing shall address the party that is responsible for the maintenance, repair and replacement of the crossing and installation and maintenance, repair and replacement of any traffic control signage at the crossing.

**C.** The department shall require the second party at the crossing to pay the department for the installation and maintenance, repair and replacement as needed of the traffic controls and signage determined to be necessary based upon a diagnostic study of the crossing and as approved by the secretary. If payment is not provided the department may close the crossing after providing written notice to the second party.

**D.** The following passive warning traffic control devices will be installed and maintained at all crossings unless the secretary determines that additional passive warning traffic control devices or active traffic control devices are required at a crossing. All passive warning traffic control devices shall be installed as specified in section 8B.04 of the MUTCD and shall include:

(1) a yield sign (an R1-2 sign as shown in figure 8B-1 and sized as shown in table 8B-1 of the MUTCD) shall be the default traffic control device, unless the secretary or a diagnostic study determines that a stop sign (an R1-1 sign as shown in figure 8B-1

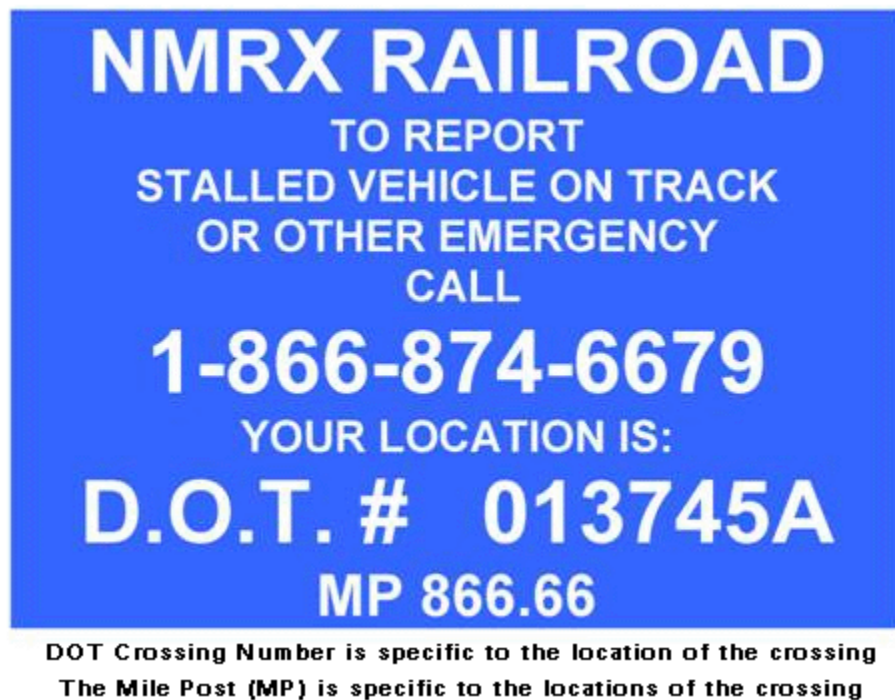
and sized as shown in table 8B-1 of the MUTCD) is appropriate and shall be installed in compliance with the provisions of Part 2 of section 2B.10 of the MUTCD and figures 8B-2 and 8B-3 of the MUTCD;

(2) a railroad cross buck sign (an R15-1 sign as shown in figure 8B-1 and sized as of Table 8B-1 of the MUTCD) that complies with the provisions of section 8B.03 of the MUTCD;

(3) a sign indicating the number of tracks at the crossing at the location if two or more tracks are present that complies with the provisions of section 8B.03 of the MUTCD;

(4) reflective striping on the front and back of the signpost but may be omitted from the back sides of crossbuck sign supports installed on one-way streets;

(5) an emergency notification sign as shown in figure 1 below with a telephone number for the railroad dispatcher who dispatches trains using the tracks at the crossing;



**Figure 1**

- (6) roadway striping where appropriate;
- (7) advance highway-railroad grade crossing warning signs for each direction of traffic.



**E.** It shall be the responsibility of the department to ensure that all federal and state laws and regulations, department procedures and industry standards are followed.

**F.** The rail manager shall conduct inspections of all department-owned crossings on a regular basis at least every two years to evaluate the sufficiency of traffic control devices and signage. The rail manager shall utilize the references in section b of 18.14.4.8 NMAC in conducting the inspection. The rail manager shall make a recommendation regarding any modifications to a crossing to the department secretary. The department secretary shall decide whether modifications to a crossing shall be made.

[18.14.4.10 NMAC - N, 12/1/2010]

**18.14.4.11 ADDITIONAL REQUIREMENTS FOR PRIVATE CROSSINGS OF DEPARTMENT OWNED RAILROAD PROPERTY:**

**A.** All liability at a private crossing will lie with the second party named in any existing or future crossing agreement. The department will bear no liability for these crossings.

**B.** The liability for the use and the responsibility for funding the inspection, maintenance and improvement of a private crossing shall be the responsibility of the second party, as the owner of the road that crosses the department owned railroad property.

**C.** If the department can not locate or acquire a valid agreement that has been issued to allow a private crossing of the department owned railroad property, and the department is unable to execute an agreement with an applicant for the crossing, the department shall initiate a process to consider closing the crossing utilizing the procedures included in 18.14.4.13 NMAC.

**D.** The department shall have the right to terminate an agreement in the event that the department determines any of the following:

**(1)** the crossing is being used for a purpose or in a manner not set forth in the agreement; or

**(2)** there is a significant change in the volume or nature of road traffic at the crossing; or

**(3)** the second party has in any way breached the terms or conditions of any applicable agreement.

[18.14.4.11 NMAC - N, 12/1/2010]

#### **18.14.4.12 FOR REQUESTS THAT A DESIGNATION OF A PRIVATE CROSSING BE CHANGED TO A PUBLIC CROSSING:**

**A.** A local government or regional transit district may request that a private crossing be changed to a public crossing by submitting a written request to the rail manager. The request shall include the reasons for such redesignation, the supporting documents referenced in Paragraph (2) of Subsection (A) of 18.14.4.9 NMAC, and a resolution from the governing body of the local government or regional transit district committing to maintain the approach roads to the grade crossing. The process referenced in 18.14.4.9 NMAC shall be used by the department in considering the redesignation request.

**B.** The rail manager shall make a recommendation to the secretary regarding the request to redesignate a private crossing to a public crossing. The secretary shall decide whether such redesignation shall be made. Upon approval by the secretary of the redesignation, an agreement between the department and the second party that will assume responsibility for the redesignated crossing shall be executed regarding the responsibilities of the second party.

**C.** The rail manager shall submit all changes in crossing designation to the FRA to update the FRA crossing inventory.

[18.14.4.12 NMAC - N, 12/1/2010]

#### **18.14.4.13 CONSIDERATION OF CLOSING AN EXISTING CROSSING:**

##### **CONSIDERATION OF CLOSING AN EXISTING CROSSING:**

**A.** If the department seeks the closure of an existing crossing or if the rail manager receives a proposal to close an existing crossing that is determined to merit consideration based on the rail manager's review of the proposal, the department shall provide public notice of the proposed closure:

**(1)** the department shall inform the local government in which the crossing is located of the proposed closure;

**(2)** the department shall post signs at the crossing notifying the public that the crossing is under consideration for closure and requesting public comment;

**(3)** the department shall publish a notice in a newspaper of general circulation in the community in which the crossing is located inviting public comment.

**B.** The rail manager shall evaluate the impacts of closing the crossing and the options to closure. In preparing a recommendation to the secretary regarding a proposed closing of an existing crossing, the rail manager shall utilize the criteria contained in the references cited in 18.14.4.8 NMAC, the results of the diagnostic study

and consider any public comments received. The rail manager shall provide a recommendation and a summary of any public comments received to the secretary.

**C.** The approval of the secretary or their designee is required in order to close an existing crossing.

[18.14.4.13 NMAC - N, 12/1/2010]

#### **18.14.4.14 CONSIDERATION OF OPENING A NEW CROSSING:**

**A.** If the department seeks the opening of a new crossing or if the rail manager receives a proposal to open a new crossing that is determined to have merit based on the rail manager's review of the proposal, the department shall provide public notice of the proposed new crossing.

**(1)** The department shall inform the local government in which the crossing is located of the proposed new crossing.

**(2)** The department shall post signs at the site of the proposed crossing notifying the public that a new crossing is under consideration at this site and requesting public comment.

**(3)** The department shall publish a notice in a newspaper of general circulation in the community in which the crossing is located inviting public comment.

**B.** The rail manager shall evaluate the impacts of opening the new crossing in preparing a recommendation to the secretary regarding a proposed new crossing, the rail manager shall utilize the criteria contained in the references cited in 18.14.4.8 NMAC, the results of the diagnostic study and consider any public comments received. The rail manager shall provide a recommendation and a summary of any public comments received to the secretary.

**C.** The approval of the secretary or their designee is required in order to open a new crossing.

[18.14.4.14 NMAC - N, 12/1/2010]

#### **18.14.4.15 CONSIDERATION OF REQUESTS FOR GRADE SEPARATION OF A CROSSING:**

**A.** The rail manager in preparing their recommendation to the secretary regarding a request for grade separation of a crossing shall utilize:

**(1)** the criteria contained in the references cited in 18.14.4.8 NMAC;

**(2)** the results of the diagnostic study of the grade crossing;

- (3) the cost of the project;
- (4) the availability of funding for the project;
- (5) the impact on the community in which the crossing is located.

**B.** The approval of the secretary or their designee is required in order to grade separate an existing crossing.

[18.14.4.15 NMAC - N, 12/1/2010]

## **CHAPTER 15: OFF-HIGHWAY MOTOR VEHICLE SAFETY**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD OPEN MEETINGS**

#### **18.15.2.1 ISSUING AGENCY:**

New Mexico Department of Game and Fish.

[18.15.2.1 NMAC - Rp, 18.15.2.1 NMAC, 10-14-2016]

#### **18.15.2.2 SCOPE:**

Persons interested in and affected by actions of the off-highway motor vehicle advisory board and the department of game and fish.

[18.15.2.2 NMAC - Rp, 18.15.2.2 NMAC, 10-14-2016]

#### **18.15.2.3 STATUTORY AUTHORITY:**

Sections 10-15-1 to 4 NMSA 1978, (as amended through 2012, "Open Meetings Act") and Section 66-3-1018 NMSA 1978, that provide the New Mexico department of game and fish director with the authority to establish rules that it may deem necessary to carry out the purpose of Off-Highway Motor Vehicle Act, Sections 66-3-1001 to 21 NMSA 1978 and all other acts pertaining to off-highway motor vehicles. Section 66-3-1017 NMSA 1978 provides that the "off-highway motor vehicle advisory board is created to advise the department on matters related to administration of the Off-Highway Motor Vehicle Act.

[18.15.2.3 NMAC - Rp, 18.15.2.3 NMAC, 10-14-2016]

#### **18.15.2.4 DURATION:**

Permanent.

[18.15.2.4 NMAC - Rp, 18.15.2.4 NMAC, 10-14-2016]

#### **18.15.2.5 EFFECTIVE DATE:**

October 14, 2016, unless a later date is cited at the end of a section.

[18.15.2.5 NMAC - Rp, 18.15.2.5 NMAC, 10-14-2016]

#### **18.15.2.6 OBJECTIVE:**

To establish rules pursuant to the "Open Meetings Act," determining what constitutes reasonable notice of off-highway motor vehicle advisory board public meetings.

[18.15.2.6 NMAC - Rp, 18.15.2.6 NMAC, 10-14-2016]

#### **18.15.2.7 DEFINITIONS:**

**A. "Department"** shall mean the New Mexico department of game and fish.

**B. "Board"** means the off-highway motor vehicle advisory board.

**C. "Department's public website"** means: [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us).

**D. "Emergency meeting"** is a meeting called to address unforeseen circumstances that, if not addressed immediately by the board, will likely result in injury or damage to persons or property, or substantial financial loss to the trail safety fund or the department.

**E. "Publish"** shall mean to publish via paid legal advertisement in a newspaper of general circulation.

[18.15.2.7 NMAC - Rp, 18.15.2.7 NMAC, 10-14-2016]

#### **18.15.2.8 OPEN MEETINGS:**

**A. Reasonable notice:** Reasonable notice shall be given, as hereinafter provided, of all meetings of a quorum of the off-highway motor vehicle advisory board held for the purpose of discussing or making recommendations to the director of the department for consideration regarding the Off-Highway Motor Vehicle Act, sections 66-3-1001 to 21 NMSA 1978.

(1) Ten day notice for regular meetings: At least 10 days in advance of each regularly scheduled meeting, notice will be posted on the department's public website and social media sites and in addition will be sent to newspapers, radio stations, wire services, and television stations in the state that have provided a written request for the notice of meetings per Section 10-15-1(D) NMSA 1978. These notices shall contain the date, time, and place of the meeting and information on how a copy of the agenda can be obtained.

(2) Three day notice for special meetings: At least three days in advance of each special meeting, notice will be posted on the department's public website and social media sites and given by telephone to newspapers, radio stations, wire services and television stations in the state that have provided a written request for the notice of meetings per Section 10-15-1(D) NMSA 1978. These notices shall contain the date, time, and place of the meeting and information on how a copy of the agenda can be obtained.

(3) Twenty-four hour notice for emergency meetings: Notwithstanding any other provisions of this rule, the chairman of the off-highway motor vehicle board may call an emergency meeting to consider any unforeseen urgent matter that demands immediate board action. Notice of an emergency meeting shall be posted on the department's public website and social media sites at least 24 hours in advance unless threat of personal injury or property damage requires less notice, and shall be given by telephone to the associated press and, if time permits, via news release faxed or hand delivered to at least one daily newspaper of general circulation in the state.

(4) Telephone participation: Board members may choose to participate in properly noticed meetings of the board by telephone or other similar communications equipment, but only when attendance in person is difficult or impossible. Each board member participating by telephone or other similar equipment must be identified when speaking. All board members must be able to hear each other at the same time and hear any speaker, and members of the public attending the meeting must be able to hear any board member.

**B. Correspondence with interested parties:** Prior to each regularly scheduled meeting, correspondence announcing the date, time, and place of the meeting and information on how a copy of the agenda may be obtained shall be sent to agencies, organizations, groups, or individuals who have requested such notice.

**C. Agenda availability and changes:**

(1) Agenda availability: Except for emergency meetings, the agenda for a regular or special meeting will be made available to the public by posting on the department's public website and social media sites and from the office of the director, New Mexico department of game and fish, one wildlife way, Santa Fe, New Mexico 87507 at least 72 hours in advance of each meeting.

**(2)** The proposed agenda for any meeting is subject to change as deemed necessary by the chairman of the off-highway vehicle board. However, such changes may not be made less than 72 hours in advance of any meeting and the final agenda, incorporating any such changes, will be made available to the public at least 72 hours in advance of the meeting from the office of the director.

[18.15.2.8 NMAC - Rp, 18.15.2.8 NMAC, 10-14-2016]

## **PART 3: OFF-HIGHWAY MOTOR VEHICLE SAFETY STANDARDS**

### **18.15.3.1 ISSUING AGENCY:**

New Mexico Department of Game and Fish.

[18.15.3.1 NMAC - Rp, 18.15.3.1 NMAC, 10-14-2016]

### **18.15.3.2 SCOPE:**

This rule prescribes safety standards, registration, and safety permit requirements for all persons seeking to operate an off-highway motor vehicle and applies to all persons seeking to operate an off-highway motor vehicle safety training organization, or serve as an off-highway motor vehicle instructor, or off-highway motor vehicle tour operator or guide in New Mexico.

[18.15.3.2 NMAC - Rp, 18.15.3.2 NMAC, 10-14-2016]

### **18.15.3.3 STATUTORY AUTHORITY:**

Sections 66-3-1001 through 66-3-1020 NMSA 1978.

[18.15.3.3 NMAC - Rp, 18.15.3.3 NMAC, 10-14-2016]

### **18.15.3.4 DURATION:**

Permanent.

[18.15.3.4 NMAC - Rp, 18.15.3.4 NMAC, 10-14-2016]

### **18.15.3.5 EFFECTIVE DATE:**

October 14, 2016, unless a later date is cited at the end of a section.

[18.15.3.5 NMAC - Rp, 18.15.3.5 NMAC, 10-14-2016]

### **18.15.3.6 OBJECTIVE:**

The purpose of this rule is to provide minimum and uniform standards for the registration, permitting, and safe operation of off-highway motor vehicles, for the certification of off-highway motor vehicle safety training organizations and instructors, for the conduct of off-highway motor vehicle tour operators and guides, and matters incident thereto.

[18.15.3.6 NMAC - Rp, 18.15.3.6 NMAC, 10-14-2016]

#### **18.15.3.7 DEFINITIONS:**

**A. "ASI"** means the ATV safety institute, a division of the specialty vehicle institute of America.

**B. "All-terrain vehicle (ATV)"** which means a motor vehicle 50 inches or less in width, having an unladen dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control.

**C. "Certificate"** means one of the following documents issued by the department or an organization recognized by the department authorizing a person to:

**(1)** "Safety training permit": operate an off-highway motor vehicle if under 18 years of age or;

**(2)** "Instructor certificate": serve as an off-highway motor vehicle safety training lead instructor or junior instructor.

**(3)** "Registration certificate": operate on public land an off-highway motor vehicle for which registration fees have been paid in accordance with Chapter 66, Article 3 NMSA 1978.

**D. "Department"** means the New Mexico department of game and fish.

**E. "Director"** means the director of the New Mexico department of game and fish.

**F. "Division"** means the motor vehicle division of the New Mexico taxation and revenue department.

**G. "Enrolled"** means the status of a student who has begun to participate in a department-certified or department-recognized safety training course and will continue until the course is completed.

**H. "MSF"** means the motorcycle safety foundation.



**I. "Off-highway motor vehicle (OHV)"** means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road as defined in statute or as designated by the director.

**J. "Off-highway motorcycle (OHM)"** means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control.

**K. "Off-highway motor vehicle safety training organization"** (also referred to in these rules as "OHV safety training organization" or "organization") means a business certified by the department as qualified to provide off-highway vehicle safety training.

**L. "Person"** means an individual, firm, partnership, association, corporation, limited liability company, or other legal entity.

**M. "ROHVA"** means the recreational off-highway vehicle association.

**N. "Recreational off-highway vehicle (ROV)"** means a motor vehicle designed for travel on four or more non-highway-legal tires, for recreational use by one or more persons, and having:

- (1) a steering wheel for steering control;
- (2) non-straddle seating;
- (3) maximum speed capability greater than 35 miles per hour;
- (4) gross vehicle weight rating (GVRW) no greater than 1,750 pounds;
- (5) less than 80 inches in overall width, exclusive of accessories;
- (6) engine displacement of less than 1,000 cubic centimeters;
- (7) identification by means of a 17-character vehicle identification number.

**O. "ROV youth model"** means an OHV intended by the manufacturer for use by operators under 16 years of age that meets all requirements of an ROV with the exception that it is capable of reaching a minimum speed of 10 miles per hour, and having an engine displacement of 200 cubic centimeters or less.

**P. "Revocation or revoked"** means the involuntary permanent termination of a certificate by the department for cause.

**Q. "Snowmobile"** means a motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners, or low-pressure tires.

**R. "Specialty off-highway motor vehicle (SOHV)"** means any self-propelled vehicle which is designed to travel on wheels or track in contact with the ground, which is designed primarily for use off the public highways, and which is generally and commonly used to transport persons for recreational purposes, that does not meet the definition of an all-terrain vehicle, off-highway motorcycle, recreational off-highway vehicle, or snowmobile. Go-karts, golf carts, battery-powered toys, and motorized scooters are not included in this definition.

**S. "Student"** means a person who has enrolled in an OHV safety training course certified or recognized by the department.

**T. "Suspended or suspension"** means the involuntary permanent termination of a certificate, either indefinitely pending an administrative appeals process or for a certain, limited period of time, by the department for cause.

**U. "Trail etiquette"** means a set of guidelines describing the correct and appropriate interaction between all types of trail users, respect for and adherence to rules and laws governing use on public and private land, and respect for natural resources.

[18.15.3.7 NMAC - Rp, 18.15.3.7 NMAC, 10-14-2016]

#### **18.15.3.8 EQUIPMENT REQUIREMENTS:**

**A. Safety helmets:** All OHV operators and passengers under the age of 18 shall wear safety helmets that comply with the safety standards of Title 49 Transportation, Chapter V - National Highway Traffic Safety Administration, Department of Transportation, Part 571-Federal Motor Vehicle Safety Standards, Subpart B-Federal Motor Vehicle Safety Standards, Standard No. 218, Motorcycle helmets of the Code of Federal Regulations (49CFR571.218); or with the safety standards of the United Nations Economic Commission for Europe Regulation 22.05, or their superseding standards. A decal exhibiting the symbol DOT in conformance with 49CFR571.218, or the symbol ECE22.05 in conformance with ECE Regulation 22, permanently affixed to a safety helmet shall constitute prima facie evidence of compliance with this standard.

**B. Eye protection:** All OHV operators and passengers under the age of 18 shall wear eye protection that meets or exceeds the Vehicle Equipment Safety Standards Regulations VESC-8 (Minimum Requirements for Motorcycles, Eye Protection Section 11-1306(e) or the American national standards institute (ANSI) Standard Z87.1 and more generally known as safety glasses, safety goggles, or a face shield. Additionally, the protective eyewear must be free of scratches and fastened securely in the manner that the eyewear's manufacturer prescribes.

**C. Age-appropriate size-fit standards for ATVs:** Standards governing the relationship between the engine size (displacement measured in cubic centimeters, or cc.) of an ATV and the minimum age an operator must attain before operating an ATV

of that engine size, combined with objective measurements of how a rider physically fits on an ATV and can operate basic controls, are called "age-appropriate size-fit standards" and include, but are not limited to:

- (1) No person less than six years of age shall operate an ATV on public land.
- (2) Operators less than 10 years of age shall not operate an ATV with an engine size larger than 110 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection D of this section.
- (3) Operators from 10 through 15 years of age shall not operate an ATV with an engine size larger than 250 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection D of this section.
- (4) Notwithstanding Paragraph (3) of this subsection, operators who are 14 or 15 years of age and who possess a valid driver's license may operate an ATV with an engine size not larger than 450 cubic centimeters.
- (5) Operators at least 16 years of age and less than 18 may operate an ATV with an engine size larger than 250 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection D of this section.

**D. Physically-appropriate size-fit standards for ATVs:** Unless the relationship between an operator and the ATV being operated complies with the following standards, it is a violation of the age-appropriate size-fit standards of these rules, regardless of whether the operator is in compliance with the engine size standards set forth above in Subsection C preceding this section.

- (1) Seat clearance when standing: The minimum clearance between the ATV seat and the operator's inseam while standing on the operator's foot rests should be three inches. The intent for requiring minimum clearance is two-fold: first, to permit the rider to stand up and absorb shocks through the legs while traversing rough terrain; second, to minimize the possibility of the rider being struck by the seat and catapulted over the handle bars.
- (2) Upper leg position when seated: The upper portion of the operator's leg, roughly from the top of the knee to the hip, should be approximately horizontal when seated. Minor departures a little above or below the horizontal are not violations of this standard, but gross departures (knees visibly significantly below or above the hips) shall warrant further inquiry and may constitute a violation of this standard. Knees that are significantly above the hips and which contact the handlebars in either direction when they are turned constitute a violation of this standard.
- (3) Foot reach: With the boot or shoe placed in the proper position upon the foot rest or on the running board, the toe should be able to operate the foot brake (on an ATV so equipped) with a simple downward rotation of the foot. The rider should be able

to operate the brakes consistently with no impairment of full range of motion. The same standard applies to the operator's boot or shoe and the foot-operated shift lever (on an ATV so equipped).

(4) Handlebar grip reach: With the rider in the normal seated position (not leaning forward) and the hands on the handlebar grips, the elbows should have a distinct angle between the upper arm and the forearm. If the operator's posture is such that the operator's arms present a straight line from wrist to shoulder, then the operator's ability to maintain directional control of the ATV is compromised, particularly in rough terrain.

(5) Throttle and engine stop switch: With the hands in the normal operating position and the handlebars turned fully either left or right, the operator must be able to operate the throttle and engine stop switch.

(6) Hand-brake lever or clutch lever reach: With the hands in the normal operating position and the handlebars turned fully either left or right the first joint (from the tip) of at least one finger should be able to extend beyond the hand-brake levers (or clutch lever on an ATV so equipped) and fully operate the hand levers. If not, the hands are too small to grasp the levers effectively.

**E. Age-appropriate size-fit standards for ROVs and ROV youth models:**

Standards governing the relationship between the engine size (displacement measured in cubic centimeters, or cc.) of an ROV or ROV youth model and the minimum age an operator must attain before operating an ROV or ROV youth model of that engine size, combined with objective measurements of how a rider physically fits in an ROV or ROV youth model and can operate basic controls, are called "age-appropriate size-fit standards" and include, but are not limited to:

(1) No person under six years of age shall operate an ROV or ROV youth model on public land.

(2) Operators at least six and less than 10 years of age shall not operate an ROV or ROV youth model with an engine size larger than 200 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection F of this section.

(3) Operators at least 10 years of age and less than 18 years of age shall comply with the physical fit standards set forth below in Subsection F of this section

**F. Physical-appropriate size-fit standards for ROVs and youth-model ROVs:**

Unless the relationship between an operator and the ROV or ROV youth model being operated complies with the following standards, it is a violation of the age-appropriate size-fit standards of these rules, regardless of whether the operator is in compliance with the engine size standards set forth above in Subsection E of this section.

(1) The operator shall be able to reach and fully operate the pedals with the operator's back flat against the driver's seat and with the operator's seatbelt properly fastened.

(2) The operator shall be able to reach the steering wheel and turn the wheel fully in both directions with arms slightly bent while keeping the operator's back flat against the driver's seat with the operator's seatbelt properly fastened.

[18.15.3.8 NMAC - Rp, 18.15.3.8 NMAC, 10-14-2016; A, 6-27-17]

**18.15.3.9 MINIMUM CRITERIA FOR APPROVAL AND CERTIFICATION OF OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING ORGANIZATIONS, INSTRUCTORS, AND CURRICULA; OUT-OF-STATE SAFETY PERMITS; GRANDFATHERED SAFETY PERMITS:**

**A. ASI standard adopted:** the department shall approve and certify all ATV safety training organizations whose applications establish that the organization will:

(1) use ASI's instructional materials, e-course, or a materially equivalent curriculum; and

(2) comply with the inclusion of New Mexico-specific curriculum with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, laws and prohibitions against operating OHVs under the influence of alcohol or drugs.

**B. MSF standard adopted:** the department shall approve and certify all OHM safety training organizations whose applications establish that the organization will:

(1) use the MSF "dirt bike school" instructional materials, e-course, or a materially equivalent curriculum; and

(2) comply with the inclusion of New Mexico-specific curriculum with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, and state laws and prohibitions against operating OHVs under the influence of alcohol or drugs.

**C. ROHVA standard adopted:** the department shall approve and certify all ROV safety training organizations whose applications establish that the organization will:

(1) use ROHVA's instructional materials, e-course, or a materially equivalent curriculum; and

(2) comply with the inclusion of New Mexico-specific curriculum with respect to environmental considerations, private property restrictions, agricultural and rural

lifestyles and cultural considerations, laws and prohibitions against operating OHVs under the influence of alcohol or drugs.

**D. Snowmobile standard. [RESERVED]**

**E. Out-of-state safety permits:** a current OHV safety permit issued by another state or an ASI, MSF, ROHVA, or equivalent certificate as determined by the department to be evidencing completion of an OHV safety training course, shall satisfy the requirement for completion of an OHV safety training course before operating an OHV in New Mexico.

**F. Grandfathered safety permits:** a safety certificate issued prior to January 1, 2007, by ASI, MSF, 4-H, or equivalent certificates as determined by the department to be evidencing completion of an OHV safety training course, shall satisfy the requirement for completion of an OHV safety training course for the purpose of operating an OHV in New Mexico.

[18.15.3.9 NMAC - Rp, 18.15.3.10 NMAC, 10-14-2016]

**18.15.3.10 CERTIFICATION OF OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING INSTRUCTORS:**

**A. Review by the department:** when reviewing applications for OHV safety training instructors, the department shall consider whether:

- (1) the information provided by the applicant is accurate and valid;
- (2) the character and employment references provided by the applicant report that the applicant is fit to conduct an OHV safety training course;
- (3) the applicant has a criminal history, as evidenced by a background check conducted by the department.

**B. Disqualification:** a criminal record of conviction of any of the following offenses shall disqualify an applicant or instructor for certification.

- (1) assault in any degree;
- (2) assault with intent to commit a violent felony in any degree;
- (3) attempt to commit criminal sexual penetration (CSP) or criminal sexual contact (CSC) in any degree;
- (4) abandonment or abuse of a child, cruelty to animals in any degree, or indecent exposure;

(5) any drug-related felony;

(6) a crime in which an element of the crime is the use or threat of use of physical force; or

(7) a crime in which fraud, theft, or embezzlement is considered to be an element of the conviction;

**C. Denial of certificate:** If the department determines that an applicant is disqualified in Subsection B of this rule, or is deemed unsuitable for other reasons as the department may determine, the department will issue a letter stating the reasons for denial of certification. An applicant may address the reasons for denial in a reapplication for a certification. Reapplications for certification must be submitted in written form to the department within 15 calendar days of the applicant receiving the letter stating the reasons for denial of certification.

**D. Term of certification:** Initial certification shall be valid from the date of issuance and shall be valid for a period of three years thereafter, unless suspended or revoked for cause before that date.

**E. Certification renewal:** A certified OHV instructor must apply for renewal of their certificate with the department 30 days prior to the expiration of their certification. The department shall renew an instructor certification if:

(1) the instructor consents to a new background check;

(2) the instructor has taught an average of three safety courses per year; and

(3) the instructor has not found to be in violation of any part of this rule, to include successful completion of a background check as described in 18.14.3.11 NMAC.

**F. Early termination:**

(1) A certification shall terminate if an OHV safety training instructor fails to teach a course within one full calendar year.

(2) The department may suspend or revoke a certification for cause as provided in this rule.

[18.15.3.10 NMAC - Rp, 18.15.3.10 NMAC, 10-14-2016]

**18.15.3.11 ON-LINE SAFETY TRAINING:**

**A. Course length and testing requirement:** an OHV safety training program shall provide at least four hours of curriculum on safe and responsible OHV operation. Upon

successful completion of the curriculum and final exam, a safety permit shall be issued. A student must correctly answer at least seventy percent of the questions to pass the final exam and receive a permit.

**B. Curriculum requirement:** Only the curriculum, chapter review material, and final examination questions approved by the department may be used. An on-line safety training curriculum must include lessons about:

- (1) safety awareness;
- (2) New Mexico operations requirements as required by Chapter 66, Article 3 NMSA 1978;
- (3) safety equipment requirements as required by 18.15.3.8 NMAC;
- (4) age-appropriate OHV size-fit as outlined by 18.15.3.8 NMAC;
- (5) responsible use of OHVs with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, OHV operating laws and prohibitions against operating OHVs under the influence of alcohol or drugs;
- (6) safety awareness; preparation to ride; controls and equipment checks; starting procedures; posture, starting out, shifting gears, braking and parking; turning; quick stops and swerving; riding strategies; riding over obstacles; riding on hills; and safe riding practices; and
- (7) trail etiquette and respect for natural resources.

**C. Other requirements:** A safety training organization shall provide the department with a monthly (or as requested) report of students successfully completing the on-line safety training course. The information should include each student's first and last name, middle initial, date of birth, last four digits of social security number, and student's home telephone number, date training was completed, the student's final grade and total number of hours spent for completion of the training course. This information shall be held confidential by the safety training organization and the department and for the sole purpose of record keeping.

[18.15.3.11 NMAC - Rp, 18.15.3.11 NMAC, 10-14-2016]

### **18.15.3.12 OFF-HIGHWAY MOTOR VEHICLE (OHV) TOUR OPERATORS AND GUIDES:**

**A.** Off-highway motor vehicle (OHV) tour operators and guides shall complete an approved OHV safety course for each type of OHV being operated by their clients and



carry proof of applicable OHV safety training while providing tour operator or guide services.

**B.** OHV tour operators and guides shall comply with all applicable laws, statutes, regulations, and rules for the types of OHVs being operated and for the locations in which tour operator or guide services are being provided.

**C.** OHV tour operators and guides shall provide to their clients photocopies of all applicable laws, statutes, regulations, and rules for the types of OHVs being operated and for the locations in which tour operator or guide services are being provided. OHV tour operators and guides shall provide a mandatory safety briefing before each guided tour that includes a walk around of the OHVs that will be used by the clients to include how to operate the OHV, proper use of safety equipment, what to do in case of an emergency, etc. During the safety briefing the OHV tour operators and guides shall request proof of a current OHV safety permit from all youth clients.

[18.15.3.12 NMAC - N, 10-14-2016]

#### **18.15.3.13 DISPLAY OF OHV REGISTRATION PLATES OR DECALS:**

**A. All OHVs:** shall display a registration decal or plate assigned to the vehicle and issued by the division, or a suitable decal as issued by the department, which shall contain the year and month in which it expires, except for OHVs exempted or owned by those persons exempted under Section 66-3-1005 NMSA 1978.

**B. Registration plate or decal:** shall at all times be securely affixed to the vehicle for which it is issued, and shall be mounted or affixed in a position clearly visible, shall be maintained in a condition so as to be clearly legible, and displayed only for the period for which it is valid. Nothing shall be used to block, dim, or cover any portion of the plate or decal. All registration plates or decals issued on or after January 1, 2012 shall be displayed as follows:

**(1)** OHMs shall display decal horizontally on the left fork leg of the motorcycle, and shall be visible from the left side of the motorcycle.

**(2)** ATVs shall display decal horizontally on the left rear quadrant on permanent body or frame and visible from the left side of the all-terrain vehicle.

**(3)** ROVs and youth-model ROVs shall display decal horizontally on the left front quarter panel of a recreational off-highway vehicle.

**(4)** Snowmobiles shall display decal horizontally on the left tunnel on the back of snowmobile.

**(5)** SOHV shall display decal on the left side, on the front quarter of the machine.

(6) Failure to comply with any part of this section constitutes grounds for revocation or suspension.

**C. Exceptions:** No off-highway vehicle shall deviate from this display requirement except:

(1) if displaying a valid license plate, temporary registration, or dealer demonstration permit visible from the rear of the vehicle; or

(2) non-residents who have a valid OHV permit displayed on their OHV that is currently in compliance with another state's OHV registration, user fee or similar law or rule demonstrated by certificate of registration, permit or similar evidence.

**D. Replacement fee:** The division shall charge a transition fee of seven dollars fifty cents to replace a previously issued license plate with a decal when requested by the registered owner of an OHV. The previously issued license plate will be surrendered upon issue of a decal, and the decal will be valid for the remaining term of the registration.

**E. Special off-highway motor vehicle paved road use vehicle plates:** In addition to an OHV registration decal, an OHV operated on a paved road in compliance with the provisions of 66-3-1011 NMSA 1978 shall display a standardized special off-highway motor vehicle paved road use vehicle plate issued by the division, in accordance with the provisions of the Motor Vehicle Code, and for which the fee has been paid.

[18.15.3.13 NMAC - Rp, 18.15.3.12 NMAC, 10-14-2016; A, 6-27-17]

#### **18.15.3.14 OPERATION ON STREETS AND HIGHWAYS:**

**A.** A person shall not operate an off-highway motor vehicle on any:

(1) limited access highway or freeway at any time;

(2) paved street or highway except as provided in Subsection B of this section, or except in compliance with the provisions of 66-3-1011 NMSA 1978 (the Off-Highway Motor Vehicle Act); or

(3) pedestrian walkways and non-motorized trails.

**B.** Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular angle as possible.

**C.** If authorized by ordinance or resolution of a local authority or the state transportation commission, an ROV or an ATV may be operated on a paved street or highway owned and controlled by the authorizing entity if:

(1) the vehicle has one or more functioning headlights and one or more functioning taillights that comply with the Off-Highway Motor Vehicle Act;

(2) the vehicle has brakes, mufflers, and mirrors providing an unobstructed view to the rear;

(3) the operator has a valid driver's licenses or permits as required under the Motor Vehicle Code and off-highway motor vehicle safety permits as required under the Off-Highway Motor Vehicle Act;

(4) the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act;

(5) the operator of the vehicle is appropriately wearing approved eye protection in compliance with 18.15.3.8 NMAC;

(6) the operator of the vehicle is under 18 years of age and appropriately wearing an approved safety helmet in compliance with Rule 18.15.3.8 NMAC; and

(7) the operator is in compliance with all existing traffic laws, including speed limits and operating restrictions as may be established by local authority or the state transportation commission.

[18.15.3.14 NMAC - N, 10-14-2016; A, 6-27-17]

#### **18.15.3.15 ORDINANCE NOTIFICATION PROCESS:**

Any county, municipal, or other local or state government authority that authorizes or changes OHV use on designated paved roads within its jurisdiction shall notify the department of the authorization and upon the authorization becoming effective shall provide the department a copy of the authorization.

[18.15.3.15 NMAC - N, 10-14-2016]

## **CHAPTER 16: [RESERVED]**

## **CHAPTER 17: NAVIGATION AND BOATING**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: BOATING OPERATION AND SAFETY**

**18.17.2.1 ISSUING AGENCY:**

Energy, Minerals and Natural Resources Department.

[18.17.2.1 NMAC – Rp, 18.17.2.1 NMAC, 1/1/2025]

**18.17.2.2 SCOPE:**

18.17.2 NMAC applies to persons using vessels in the waters of New Mexico.

[18.17.2.2 NMAC – Rp, 18.17.2.2 NMAC, 1/1/2025]

**18.17.2.3 STATUTORY AUTHORITY:**

Section 66-12-18 NMSA 1978 authorizes the state parks division to promulgate rules to carry into effect the provisions of the Boat Act, Sections 66-12-1 *et seq.* NMSA 1978.

[18.17.2.3 NMAC – Rp, 18.17.2.3 NMAC, 1/1/2025]

**18.17.2.4 DURATION:**

Permanent.

[18.17.2.4 NMAC – Rp, 18.17.2.4 NMAC, 1/1/2025]

**18.17.2.5 EFFECTIVE DATE:**

January 1, 2025 unless a later date is cited at the end of a section.

[18.17.2.5 NMAC – Rp, 18.17.2.5 NMAC, 1/1/2025]

**18.17.2.6 OBJECTIVE:**

18.17.2 NMAC's objective is to set forth registration requirements for vessels and to promote safety for persons and property in and connected with vessels' use, operation and equipment.

[18.17.2.6 NMAC – Rp, 18.17.2.6 NMAC, 1/1/2025]

**18.17.2.7 DEFINITIONS:**

**A. "Certificate of number"** means the registration certificate required to operate a motorboat on the waters of New Mexico.

**B. "Combination lights"** means lights required on vessels operating on the waters of New Mexico in the hours of darkness, green on the starboard (right) side and red on

the port (left) side and shall throw the lights from dead ahead to two points abaft of the beam on their respective sides.

**C. "Department"** means the energy, minerals and natural resources department.

**D. "Director"** means the director of the energy, minerals and natural resources department, state parks division.

**E. "Division"** means the energy, minerals and natural resources department, state parks division.

**F. "Human-powered watercraft"** means a vessel that is propelled by human power through the use of hands or feet, oars, paddles, poles or pedals, but not sails or an engine.

**G. "Paddle craft"** means any type of canoe, kayak, paddleboard or other vessel powered only by its occupants using a single or double-bladed paddle as a lever without the aid of a fulcrum provided by oarlocks, tholepins, crutches or similar mechanisms.

**H. "Person"** means an individual, partnership, firm, corporation, association, joint venture or other entity.

**I. "Personal flotation device"** means a U.S. coast guard approved personal flotation device used in accordance with its U.S. coast guard approved label.

**J. "Personal watercraft"** means a class A motorboat less than 16 feet, designed to be operated by a person sitting, standing or kneeling on the vessel rather than the operator sitting or standing inside the vessel. Examples include jet skis, sea doos, wave runners and similar devices.

**K. "Power driven vessel"** means any vessel propelled by machinery at the time of operation.

**L. "Registration"** means the process by which motorboats owned by persons domiciled in New Mexico and motorboats not registered in another state nor by the United States, which are operated on the waters of this state are numbered as evidenced by a certificate of number issued by the New Mexico taxation and revenue department under a joint powers agreement with the department.

**M. "Right of way"** means the right of a vessel, which is proceeding on an established forward course at a relatively constant speed to continue such course unchanged without reducing speed, turning, veering or reversing.

**N. "Secretary"** means the secretary of the energy, minerals and natural resources department.

**O. "Superintendent"** means a division employee who is in charge of a specific park.

**P. "Vessel"** means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

**Q. "Wake"** means white water created from wave action breaking off the vessel's bow or sides.

[18.17.2.7 NMAC – Rp, 18.17.2.7 NMAC, 1/1/2025]

#### **18.17.2.8 REGISTRATION:**

**A. Certificate of number:** In accordance with the Boat Act, boats operating on waters of the state shall be numbered and the certificate of number shall be available for inspection at all times when the motorboat is in operation. Every certificate of number except those issued to dealers and manufacturers expires on December 31 of the third calendar year of registration. Registration shall be renewed triennially. Refunds shall not be made for any unused period of a certificate of number due to non-use of a vessel or change in ownership. No person shall transfer or authorize the transfer of a registration validation decal from one vessel to another.

**B. Registration number:** A motorboat's registration number shall be painted on or permanently affixed to each side of the motorboat's forward half, and no other number shall be displayed on that part of the motorboat. Numbers shall: read from left to right; be in plain vertical block characters; be of a color contrasting with the background; be distinctly visible and legible; be not less than three inches in height; and have spaces or hyphens that are equal to the width of a letter between the letter and number groupings. Example: NM 0000 AA or NM--0000--AA. The validation sticker shall be affixed within six inches to the right of the registration number on the port side of the vessel.

**C. Dealer registrations:** A dealer's certificate of number shall be on board each vessel being demonstrated. Dealer numbers shall be displayed and mounted temporarily on such vessels. The dealer number shall not be affixed permanently on a vessel. An individual dealer shall not demonstrate more than three vessels at any one time.

#### **D. Registration fees:**

CLASS	MOTORBOAT LENGTH	THREE YEAR COST
A	Less than 16 ft.	\$60.00
1	16 ft. to less than 26 ft.	\$75.00
2	26 ft. to less than 40 ft.	\$120.00
3	40 ft. to less than 65 ft.	\$150.00
	65 ft. or over	\$180.00
	Duplicate Registration	\$25.00

[18.17.2.8 NMAC – Rp, 18.17.2.8 NMAC, 1/1/2025]

### **18.17.2.9 EQUIPMENT REQUIRED TO OPERATE A VESSEL:**

No person shall operate or give permission to operate a vessel on the waters of this state that is not equipped as required by 18.17.2.9 NMAC and the Boat Act.

#### **A. Flotation devices:**

(1) Vessels shall carry a U.S. coast guard approved wearable personal flotation device of proper size and fit for each person on board or being pulled as a skier, plus one U.S. coast guard approved throwable device. A throwable device is not required for personal watercraft, kayaks, canoes, paddleboards, wind sail boards, inner tubes, air mattresses, float tubes, rubber rafts or other inflatable watercraft. Personal flotation devices and throwable devices shall be in serviceable condition readily accessible for use and shall bear evidence of U.S. coast guard approval. Personal flotation devices and throwable devices shall be carried and used in accordance with any requirements on the approval label.

(2) Skiers and those being pulled on a floating object shall wear a U.S. coast guard approved wearable personal flotation device while being pulled by a vessel.

(3) Vessels that carry passengers for hire shall provide a U.S. coast guard approved wearable personal flotation device for each person on board. Vessels shall carry an additional number of approved wearable personal flotation devices of children size equal to at least 10 percent of the total number of persons carried unless the service is such that children are never carried.

(4) Persons engaged in boating on a river or in boat races or persons using human-powered watercraft, ice sailboats, personal watercraft, kayaks, canoes, paddleboards and rubber rafts on any waters of this state shall wear a U.S. coast guard approved wearable personal flotation device.

(5) Persons using wind sail boards, inner tubes, air mattresses, float tubes or other inflatable devices not covered in Paragraph (4) of Subsection A of 18.17.2.9 NMAC on waters of this state shall wear a U.S. coast guard approved wearable personal flotation device of the proper size and fit and in accordance with any requirements on the approved label.

(6) The operator of a vessel used for recreational purposes shall require children age 12 or under who are aboard the vessel to wear a personal flotation device approved by the United States coast guard while the vessel is underway, unless the child is below deck or in an enclosed cabin.

#### **B. Fire extinguisher:**

(1) Vessels constructed with any of the following characteristics shall be equipped with serviceable U.S. coast guard approved marine fire extinguisher of a size and in a quantity set forth in Paragraph (2) of Subsection B of 18.17.2.9 NMAC:

(a) inboard engine;

(b) closed compartments under thwarts and seats where portable fuel tanks may be stored;

(c) double bottoms not sealed to the hull or that are not completely filled with flotation material;

(d) closed living spaces;

(e) closed storage compartments in which combustible or flammable materials may be stored; or

(f) permanently installed fuel tanks.

(2) Fire extinguisher requirements by boat length:

CLASS	LENGTH OF MOTORBOAT	NUMBER OF EXTINGUISHERS REQUIRED	SIZE OF FIRE EXTINGUISHERS
A	Less than 16 feet	One	5-B
1	16 feet to less than 26 feet	One	5-B
2	26 feet to less than 40 feet	Two or One	5-Bs or 20-B
3	40 feet or more	Three or One	5-Bs or 20-B

(3) Disposable (non-rechargeable) fire extinguishers meeting this requirement shall be not more than 12 years old from the date stamped on the bottle.

**C. Sound producing devices:** Vessels shall carry on board a sound producing device in accordance with the following minimum requirements:

(1) less than 26 feet (this includes kayaks, canoes, paddleboards and rubber rafts): mouth, hand or power operated whistle or other sound producing mechanical device capable of producing a blast of two second duration and audible for at least one-half mile;

(2) 26 feet but less than 40 feet: hand or power operated horn or whistle capable of producing a blast of two seconds or more duration and audible for a distance of at least one mile and a bell;



(3) 40 feet or more: power operated horn or whistle capable of producing a blast of two seconds or more duration and audible for a distance of at least one mile and a bell.

**D. Flame arrestor:** Enclosed gasoline engine carburetors (except outboard motors) installed in a vessel shall be equipped with a U.S. coast guard approved backfire flame arrestor that is marked with a U.S. coast guard approval number or in compliance with UL 1111 tests or the standard SAE J-1928, MARINE.

**E. Water closets:** No person shall maintain or operate a vessel on the waters of this state equipped with a water closet unless the closet is self-contained and incapable of discharging directly into the water.

**F. Lights:**

(1) Power driven vessels operating one-half hour after sunset to one-half hour before sunrise or during times of poor visibility shall display a combination light on the vessel's fore part and a white light aft to show 360 degrees around the vessel's horizon and above the combination light. The combination light shall be green on the starboard (right) side and red on the port (left) side and shall throw the lights from dead ahead to two points abaft of the beam on their respective sides.

(2) A sailing vessel underway one-half hour after sunset to one-half hour before sunrise or during times of poor visibility shall exhibit lights as required below or by U.S. coast guard rule.

(a) A sailing vessel of seven meters in length or more shall exhibit sidelights and a sternlight.

(b) A sailing vessel of less than seven meters in length shall, if practicable, exhibit sidelights and a sternlight, but if she does not, she shall exhibit an all-round white light or have ready at hand an electric torch or lighted lantern showing a white light, which shall be exhibited in sufficient time to prevent collision.

(c) A sailing vessel of 12 meters or more in length proceeding under sail when also being propelled by machinery shall exhibit forward, where it can best be seen, a conical shape, apex downward. A sailing vessel of less than 12 meters in length is not required to exhibit this shape but may do so.

(3) Vessels under oar or paddle shall when underway or anchored in a non-designated mooring area one-half hour after sunset to one-half hour before sunrise or during times of poor visibility have ready at hand an electric torch or lighted lantern showing a white light, which shall be exhibited in sufficient time to prevent collision.

(4) The display of red, green and white lights contrary to Subsection F of 18.17.2.9 NMAC or U.S. coast guard regulations is prohibited.

**G. Other equipment:** Persons engaged in canoeing, kayaking, paddle boarding or rubber rafting and persons using human-powered watercraft, wind sail boards, inner tubes, air mattresses, float tubes or other inflatable devices are not required to have a bailing bucket, bilge pump or any length of stout rope.

[18.17.2.9 NMAC – Rp, 18.17.2.9 NMAC, 1/1/2025]

#### **18.17.2.10 BOAT RENTALS:**

**A. Records:** The owner of a boat rental facility shall keep a record of the name and address of persons borrowing or hiring a vessel, the identification number thereof, the departure date and time and the expected date and time of return. The owner of a boat rental facility shall preserve the record for at least six months.

**B. Equipment:** Neither the owner of a boat rental facility nor an agent or employee thereof shall permit a motorboat or a borrowed or hired vessel to depart from the facility unless it is provided with the equipment required by 18.17.2.9 NMAC and the Boat Act.

[18.17.2.10 NMAC – Rp, 18.17.2.10 NMAC, 1/1/2025]

#### **18.17.2.11 PROHIBITED OPERATIONS:**

The operator of a vessel operating on the waters of this state shall not engage the vessel in prohibited activities nor allow passengers to engage in activities prohibited by 18.17.2 NMAC or the Boat Act.

##### **A. Riding the foredeck and gunwales of vessels:**

(1) Except when casting off, mooring or when otherwise necessary such as for water rescue, picking up a swimmer or retrieving articles blown overboard, when a vessel is underway no vessel operator shall allow a person to ride or sit on the bow, gunwales, transom, seats on raised decks or any other place not intended for the carrying of passengers, unless the vessel is equipped with adequate guard rails designed to prevent a person from slipping under or rolling over the rail.

(2) Except when casting off, mooring or when otherwise necessary such as for water rescue, picking up a swimmer or retrieving articles blown overboard, when a vessel is underway no person shall ride or sit on the bow, gunwales, transom, seats on raised decks or any other place not intended for the carrying of passengers, unless the vessel is equipped with adequate guard rails designed to prevent a person from slipping under or rolling over the rail.

(3) Persons shall not sit on a seat back while the vessel is underway or allow their legs to hang overboard at any time.

(4) Persons shall not ride outside the railing of a pontoon boat when underway.

(5) Persons shall not ride on the elevated fishing seats of the vessel while the vessel is underway.

**B. Trolling:** Trolling or drift fishing is prohibited within 150 feet of a marina, boat ramp or courtesy dock.

**C. Speed:**

(1) Vessel operators shall not operate vessels at a speed greater than is reasonable or proper according to conditions prevailing at the time of operation.

(2) Vessel operators shall operate vessels at speeds controlled as necessary to avoid swamping or collision with any watercraft or person.

(3) Vessel operators shall observe no-wake speeds when operating within 150 feet of launch ramps, docks, mooring lines, beached or anchored vessels within 150 feet of shore, swimmers, fishermen and areas designated for "no-wake" boating. Exception to no-wake operation: under adverse weather conditions, a vessel may maintain the minimum speed necessary to maintain a safe course.

**D. Overloading:** No vessel operator shall carry more people on board than the number stated on a vessel's capacity plate or as computed by multiplying the vessel's length times its width and dividing by 15.

**E. Pollution:** No person shall deposit or discharge liquid or solid waste or other refuse into this state's waters.

**F. Buoys, water marking system:** No person shall anchor from, deface or relocate a buoy placed by the division or any government agency for the purpose of aiding navigation. No person shall operate a vessel in a manner that will interfere unnecessarily with the safe navigation of other vessels or anchor a vessel in the traveled portion of a channel in a way that will prevent or interfere with any other vessel passing through the same area.

**G. Operation while under the influence of alcohol or controlled substances:** No person shall operate a motorboat or vessel, nor use water skis, surfboard or similar device, while under the influence of alcohol or any controlled substance.

**H. Age restriction:** No person under the age of 13 shall operate a motorboat unless under an adult's onboard supervision.

**I. Use of airborne devices prohibited:** No person, while being towed by a watercraft, shall use a device, except for a parasail, for the purpose of becoming

airborne over the waters of this state. No person while operating a watercraft shall tow a person using a device, except for a parasail, for the purpose of becoming airborne over the waters of this state.

**J.** No person shall operate a motorized vessel less than 26 feet in length without having on or affixed to their person a line or link that activates the emergency cut off switch (ECOS) while on plane or above no-wake speed. Exceptions to this requirement include when

- (1) the vessel is not equipped with ECOS by the manufacturer;
  - (2) the engine of the vessel is three horsepower or less;
  - (3) while using the vessel for fishing or while docking or trailering the vessel;
- or
- (4) when the main helm of the vessel is in an enclosed cabin.

[18.17.2.11 NMAC – Rp, 18.17.2.11 NMAC, 1/1/2025]

#### **18.17.2.12 BOATING ACCIDENTS:**

**A.** The operator or legal representative of a vessel involved in a collision, accident or other casualty on a water of this state shall:

- (1) report the collision, accident or other casualty immediately to the local law enforcement agency; and
- (2) file a boating accident report within 48 hours with the division if the collision, accident or other casualty resulted in a death, injury requiring more than standard first aid or property damage in excess of \$100; forms are available at offices of state parks with lakes; reports shall be sent to and forms are also available at: State Parks Division; 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505; (505) 476-3355.

**B.** No person shall knowingly make false claims or statements when reporting a collision, accident or casualty.

[18.17.2.12 NMAC – Rp, 18.17.2.12 NMAC, 1/1/2025]

#### **18.17.2.13 WATER SKIING:**

Water skiing is permitted on the waters of this state; however, in the interest of public safety, the director or his designee may designate certain areas as closed to such activity and prohibit entry into these areas for water skiing.

#### **A. Prohibited skiing activities:**

(1) Water skiing is prohibited within 150 feet of a public dock (other than a ski dock), mooring line, launching ramp, boat, fisherman, swimmer or a person not also engaged in water skiing.

(2) No person shall intentionally obstruct or interfere with water skiers engaged in waterskiing.

(3) The use of personal watercraft such as jet skis, sea-doo's, wave runners and similar devices to tow water skiers, surfboards, tubes or similar devices is prohibited except as provided in Paragraph (2) of Subsection B of 18.17.2.13 NMAC.

#### **B. Skiing special requirements:**

(1) A person in the towing vessel shall raise an international fluorescent orange or a red warning flag whenever a person on water skis or other water device has fallen, dropped off or is starting, to warn other vessels away from the area. The flag shall be a minimum of 12 inches by 12 inches and displayed high enough to be visible 360 degrees around the vessel without obstruction.

(2) No person shall pull a water skier with a personal watercraft unless:

(a) water skiing laws and rules are complied with;

(b) the personal watercraft pulling the skier has manufacturer recommended seating for at least three people;

(c) there is a vacant seat on the pulling vessel for the skier; and

(d) the personal watercraft has an observer on board in addition to the operator.

[18.17.2.13 NMAC – Rp, 18.17.2.13 NMAC, 1/1/2025]

#### **18.17.2.14 SPECIAL REGULATIONS:**

##### **A. Weather:**

(1) If at any time the superintendent determines that the weather or the condition of a lake is dangerous for boats, the superintendent may prohibit the launching or use of boats for an indefinite period of time upon the posting of appropriate notice.

(2) Boaters shall observe small craft weather warnings and seek shelter ashore when flags or lights have been activated to indicate adverse weather conditions.

## **B. Anchoring and mooring:**

(1) Vessels when not in use shall be firmly anchored, moored or otherwise secured so as to prohibit drifting or otherwise damaging another's property. No person shall moor or anchor a vessel within 150 feet of a marina, boat ramp or courtesy dock.

(2) Private docks are prohibited except as provided in 18.17.3 NMAC. Private buoys and the mooring of houseboats are prohibited unless authorized by the director. Persons may anchor vessels overnight provided it does not impede or present a hazard to navigation. Overnight anchoring of vessels within a state park is subject to overnight camping permits and fees, unless the person has paid camping fees for towing vehicle, except for vessels moored at concession operated facilities such as marinas or buoy lines. Persons may not leave anchored vessels vacant for more than 24 hours without the superintendent's permission unless moored at an authorized marina or buoy line.

(3) Courtesy docks are provided for the purpose of loading and unloading vessels. No person shall leave a vessel moored at a courtesy dock for longer than 10 minutes.

**C. Launching:** Boaters using launching areas or launching ramps on waters of this state shall be prepared to launch or load their vessels promptly without undue delay to others. After the vessel is launched, the towing vehicle shall be immediately driven well away from the launching area and parked in a designated location if such is provided.

[18.17.2.14 NMAC – Rp, 18.17.2.14 NMAC, 1/1/2025]

## **18.17.2.15 TRAFFIC CONTROL:**

When a person operating a vessel meets, overtakes or crosses another vessel's course, the operator shall take the appropriate action.

**A. Meeting:** When two vessels approach each other head-on or nearly so, each vessel shall steer to the starboard (right) so as to pass port (left) side to port side.

**B. Passing on parallel courses:** When the courses of two vessels approaching one another are so far on the starboard side of each other as not to be meeting head-on, the vessels shall pass on the starboard side of each other.

**C. Overtaking:** When one vessel is overtaking another, the vessel overtaking shall keep clear of the vessel being overtaken.

**D. Crossing:** When the courses of two vessels are such that their courses, if continued unchanged, will cross, the vessel approaching from the left shall give way by altering course, slowing down, stopping or reversing.

**E. Power driven vessels:** A power driven vessel shall yield the right-of-way to a non-power driven vessel except when the non-power driven vessel is passing the power driven vessel from behind the power-driven vessel shall maintain course.

**F. Vessel departure/arrival:** A vessel leaving a pier or dock has the right-of-way over a vessel approaching a dock.

**G. Distance:** Vessels shall keep 150 feet away from swimmers, water skiers, fishermen, diver flags and others not participating in the same activity.

[18.17.2.15 NMAC – Rp, 18.17.2.15 NMAC, 1/1/2025]

#### **18.17.2.16 RESTRICTED OPERATION ON STATE WATERS:**

Limits to the size, type and operation of vessels on waters within the state are provided below. Officials of the division and other state and federal agencies authorized by the director or by law and who are on official duty are exempt from 18.17.2.16 NMAC while operating in an emergency condition.

**A. Bottomless lakes:** Only paddle craft, vessels under oar and float tubes are permitted.

**B. Clayton lake:** Motorized boating activity is limited to no-wake operation only.

**C. Cochiti lake:** Motorized boating activity is limited to no-wake operation only.

**D. Fenton lake:** Only paddle craft, vessels under oar and float tubes are permitted.

**E. Heron lake:** Motorized boating activity is limited to no-wake operation only.

**F. Morphy lake:** Only vessels with electric motors, paddle craft, vessels under oar and float tubes are permitted.

**G. San Juan river:** Motorized vessels are prohibited on the San Juan river, within Navajo Lake state park. The use of non-motorized vessels on the San Juan river within Navajo Lake state park is authorized from the Texas hole day use area downstream and is limited to the purpose of fishing unless otherwise authorized by the director.

**H. Santa Cruz:** Motorized boating activity is limited to no-wake operation only.

**I. Sugarite canyon:** Only vessels with electric motors, paddle craft, vessels under oar and float tubes are permitted on lake Maloya. Only float tubes are permitted on lake Alice.

[18.17.2.16 NMAC – Rp, 18.17.2.16 NMAC, 1/1/2025]

#### **18.17.2.17 VESSEL INSPECTIONS:**

Division law enforcement officials may randomly inspect vessels operating on the waters of this state to verify registration, titling and that the proper safety equipment is on board.

[18.17.2.17 NMAC – Rp, 18.17.2.17 NMAC, 1/1/2025]

#### **18.17.2.18 TERMINATION OF VOYAGE:**

Division law enforcement officers, sheriffs in their respective county and members of the state police may terminate the voyage of a vessel when they determine the continued use of the vessel will create hazardous conditions that constitute a danger to the health and safety of the occupants of the vessel or others. The officer may direct the operator of the vessel to return to mooring, remove the vessel from the water or prohibit launching of the vessel until the unsafe conditions end or are corrected. Reasons for termination of voyage include:

- A.** operating a vessel contrary to the provisions of 18.17.2.9 NMAC;
- B.** operating a vessel contrary to the provisions of 18.17.2.11 NMAC or otherwise operating a vessel in a reckless or negligent manner;
- C.** operating a vessel in hazardous weather as to create an undue risk to the life of the occupants of the vessel; or
- D.** any other conditions a reasonable person would deem create a danger to the occupants of the vessel or others and only the immediate termination of the voyage would prevent serious injury or death.

[18.17.2.18 NMAC – Rp, 18.17.2.18 NMAC, 1/1/2025]

### **PART 3: CONSTRUCTION VISITOR PROVISIONS**

#### **18.17.3.1 ISSUING AGENCY:**

Energy, Minerals and Natural Resources Department, State Parks Division.

[18.17.3.1 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.2 SCOPE:**

18.17.3 NMAC applies to the construction and maintenance of private, non-commercial boat docks ("private boat docks") on lakes that are subject to the division's authority. 18.17.3 NMAC does not address the construction or maintenance of commercial boat docks or marinas, which are addressed in 19.5.5 NMAC.



[18.17.3.2 NMAC - N, 7/1/200; A, 1/1/2008]

**18.17.3.3 STATUTORY AUTHORITY:**

18.17.3 NMAC is established under the authority of NMSA 1978, Section 16-2-7, or under such other authority or agreements that grant the division authority over such private boat docks (for purposes of 18.17.3 NMAC all such lakes being described as "lakes subject to the authority of the division").

[18.7.3.3 NMAC - N, 7/1/2002; A, 1/1/2008]

**18.17.3.4 DURATION:**

Permanent.

[18.17.3.4 NMAC - N, 7/1/2002]

**18.17.3.5 EFFECTIVE DATE:**

July 1, 2002, unless a later date is cited at the end of a section.

[18.17.3.5 NMAC - N, 7/1/2002]

**18.17.3.6 OBJECTIVE:**

18.17.3 NMAC's objective is to provide construction and maintenance standards for private boat docks on lakes that are subject to the division's authority.

[18.17.3.6 NMAC - N, 7/1/2002; A, 1/1/2008]

**18.17.3.7 DEFINITIONS:**

**A.** "BLM" means the United States department of the interior, bureau of land management.

**B.** "Boat dock" means a structure extending from the shore into the water to permit the landing and mooring of vessels. The term "boat dock" includes the anchoring system, and any catwalks or bridges that will attach to the dock itself.

**C.** "BOR" means the United States department of the interior, bureau of reclamation.

**D.** "Bridge" means a passage that provides access from the land to a boat dock, marina or other floating facility.

**E.** "Catwalk" means a passage that provides access from the land to a boat dock, marina or other floating facility.

**F.** "Community boat dock" means a private, non-commercial boat dock for use by the owner-members or other authorized residents of a residential community, such as a planned unit development or condominium, and is not available for commercial use. The imposition of a fee for the maintenance or use of a community boat dock by owner-members or other residents of a residential community served by a community boat dock will not result in the boat dock being characterized as a "commercial" boat dock.

**G.** "Dead load" means the permanent inert weight of the boat dock structure, including fixed or permanent attachments, such as bumpers, railings, winch stands, roof structures, etc.

**H.** "Decking" means the surface material that forms the floor of the boat dock or catwalk.

**I.** "Division" means the energy, minerals and natural resources department, state parks division.

**J.** "Flotation live load" means the total load that a boat dock can carry without capsizing or sinking. The flotation live load is equal to the dead load plus the live load.

**K.** "Habitable structure" means any structure on a boat dock or catwalk, whether permanent or temporary, including tents, which humans may use for overnight occupancy of any duration.

**L.** "Hunt absorption test" means a test documenting the rate at which flotation material absorbs liquid, as well as the quantity of liquid absorbed.

**M.** "Live load" means any moving or variable superimposed load on the boat dock.

**N.** "PSF" means per square foot.

**O.** "Registered professional engineer" means a professional engineer currently registered with the New Mexico professional engineer and surveyors board, or its successor agency, with a specialization in civil or structural engineering.

**P.** "RPE" means a registered professional engineer.

**Q.** "Sanitation device" means any enclosure or equipment used as a toilet or bathing facility, or device capable of holding refuse, garbage or trash.

**R.** "Shoreline" means that line where the surface of the lake water and the land meet, regardless of the current lake elevation.

**S.** "Structural live load" means the weight of the boat dock itself and its ability to support itself.

**T.** "USFS" means the United States department of agriculture, forest service.

**U.** "Working load safety factor" means the ability of a boat dock anchoring system to hold or withstand loads. A safety factor of 3.0 means the anchoring system is rated to hold or withstand a load equal to three times the entire weight of the structure; e.g., if the structure weighs 1000 pounds, the cable attached to the anchor will be able to hold 3000 pounds.

[18.17.3.7 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.8 GENERAL PROVISIONS:**

**A.** Boat docks approved under 18.17.3 NMAC shall be for personal, family or community uses only and shall not be used for commercial activity.

**B.** The division operates a number of state parks under agreements with other entities. Those agreements and applicable federal, state and local statutes, regulations, rules and ordinances may contain provisions that supersede 18.17.3 NMAC. In addition, conditions at a particular lake, or the ownership of land on which a state park operates or around a lake, may restrict the construction or use of boat docks at a particular lake. Provisions applicable to individual state parks are set forth in 18.17.3.21 NMAC.

**C.** The provisions of the New Mexico Boat Act, NMSA 1978, Sections 66-12-1 through 66-12-23, and statutory provisions applicable to the acquisition and management of state parks, including NMSA 1978, Section 16-2-11, shall guide interpretation of 18.17.3 NMAC.

**D.** In reviewing project plans for a boat dock, the division may consider, without limitation: applicable federal, state and local statutes, regulations, rules and ordinances; agreements with other public agencies and private parties, including concessionaires; the purposes for which the lake and the state park were created; the management plan for the state park; the health, safety and welfare of other users and activities at the lake and state park, including the impact on boating, fishing and other recreation activities; and, conditions at a given location.

**E.** Community boat docks approved under 18.17.3 NMAC shall be permitted subject to payment of the following fees.

**(1)** Application fee – all applications for boat docks made under 18.17.3 NMAC shall be accompanied by a non-refundable application fee of \$1,000. In the event an application is rejected or withdrawn, the subsequent application fee for the same boat dock, location and owner is \$200.

(2) Annual fees – permittees for community boat docks approved under 18.17.3 NMAC shall submit to the division annual rental fees equal to \$2.50 per each square foot of boat dock, but no less than \$750 per year. Annual rental fees are due to the division prior to December 1 for the current and subsequent year if it is for a new permit, or by December 1 for the subsequent year if it is for an established permit.

(3) Annual fees for the first year shall be prorated to reflect the actual amount of time the boat dock is present prior to December 1.

[18.17.3.8 NMAC - N, 7/1/2002; A, 1/1/2008; A, 1/1/2013]

#### **18.17.3.9 APPROVED PLANS AND CERTIFICATION OF COMPLETION:**

**A.** Persons seeking to construct a boat dock shall submit to the division: two complete sets of project plans for the boat dock, including the anchoring system, and any catwalks or bridges that will attach to the boat dock; the surety bond required by 18.17.3.11 NMAC; and the permit or approval from other entities with authority over the lake or body of water.

(1) When a boat dock will use existing facilities as part of the new proposed boat dock, the project plans shall include a complete description of the existing facilities, and those facilities shall comply with the specifications set forth in 18.17.3 NMAC.

(2) The plans must be signed and sealed by a registered professional engineer, and contain a statement that the proposed boat dock complies with the specifications set forth in 18.17.3 NMAC.

(3) Each plan set also shall include a copy of the manufacturer's certified plans for any components that will be a part of a boat dock, such as floats, decking, railing or awning systems.

(4) Both engineered plans and manufacturer's certified plans shall be based upon the actual conditions at the site of the proposed boat dock.

**B.** Persons seeking approval for a boat dock are required to obtain a permit or written approval for the proposed boat dock from other entities with authority over the lake or body of water on which the proposed boat dock will be constructed or the land to which any part of the boat dock will be affixed.

(1) Persons seeking approval for a boat dock are responsible for determining what, if any, such permits or approvals are required, and for obtaining the permits or approvals.

(2) The division shall condition approval of the project plans for the boat dock upon receipt of proof that the person has received such other permits or approvals required to construct the boat dock.

**C.** During construction of a boat dock, a complete set of all permits and approvals required for construction of the boat dock shall be posted in a readily visible location at or adjacent to the construction site, and one complete set of the approved plans shall be kept available at the construction site.

**D.** Construction of a boat dock shall be completed within six months of the date that the permitting entity approves the permit.

**E.** After a boat dock is completed, an RPE shall submit to the division a signed and sealed certification that it was built in accordance with the requirements set forth in 18.17.3 NMAC; the plans submitted to and approved by the division and any entity issuing a permit or approval for construction of the boat dock; and, with any special conditions or requirements imposed by the this division or any entity issuing a permit or approval for the construction of a boat dock.

**F.** The number shown on an approved permit shall be permanently affixed to the end of boat dock facing the lake using reflective numbers and letters three inches in height, and of a color contrasting with the background. Example: **UT-00-001**.

[18.17.3.9 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.10 COMPLIANCE WITH OTHER STATUTES:**

**A.** All boat docks shall be constructed in compliance with the provisions of the New Mexico Cultural Properties Act, NMSA 1978, Sections 18-6-1 through 18-6-17, and the Cultural Properties Protection Act, NMSA 1978, Sections 18-6A-1 to 18-6A-6.

**B.** If federal land will be impacted in the construction or maintenance of a dock, federal law, including the following acts, shall be complied with: the Archaeological Resources Protection Act of 1979, 16 U.S.C. Section 470aa-11; the Native American Grave Protection and Repatriation Act of 1990, 25 U.S.C. Section 3001; and the National Historic Preservation Act of 1966, 16 U.S.C. Section 469l.

[18.17.3.10 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.11 LIABILITY AND SURETY BOND:**

**A.** Boat dock owners are fully responsibility for all damage, direct and indirect, of whatever nature, and by whomever suffered, arising out of a project described in 18.17.3 NMAC and agree to release, hold harmless and indemnify the state from any and all liability, claims or demands of any nature whatsoever, including the cost of defending against those claims or demands, arising out of or in any manner related to the ownership, construction, operation, maintenance or use of a boat dock.

**B.** Boat dock owners shall provide evidence of a surety bond in favor of the permitting entity and the state of New Mexico and its agencies including the division

issued by a corporate surety company qualified and authorized to do business in New Mexico, to cover the cost of salvage and removal by the division or permitting entity of any boat dock that has come loose from its anchors or has become a hazard to navigation or to the use of state park lakes by virtue of its condition; or, was constructed in a manner that violates 18.17.3 NMAC or other applicable statutes or regulations or rules. The surety bond shall be in an amount not less than \$5000, but a larger amount may be required based on the size and configuration of the proposed boat dock or conditions at the lake where the boat dock will be located. Boat dock owners shall provide evidence annually to the division's boating safety and law enforcement bureau chief that the surety bond is in effect.

**C.** In addition to the surety bond required above, where a lake on which a boat dock will be constructed is owned or subject to the authority of an entity other than the division, persons applying for a permit to construct a boat dock may be required to secure an additional surety bond and insurance coverage in amounts satisfactory to, and for the purposes of, that entity.

**D.** A boat dock owner's failure to keep in effect the required surety bond and any required general liability coverage is grounds for the permitting entity to revoke the boat dock permit and to require the boat dock owner to remove the boat dock at their expense.

[18.17.3.11 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.12 BOAT DOCK SIZE AND CONFIGURATION:**

**A.** Except as otherwise provided by 18.17.3 NMAC, boat docks shall not exceed 38 feet in length and 30 feet in width. Catwalks shall not be more than 32 feet in length. An entire boat dock, including catwalks and bridges, shall not project into a lake more than 70 feet from the shoreline at any time, regardless of lake elevation.

**B.** Boat docks located in coves or other narrow channels may not have a length greater than one-third of the distance to the opposite shoreline, or extend to within 25 feet of the center of the cove, whichever is more limiting, regardless of lake elevation.

**C.** Except as otherwise provided by requirements in 18.17.3 NMAC for community boat docks, boat docks shall be constructed only in the following configurations: straight pier, T, L, F or U-shaped.

**D.** Persons seeking approval for a community boat dock may propose alternate configurations, such as an E shape, where the use of such configurations would be appropriate. In evaluating whether to approve the use of an alternate configuration for a community boat dock, the permitting entity may consider the factors described below for limiting the length or configuration of a boat dock, catwalk or boat dock.

**E.** Every boat dock shall have a minimum 50-foot setback from any other boat dock.

**F.** Notwithstanding the foregoing, based upon conditions at a given location the division or permitting entity may require length of a boat dock, catwalk and an entire boat dock to be shorter than the lengths set forth above, or may require greater setbacks from other boat docks. In addition, the division or permitting entity may limit the acceptable configurations of a boat dock. Conditions that the division or permitting entity may consider when determining whether to limit lengths or acceptable configurations or in requiring greater setbacks include, without limitation, the width or depth of a lake, channel or waterway at the location of the proposed boat dock; existing or proposed boat docks and boat docks in the vicinity of that location; and use of the surrounding area by others such as boaters, fishermen and water recreationists.

**G.** Boat docks may not be configured or placed in a manner that will restrict public access to a lake where such access is otherwise permitted by law.

[18.17.3.12 NMAC - N, 7/1/2002; A, 1/1/2008]

### **18.17.3.13 GENERAL CONSTRUCTION GUIDELINES; MAINTENANCE:**

**A.** Sanitation devices, electric power sources or permanent storage facilities are not allowed on docks, or adjacent to floating facilities, whether permanent or temporary in nature.

**B.** No habitable structures are permitted on boat docks.

**C.** Boat docks shall be constructed with environmentally safe materials. The use of wood treated with creosote or penta is prohibited.

**D.** All steel used in boat docks shall be hot-dip galvanized. All holes, cuts or welds on steel members shall be made prior to hot-dip galvanizing. Connectors shall be hot-dip galvanized steel or stainless steel.

**E.** Boat docks shall not have enclosed or partially enclosed structures or any type of attached siding above the surface of the decking.

**F.** American society of civil engineers (ASCE) manuals and reports on engineering practice number 50 *"planning and design guidelines for small craft harbors"* (as amended or modified), ISBN #0-7844-0033-4, which is available for purchase from the ASCE bookstore at [www.ASCE.org](http://www.ASCE.org), is a recognized standard for the design of boat docks, and may be relied upon in designing boat docks and when seeking approval for a boat dock under 18.17.3 NMAC. However, the requirements set forth in 18.17.3 NMAC take precedence over the standards set forth in ASCE Number 50.

**G.** Maintenance, repairs, modifications or alterations to an existing boat dock shall conform to the requirements set forth in 18.17.3 NMAC.

[18.17.3.13 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.14 FLOTATION REQUIREMENTS:**

**A.** Flotation material shall be extruded polystyrene, expanded polystyrene or a copolymer of polyethylene and polystyrene and shall have a minimum density of 0.9 pounds per cubic foot, and be of consistent quality throughout the float. Beads shall be firmly fused together, and there shall be no voids inside the encasement. Flotation material shall have a water rate absorption of less than 3.0 pounds per cubic foot over seven days when tested by the Hunt absorption test. Other flotation material may be considered if it meets all of the requirements set forth in this section.

**B.** Flotation material shall be encased in solid polyethylene or a polyurethane type coating, both of which shall be watertight and have a nominal thickness of .125 inches.

**C.** Drums made of plastic, whether new or recycled, or metal shall not be used for encasements or floats.

**D.** All floats shall be warranted for a minimum of eight years against sinking, becoming waterlogged, cracking, peeling, fragmenting, or losing beads, and shall not be prone to damage by animals.

**E.** Floats that are punctured, exposing the foam to erosion or deterioration, shall be replaced immediately.

[18.17.3.14 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.15 LOADING REQUIREMENTS:**

**A.** Flotation devices for docks, catwalks and bridges shall be designed to support the dead load plus 30-pounds PSF live load applied to deck area.

**B.** Boat dock and dock structural frame shall be designed to support 50 pounds PSF live load applied to the full surface area of the deck.

**C.** Roofs on boat docks shall have a minimum flotation live load of 12 pounds PSF and a structural live load of 15 pounds PSF.

**D.** Catwalks and bridges shall be designed to support a live load of 50 pounds PSF.

**E.** Catwalk and bridge handrails shall be designed to withstand a 200-pound load applied in any direction and at any point along the handrail.

**F.** Catwalks and bridges shall have a maximum slope under dead load of a 4:1 ratio in any direction.



**G.** Boat docks shall be able to withstand a minimum of two-foot high wave action. Based upon conditions at a specific site, the division may require a dock to withstand a larger wave loading.

**H.** Boat docks, anchoring systems and connectors, including cables and chains, shall be designed to resist wind loads of up to 77 miles per hour (15 pounds PSF) in any direction.

**I.** Cables and chains used in anchoring systems shall be designed with a minimum working load safety factor of 3.0 for cables and 2.0 for chains.

[18.17.3.15 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.16 ANCHORING SYSTEMS:**

The anchoring systems for boat docks shall be designed and constructed in accordance with sound engineering practice and the actual soil properties encountered at the location of a proposed boat dock and shall meet the standards set forth in 18.17.3.12 NMAC through 18.17.3.15 NMAC.

[18.17.3.16 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.17 INSPECTIONS, REMOVAL FOR VIOLATIONS:**

**A.** Boat docks are subject to inspection by the division, or its authorized agents, without notice, at reasonable times. Boat dock owners shall also allow entities permitting or approving docks to conduct inspections in accordance with that entity's guidelines. If there are no such guidelines, the mandatory inspection guidelines in Subsection C of 18.17.3.17 NMAC shall be followed.

**B.** Boat dock owners and boat docks shall comply with 18.17.3 NMAC and any requirements contained in a permit at all times.

**C.** Boat dock owners shall have their boat docks inspected every five years by an RPE at their own expense. Inspections shall cover every component of the entire boat dock, including boat dock, catwalk, anchorage, winches, cable, decking and flotation material and encasements. After each inspection, boat dock owners shall submit a letter to the division signed and sealed by the RPE who conducted the inspection stating that the entire boat dock meets or exceeds the design standards set forth in 18.17.3 NMAC.

**D.** Failure to complete inspections, follow inspection guidelines set forth above, or to correct any violations of 18.17.3 NMAC within 30 days of receipt of written notice, may result in the division or permitting entity requiring removal of the boat dock at the boat dock owner's expense.

**E.** The division or permitting entity may remove boat docks that become hazards to navigation at the boat dock owner's expense.

[18.17.3.17 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.18 REMOVAL OF BOAT DOCKS:**

When a boat dock is removed for any reason whatsoever, including at the initiative of the boat dock owner or at the direction of the division or permitting entity, the boat dock owner is responsible for the complete removal of the entire boat dock including the boat dock, catwalk, anchoring system, cables, floats and any other related components or materials installed in conjunction with the construction, maintenance or use of the boat dock.

[18.17.3.18 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.19 SPECIAL RULINGS, ADDITIONAL REQUIREMENTS AND VARIANCES:**

Where conditions on a lake or at a proposed boat dock location warrant, the division in the reasonable exercise of its discretion, may make special rulings, impose additional requirements and allow appropriate variances from 18.17.3 NMAC. In addressing these matters, the division may take into consideration, without limitation: applicable federal, state and local statutes, regulations, rules and ordinances; agreements with other public agencies and private parties, including concessionaires; the purposes for which the state park and the lake were created; the management plan for the state park; the health, safety and welfare of other users; and activities at the lake and state park, including the impact on boating, fishing and other recreation activities; and conditions at a given location.

[18.17.3.19 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.20 EMERGENCY USE BY PUBLIC AGENCIES:**

Boat dock owners shall allow the division, any other entity permitting or approving the boat dock, law enforcement agencies, fire departments and emergency personnel to access and use a boat dock for emergency purposes, without charge or other compensation, or liability for such use.

[18.17.3.20 NMAC - N, 7/1/2002; A, 1/1/2008]

#### **18.17.3.21 PROVISIONS APPLICABLE TO INDIVIDUAL PARKS:**

**A.** 18.17.3.21 NMAC addresses restrictions on obtaining permits for private boat docks under 18.17.3 NMAC at state parks with or adjacent to lakes. 18.17.3 NMAC states whether private boat docks are allowed on a lake and what entity must be

contacted to obtain permission to build such a boat dock. The applicant shall obtain written authorization for a private boat dock from the appropriate authority before submitting an application to the division for a permit.

**B.** Bluewater Lake state park. Private boat docks are not permitted.

**C.** Bottomless Lakes state park. Because of the size of the lakes at this state park, private boat docks are not permitted.

**D.** Brantley Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

**E.** Caballo Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

**F.** Clayton Lake state park. The division operates this state park pursuant to an agreement with the New Mexico state game commission, and the state owns the land surrounding the lake. Private boat docks are not permitted.

**G.** Conchas Lake state park. The division operates this state park pursuant to an agreement with the United States army corps of engineers. The United States army corps of engineers has designated that part of the shoreline and lake the division operates "public recreation use" areas and private boat docks are not allowed.

**H.** Eagle Nest Lake state park. The division operates this state park pursuant to an agreement with the New Mexico state game commission and the New Mexico department of game and fish. Private boat docks are not permitted.

**I.** Elephant Butte Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

**J.** El Vado Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

**K.** Fenton Lake state park. The division operates this state park pursuant to an agreement with the New Mexico department of game and fish. The New Mexico department of game and fish constructed the dam at the lake pursuant to an agreement with the USFS. That agreement does not permit any structure other than a dam to be built or maintained on land the USFS owns. The New Mexico department of game and fish owns the remaining land around the lake. Private boat docks are not permitted.

**L.** Heron Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

**M.** Morphy Lake state park. The division operates this state park pursuant to an agreement with the New Mexico state game commission, under which the New Mexico

state game commission controls the use of boats and other floating devices on the lake. The New Mexico state game commission operates the lake pursuant to an agreement with the Acequia de San Jose and the Acequia de la Isla of Le Doux (the acequias), which own the lake and the surrounding land. Private boat docks are not permitted.

**N.** Navajo Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

**O.** Oasis Lake state park. The division operates this state park pursuant to an agreement with the New Mexico state land office, which owns the land on which the state park is located. The agreement does not authorize private boat docks.

**P.** Santa Rosa state park. The division operates this state park pursuant to an agreement with the United States army corps of engineers. Pursuant to federal regulation, private boat docks are not permitted in the area the division operates.

**Q.** Storrie Lake state park. The division operates this state park pursuant to an agreement with the Storrie project water users association. Private boat docks are not permitted.

**R.** Sugarite Canyon state park. The division operates this state park pursuant to an agreement with the city of Raton. Private boat docks are not permitted on Lake Alice or Lake Maloya.

**S.** Sumner Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

**T.** Ute Lake state park. The New Mexico interstate stream commission owns this lake and must approve applications for private boat docks.

[18.17.3.21 NMAC - N, 7/1/2002; A, 1/1/2008]

## **PART 4: BOATING SAFETY EDUCATION**

### **18.17.4.1 ISSUING AGENCY:**

Energy, Minerals and Natural Resources Department.

[18.17.4.1 NMAC - N, 1/01/07]

### **18.17.4.2 SCOPE:**

This part applies to persons born on or after January 1, 1989 who operate a motorboat on the state's waters, motorboat rental and leasing businesses and boating safety course providers.

[18.17.4.2 NMAC - N, 1/01/07]

**18.17.4.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 66-12-18.1 directs the energy, minerals and natural resources department, state parks division to adopt safe boating education rules.

[18.17.4.3 NMAC - N, 1/01/07]

**18.17.4.4 DURATION:**

Permanent.

[18.17.4.4 NMAC - N, 1/01/07]

**18.17.4.5 EFFECTIVE DATE:**

January 1, 2007, unless a later date is cited at the end of a section.

[18.17.4.5 NMAC - N, 1/01/07]

**18.17.4.6 OBJECTIVE:**

This part's objective is to set forth rules that require motorboat operators born on or after January 1, 1989 to have and present evidence of successful completion of an approved course on safe boating and prohibit motorboat rental and leasing businesses from renting or leasing a motorboat to persons born on or after January 1, 1989 who cannot present evidence of successful completion of an approved course on safe boating, unless the rental agent provides instructions to the authorized operator of the rented or lease motorboat concerning the motorboats' safe operation. This part also requires motorboat rental and leasing businesses to maintain certain rental or lease records.

[18.17.4.6 NMAC - N, 1/01/07]

**18.17.4.7 DEFINITIONS:**

**A.** "Approved course provider" means a division-approved person or organization that provides a NASBLA approved and state certified boating safety course and exam.

**B.** "Boater education card" means a division-issued document certifying that the person named on the document has established proof of competency and is authorized to operate a boat in New Mexico.

**C.** "Boating safety course" means a NASBLA approved division-certified course of instruction that concludes with an examination containing at least 50 questions including a minimum of 10 specific questions about New Mexico boating laws.

**D.** "Certificate" means a boating education safety certificate issued by the United States power squadrons, United States coast guard auxiliary, the division or other approved course provider as evidence of successful completion of a boating safety course or correspondence internet course.

**E.** "Correspondence internet course" means a boating safety course and examination the division or approved course provider offers on the internet that allows individuals who are unable to participate in person in a boating safety course a means providing proof of competency. The exam shall be composed of at least 50 questions on boating plus a minimum of 10 specific questions that cover laws and other issues pertaining to boating in New Mexico. The exam shall be randomly selected from a database with a minimum of 150 questions; and questions shall address each of the key areas of general boat information, national and New Mexico specific boating laws, boat operation, preparation and trailering, legal requirements and boating emergencies.

**F.** "Department" means the energy, minerals and natural resources department.

**G.** "Division" means the energy, minerals and natural resources department, state parks division.

**H.** "Dockside safety checklist" means a division-provided document that consists of selected facts about New Mexico boating laws that a rental or livery agent that rents or leases motorboats for a period that does not exceed 30 days shall provide to each authorized motorboat operator of a leased or operated motorboat, which each authorized motorboat operator shall read and sign.

**I.** "Equivalency exam" means a division-created exam containing at least 50 questions on boating plus a minimum of 10 specific questions that cover laws and other issues pertaining to boating in New Mexico, which is intended to provide experienced boaters with an opportunity to meet the minimum boating education safety standard without taking boating safety course.

**J.** "Minimum standard of boating safety education competency" means a division-established proficiency standard, based on NASBLA standards, that determines whether an applicant for a boating education card has successfully completed a boating safety or correspondence internet course or an equivalency exam.

**K.** "Motorboat" means any vessel propelled by machinery, whether or not machinery is the principal source of propulsion, but does not include a vessel that has a valid marine document issued by the United States bureau of customs or any federal agency successor thereto; motorboat includes any vessel propelled or designed to be propelled

by sail and that does not have a valid document issued by a federal agency, but does not include a sailboard or windsurf board.

**L.** "NASBLA" means the national association of state boating law administrators.

**M.** "Operate" or "Operating" means to navigate or otherwise control a motorboat's movement including control of the motorboat's propulsion system.

**N.** "Operator" means the person who navigates or is otherwise in control or in charge of the motorboat's movement, including control of the motorboat's propulsion system.

**O.** "Person" means an individual, partnership, firm, corporation, association, joint venture or other entity.

**P.** "Proof of competency" means evidence of having met the minimum standard for boating safety education competency as determined by the division.

**Q.** "Rental agent" means the owner, or an employee of or person authorized to act for the owner, of a business that rents or leases motorboats for a period not exceeding 30 days.

**R.** "Rental motorboat" means a motorboat owned by a person that rents or leases motorboats for a period not exceeding 30 days and for which there is a written and signed rental, charter or lease agreement for the motorboat.

**S.** "Replacement boater education card" means a boater education card the division provides to a person who the division has already issued a boater education card and who has applied for the replacement of a boater education card that has been lost, damaged, stolen or otherwise needs replacement.

**T.** "Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water.

**U.** "Waters of the state" means any waters within the state's jurisdiction.

[18.17.4.7 NMAC - N, 1/01/07]

#### **18.17.4.8 BOATER EDUCATION CARD:**

**A.** A person born on or after January 1, 1989 who operates a motorboat on the state's waters shall possess a division-issued boater education card and have it onboard the motorboat during its operation unless the person:

**(1)** possesses and has onboard the motorboat a valid marine operator license issued by the United States coast guard that covers the motorboat being operated;

(2) is legally operating a motorboat that is exempt from vessel registration requirements and applicable rules and is being used for law enforcement or official government business;

(3) is not a New Mexico resident and possesses and has onboard the motorboat a current boater education card or certificate issued by another state or country whose requirements meet NASBLA minimum standards;

(4) has purchased the motorboat within the prior 30 days, and possesses and has onboard the motorboat the bill of sale or motorboat registration that documents the purchase date; or

(5) is renting a motorboat for a period not exceeding 30 consecutive days, is an authorized operator of the rental motorboat and has reviewed and received the information listed in Subsection B of 18.17.4.13 NMAC from the rental agent.

**B.** A person that has successfully completed a boating safety course or correspondence internet course may use a boating education safety certificate in lieu of a division-issued boater education card for up to 45 days from the certificate's date of issue if the certificate is onboard the motorboat during operation.

**C.** A person that has moved to New Mexico may use a boater education card, certificate or other document issued by another state or country in lieu of a division-issued boater education card for up to 45 days after moving to New Mexico to operate a motorboat if the original certificate, card or document is onboard the motorboat during operation.

[18.17.4.8 NMAC - N, 1/01/07]

#### **18.17.4.9 BOATER EDUCATION REQUIREMENTS:**

A person required to possess a boater education card shall meet the following minimum standards:

**A.** successful completion of a boating safety course with a passing score of at least 80 percent on a written test administered by the course instructor at the course's conclusion;

**B.** successful completion of a correspondence internet course with a passing score of at least 80 percent on the self administered test;

**C.** possession of a certificate, card or other document issued by another state or country whose requirements meet NASBLA minimum standards;

**D.** successful completion of an equivalency exam with a passing score of at least 80 percent;



E. possession of a United States coast guard motorboat operator's license; or

F. possession of a license to operate a vessel issued by the United States coast guard for maritime personnel pursuant to 46 CFR Part 10, as may be amended, or a maritime certificate issued by the Canadian government.

[18.17.4.9 NMAC - N, 1/01/07]

#### **18.17.4.10 COURSE PROVIDER ACCREDITATION:**

A. To become an approved course provider persons shall apply with the division's Santa Fe office on a division-approved form that includes the course provider's name, address and phone number; the names of all instructors; the dates the provider would offer the course; proposed course content, and whether the provider will offer the course in person or on the internet as well as documentation that NASBLA has approved the proposed course. The division shall deny or approve the application within 30 days after its receipt, or if the division requires more time it shall notify the applicant of the reason and shall approve or reject the application as soon as possible.

B. In approving a course provider the division shall:

(1) follow the NASBLA process for course review and approval and shall review each course the person proposes to provide;

(2) require the person or organization use the NASBLA testing standards for exam questions;

(3) require the person or organization use the division-created question pool that meets NASBLA examination questions standards and covers New Mexico state boating laws and rules; and

(4) require the person or organization to meet any additional requirements the division may have regarding the course presentation, course marketing, examination process, or data security.

[18.17.4.10 NMAC - N, 1/01/07]

#### **18.17.4.11 APPLICATION FOR A BOATER EDUCATION CARD:**

A. To apply for a boater education card, a person shall submit to the division Santa Fe office a completed application that includes:

(1) the applicant's name, address, phone number, date of birth, applicant's signature and other information the division may need to process the application; and

**(2)** proof of competency document, containing the applicant's name, which shall include one of the following:

**(a)** a copy of the original certificate issued by the United States power squadrons, United States coast guard auxiliary, the division or other approved course provider;

**(b)** evidence that the applicant has successfully passed an equivalency exam;

**(c)** a Canadian pleasure craft operator's card;

**(d)** a copy of the original certificate, card or other official document issued by another state or country whose requirements meet NASBLA minimum standards;

**(e)** a copy of an original United States coast guard motorboat operator's license, either valid or expired;

**(f)** a copy of a valid license to operate a vessel issued by the United States coast guard for maritime personnel pursuant to 46 CFR Part 10, as may be amended, or a maritime certificate issued by the Canadian government.

**B.** If the applicant does not have the original certificate or other document establishing proof of competency, the applicant may submit a signed notarized statement from the course provider or issuing agency stating that the applicant has successfully completed a boating safety course or internet correspondence course or passed an equivalency exam or possesses one of the documents listed in Subparagraphs (c) through (f) of Paragraph (2) of Subsection A of 18.17.4.11 NMAC.

**C.** The division may require the applicant to present the original document establishing proof of competency to the division for inspection if the copy accompanying the application is illegible or if the division has concerns about the document's authenticity.

[18.17.4.11 NMAC - N, 1/01/07]

#### **18.17.4.12 REPLACEMENT BOATER EDUCATION CARD:**

**A.** A person may request a replacement boater education card from the division if the person:

**(1)** has legally changed his or her name; or

**(2)** has had his or her boater education card lost, stolen or destroyed.

**B.** To obtain a replacement boater education card, the person shall provide the division with the boater education card number and an affidavit stating the

circumstances that led to the loss or destruction of the original boater education card or proof of name change such as a court order or marriage license along with a replacement fee of \$10.

[18.17.4.12 NMAC - N, 1/01/07]

#### **18.17.4.13 RENTAL AGENTS:**

A person in the business of renting or leasing motorboats for a period not exceeding 30 days shall:

**A.** ensure that a person born on or after January 1, 1989 and who will rent or be an authorized operator of the rental motorboat meet the requirements in 18.17.4.8 NMAC and not rent the motorboat or allow the person to be an authorized operator if the person does not meet those requirements;

**B.** provide each authorized operator of the rental motorboat instructions regarding the motorboat's safe operation, which shall include the dockside safety checklist that includes such information as a sail/float plan, emergency preparedness, pre-departure maintenance check, required equipment check, handling/loading specifications and weather forecast and a summary of the statutes and rules governing the motorboat's operation;

**C.** ensure that each person who rents the motorboat and all authorized operators:

**(1)** review, initial and sign the dockside safety checklist in the rental agent's presence before they operate the rental motorboat; and

**(2)** retain the issued copy of the dockside safety checklist onboard while operating the rental motorboat; and

**D.** maintain rental or lease records for three years that include the name and age of each person who is authorized to operate the rental motorboat and the rental period.

[18.17.4.13 NMAC - N, 1/01/07]

## **CHAPTER 18: MOTOR VEHICLE ADMINISTRATION**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2-3: [RESERVED]**

### **PART 4: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

#### **18.18.4.1 ISSUING AGENCY:**

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

[18.18.4.1 NMAC - N, 6/30/03]

**18.18.4.2 SCOPE:**

This Part applies to all persons subject to the Motor Vehicle Code.

[18.18.4.2 NMAC - N, 6/30/03]

**18.18.4.3 STATUTORY AUTHORITY:**

The Taxation and Revenue Department, Motor Vehicle Division, adopts this Rule pursuant to the Parental Responsibility Act, Section 40-5A-1 et seq., NMSA 1978, Section 9-11-6.2, NMSA 1978, and Sections 66-2-16(E) and 66-2-17, NMSA 1978.

[18.18.4.3 NMAC - N, 6/30/03]

**18.18.4.4 DURATION:**

Permanent.

[18.18.4.4 NMAC - N, 6/30/03]

**18.18.4.5 EFFECTIVE DATE:**

6/30/03, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[18.18.4.5 NMAC - N, 6/30/03]

**18.18.4.6 OBJECTIVE:**

The objective of this Part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code and Parental Responsibility Act.

[18.18.4.6 NMAC - N, 6/30/03]

**18.18.4.7 DEFINITIONS:**

The terms defined in Section 18.18.4.7 NMAC apply throughout Title 18, Chapter 18, Part 4.

A. "HSD" means the state of New Mexico human services department;

B. "MVD" means the motor vehicle division of the state of New Mexico taxation and revenue department;

C. "certificate of compliance" means a certified statement from HSD stating that a licensee is in compliance with a judgment and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings;

D. "notice of intent to suspend driver's license and right to a hearing" means a written statement that MVD intends to suspend or not renew a driver's license, the basis for the proposed suspension, and the process afforded a licensee by MVD or HSD; and

E. "license" means an individual driver's license or a commercial driver's license.

F. All other terms in Title 18, Chapter 18, Part 4 shall have the same meaning as they have in the Parental Responsibility Act or the Motor Vehicle Code, except that the term "board" shall mean the MVD or its designate.

[18.18.4.7 NMAC - N, 6/30/03]

#### **18.18.4.8 MVD ACTION:**

If a licensee is not in compliance with a valid judgment and order for support or is not in compliance with a subpoena or a warrant relating to paternity or child support proceedings, MVD shall:

- A. deny the renewal of a license;
- B. suspend the license; or
- C. deny any application for a license.

[18.18.4.8 NMAC - N, 6/30/03]

#### **18.18.4.9 CERTIFIED LIST:**

Upon receipt of an HSD-certified list of obligors not in compliance, MVD shall match the certified list against the current list of MVD licensees. If a listed MVD licensee appears on the HSD-certified list of obligors not in compliance, then MVD shall mail to a licensee or licensees a notice of proposed non-renewal or suspension. By the end of the month in which the certified list is received, MVD shall report to HSD the names of MVD licensees who are on HSD's certified list of obligors and any action MVD has taken in connection with such licensees.

[18.18.4.9 NMAC - N, 6/30/03]

#### **18.18.4.10 NOTICE:**

Prior to taking any action specified in Section 18.18.4.8 NMAC, MVD or HSD shall mail to the licensee a written notice stating that MVD has grounds to take MVD action, and that MVD shall suspend or deny a license or renewal unless the licensee:

A. files a timely written request for hearing protesting the proposed suspension or denial within thirty (30) days from the date the notice is mailed; or

B. provides MVD, within thirty (30) days from the date the notice is mailed, with a certificate of compliance from HSD.

[18.18.4.10 NMAC - N, 6/30/03]

#### **18.18.4.11 HEARINGS:**

The licensee may request a hearing by filing a written request for hearing protesting the proposed non-renewal or suspension of the license. In the request for hearing, the licensee shall provide the licensee's name; any one of either the social security number, the individual tax identification number (ITIN), or the acceptable substitute for a social security number or ITIN; the action in dispute; the grounds for protest, and the affirmative action requested.

A. The request for hearing must be filed within thirty (30) days from the date the notice is mailed. The request may be mailed to Parental Responsibility Hearings, P.O. Box 630, Santa Fe, New Mexico 87504-0630 or by delivering the request in person to the Legal Services Bureau, Joseph M. Montoya Building, 1100 S. St. Francis Drive, Suite 1100, Santa Fe, New Mexico.

B. The secretary of the New Mexico taxation and revenue department or the secretary's delegate shall appoint a hearing officer who shall set the matter for hearing within ninety (90) days from the date of the request. MVD or HSD will notify the licensee of the hearing ten (10) days prior to the date of the hearing. The notice shall be mailed to the address listed on the request for hearing or, if no return address is listed, then to the licensee's last known address as shown on MVD records.

C. The hearing officer shall make and preserve a record of the proceedings.

D. A licensee may appear at a hearing on the licensee's own behalf or be represented by an attorney.

E. All hearings will be conducted telephonically. The hearing officer may at the hearing officer's discretion specify an in-person hearing.

F. Hearings shall be closed to the public except upon request of the licensee and may be postponed or continued at the discretion of the hearing officer.

G. In all hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

H. In hearings before the hearing officer, the Rules of Civil Procedure for the district courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, or require written expositions of the case as the circumstances justify, and shall render a decision according to the law and the evidence presented and admitted.

I. The hearing officer, within thirty (30) days of the hearing, shall issue a decision granting or denying the relief requested or granting such part thereof as seems appropriate and shall inform the licensee of the licensee's right to and the requirements for perfection of, an appeal to the district court and of the consequences of a failure to appeal.

[18.18.4.11 NMAC - N, 6/30/03]

#### **18.18.4.12 ISSUES:**

The issues to be decided at the hearing are limited to whether:

- A. the licensee is in compliance with a judgment and order for support;
- B. the licensee is in compliance with a subpoena or warrants relating to paternity or child support proceedings; or
- C. the licensee is the person whose name appears on the certified list sent to MVD from HSD.

[18.18.4.12 NMAC - N, 6/30/03]

#### **18.18.4.13 EVIDENCE AND PROOF:**

A. In any hearing under Title 18, Chapter 18, Part 4, relevant evidence shall be limited to the following:

- (1) a valid certificate of compliance, if one has been issued between the date of the notice and the hearing date;
- (2) evidence of compliance with a judgment or order of support, subpoena or warrant relating to paternity or child support proceedings to rebut the absence of a certificate of compliance in cases in which the licensee has cured any non-compliance

with a judgment or order of support, subpoena or warrant after the notice date but before the date of hearing, and

(3) evidence that the licensee is not the same person as the person whose name appears on the certified list of obligors sent to MVD by HSD.

B. In lieu of a hearing, a licensee may present a valid certificate of compliance to any MVD field office and pay all applicable fees and have the license reinstated.

[18.18.4.13 NMAC - N, 6/30/03]

#### **18.18.4.14 ORDER:**

An order entered under Title 18, Chapter 18, Part 4 solely because the licensee is not in compliance with the judgment and order for support or not in compliance with a subpoena or a warrant relating to paternity or child support proceedings, the order shall provide that the license is to be reinstated upon presentation of a subsequent certificate of compliance to MVD and payment of applicable fees. MVD may order additional reasonable conditions necessary to compel compliance with MVD requirements for reapplication or reinstatement of lapsed licenses.

[18.18.4.14 NMAC - N, 6/30/03]

#### **18.18.4.15 APPEALS:**

All appeals shall be filed in accordance with Section 39-1-1.1 NMSA 1978 and Rule 1-074 of the Rules of Civil Procedure for the district courts.

[18.18.4.15 NMAC - N, 6/30/03]

#### **18.18.4.16 FEES:**

MVD shall charge a twenty-five dollar (\$25.00) fee to defray the cost of conducting the hearing.

[18.18.4.16 NMAC - N, 6/30/03]

### **PART 5: EVIDENCE OF FINANCIAL RESPONSIBILITY TO BE CARRIED IN A MOTOR VEHICLE**

#### **18.18.5.1 ISSUING AGENCY:**

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

[10/31/96, 18.18.5.1 NMAC - Rn, 18 NMAC 18.5.1, 9/14/00]



#### **18.18.5.2 SCOPE:**

This Part applies to all owners of vehicles and all drivers of vehicles.

[10/31/96, 18.18.5.2 NMAC - Rn, 18 NMAC 18.5.2, 9/14/00]

#### **18.18.5.3 STATUTORY AUTHORITY:**

Section 9-11-6.2 NMSA 1978.

[10/31/96, 18.18.5.3 NMAC - Rn, 18 NMAC 18.5.3, 9/14/00]

#### **18.18.5.4 DURATION:**

Permanent.

[10/31/96, 18.18.5.4 NMAC - Rn, 18 NMAC 18.5.4, 9/14/00]

#### **18.18.5.5 EFFECTIVE DATE:**

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96, 18.18.5.5 NMAC – Rn & A, 18 NMAC 18.5.5, 9/14/00]

#### **18.18.5.6 OBJECTIVE:**

The objective of this Part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code and Mandatory Financial Responsibility Act.

[10/31/96, 18.18.5.6 NMAC - Rn, 18 NMAC 18.5.6, 9/14/00]

#### **18.18.5.7 DEFINITIONS:**

**[RESERVED]**

[10/31/96, 18.18.5.7 NMAC - Rn, 18 NMAC 18.5.7, 9/14/00]

#### **18.18.5.8 EVIDENCE OF FINANCIAL RESPONSIBILITY:**

A. Evidence of financial responsibility required to be carried in a motor vehicle shall be executed by the owner or operator's insurer, surety or the New Mexico state treasurer, as appropriate. Except as otherwise provided in 18.18.5.8 NMAC, the evidence of financial responsibility must contain the following information:

- (1) name and address of the insured or owner of the vehicle;

- (2) year and make of the vehicle;
- (3) vehicle identification number;
- (4) insurance policy, surety bond or deposit number;
- (5) effective date of the insurance policy, surety bond or deposit; and
- (6) expiration date of the insurance policy, surety bond or deposit, if applicable.

B. The certificate or insurance policy may omit the year, make and vehicle identification number of the vehicle if the vehicle is covered under a liability insurance policy where any owned vehicle is insured. In such a case, the certificate or insurance policy must indicate "fleet - any owned vehicle" on its face.

[12/9/83, 10/31/96, 18.18.5.8 NMAC - Rn & A, 18 NMAC 18.5.8, 9/14/00]

## **PART 6: CHILD PASSENGER RESTRAINTS [RESERVED]**

# **CHAPTER 19: MOTOR VEHICLE PROCEDURES, LICENSES, PERMITS**

## **PART 1: GENERAL PROVISIONS**

### **18.19.1.1 ISSUING AGENCY:**

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

[10/31/96; 18.19.1.1 NMAC - Rn, 18 NMAC 19.1.1, 9/14/00]

### **18.19.1.2 SCOPE:**

This part applies to all persons subject to the Motor Vehicle Code.

[10/31/96; 18.19.1.2 NMAC - Rn, 18 NMAC 19.1.2, 9/14/00]

### **18.19.1.3 STATUTORY AUTHORITY:**

Section 9-11-6.2 NMSA 1978.

[10/31/96; 18.19.1.3 NMAC - Rn, 18 NMAC 19.1.3, 9/14/00]

### **18.19.1.4 DURATION:**

Permanent.

[10/31/96; 18.19.1.4 NMAC - Rn, 18 NMAC 19.1.4, 9/14/00]

#### **18.19.1.5 EFFECTIVE DATE:**

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 18.19.1.5 NMAC -Rn & A, 18 NMAC 19.1.5, 9/14/00]

#### **18.19.1.6 OBJECTIVE:**

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code.

[10/31/96; 18.19.1.6 NMAC - Rn, 18 NMAC 19.1.6, 9/14/00]

#### **18.19.1.7 DEFINITIONS - "DEALER" INCLUDES CERTAIN BROKERS:**

The term "dealer" includes those persons authorized under Section 66-8-3.1 NMSA 1978 to broker a motor vehicle, other than those brokers excluded by Paragraph (5) of Subsection B of Section 66-1-4.4 NMSA 1978. The term "dealer" includes those persons described in Subsection B of Section 66-8-3.1 NMSA 1978.

[3/16/92, 8/17/94, 10/31/96; 18.19.1.7 NMAC - Rn & A, 18 NMAC 19.1.7, 9/14/00]

#### **18.19.1.8 SPECIAL NOTE - CITATION OF STATUTES:**

Unless otherwise stated, all citations of statutes in regulations promulgated by the taxation and revenue department pertaining to the Motor Vehicle Code are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[8/17/94, 10/31/96; 18.19.1.8 NMAC - Rn, 18 NMAC 19.1.8, 9/14/00]

#### **18.19.1.9 OPTIONAL SERVICE FEE:**

Pursuant to Subsection E of Section 66-2-16 NMSA 1978, the following fees for optional services will be charged.

A. In addition to the fee imposed under Subsection C of Section 66-3-6 NMSA 1978, a fee of fifty cents (\$0.50) will be charged for issuance of the security version of the temporary retail-sale permit.

B. A fee of five dollars (\$5.00) will be charged for furnishing pleading forms for the district court action to restore a driver's privilege under Section 66-8-112 NMSA 1978.

C. The secretary may impose additional fees, not to exceed ten dollars (\$10.00) per transaction, to recover the expenses associated with providing optional services for the convenience of the motoring public. These fees will only be charged to persons taking advantage of the service.

[3/15/96, 10/31/97; 18.19.1.9 NMAC - Rn & A, 18 NMAC 19.1.9, 9/14/00; A, 7/31/09]

#### **18.19.1.10 [RESERVED]**

[3/31/98; 18.19.1.10 NMAC - Rn, 18 NMAC 19.1.10, 9/14/00; Repealed, 6/14/02]

#### **18.19.1.11 REQUIREMENTS FOR ELECTRONIC ACCESS TO PERSONAL INFORMATION:**

A. All electronic access to vehicle registration, driver's license or other data collected and maintained by the department pursuant to the Motor Vehicle Code that contains "personal information", as that term is defined in Section 66-1-4.14 NMSA 1978, must utilize a data delivery system that meets the minimum requirements established by the department.

B. The department may require any person outside the department seeking electronic access to vehicle registration, driver's license or other data collected and maintained by the department pursuant to the Motor Vehicle Code that contains "personal information", as that term is defined in Section 66-1-4.14 NMSA 1978, to sign a written agreement regarding minimum technical requirements, the segregation and, where appropriate, suppression of personal information and creation of audit reports and other information so that the department may verify compliance with the requirements agreed to.

[18.19.1.11 NMAC - N, 5/15/01]

### **PART 2: [RESERVED]**

### **PART 3: REGISTRATIONS**

#### **18.19.3.1 ISSUING AGENCY:**

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

[3/15/96; 18.19.3.1 NMAC - Rn, 18 NMAC 19.3.1, 9/14/00]

#### **18.19.3.2 SCOPE:**

General public, persons registering or titling or who have registered or titled motor vehicles and motor vehicle fee agents.

[3/15/96; 18.19.3.2 NMAC - Rn, 18 NMAC 19.3.2, 9/14/00]

**18.19.3.3 STATUTORY AUTHORITY:**

Sections 9-11-6.2 and 66-2-16 NMSA 1978.

[3/15/96; 18.19.3.3 NMAC - Rn, 18 NMAC 19.3.3, 9/14/00]

**18.19.3.4 DURATION:**

Permanent.

[3/15/96; 18.19.3.4 NMAC - Rn, 18 NMAC 19.3.4, 9/14/00]

**18.19.3.5 EFFECTIVE DATE:**

3/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3/15/96, 10/31/96; 18.19.3.5 NMAC - Rn & A, 18 NMAC 19.3.5, 9/14/00]

**18.19.3.6 OBJECTIVE:**

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code.

[3/15/96; 18.19.3.6 NMAC - Rn, 18 NMAC 19.3.6, 9/14/00]

**18.19.3.7 DEFINITIONS:**

**[RESERVED]**

[3/15/96; 18.19.3.7 NMAC - Rn, 18 NMAC 19.3.7, 9/14/00]

**18.19.3.8 SCHEDULE OF ADMINISTRATIVE SERVICE FEES:**

A. In addition to any other fee specified by law, the administrative service fee authorized in Subsection A of Section 66-2-16 NMSA 1978 shall be charged on each of the following transactions:

(1) registration of a vehicle, except for:

(a) vehicles for which a special registration plate is issued under Sections 66-3-409, 66-3-411, 66-3-412, 66-3-414 or 66-3-421 NMSA 1978; and

(b) vehicles owned by a government;

- (2) re-registration of a vehicle;
- (3) issuance of a duplicate vehicle registration plate;
- (4) issuance of an original or duplicate vehicle title; and
- (5) issuance of a vehicle title transfer.

B. This regulation is retroactively applicable to registrations, re-registrations or issuances occurring on or after January 1, 1995.

[3/15/96; 18.19.3.8 NMAC - Rn & A, 18 NMAC 19.3.8, 9/14/00]

#### **18.19.3.9 OPTIONAL SERVICE FEE:**

In addition to the fee imposed under Subsection C of Section 66-3-6 NMSA 1978, a fee of fifty cents (\$0.50) will be charged for issuance of the security version of the temporary retail-sale permit.

[3/15/96; 18.19.3.9 NMAC - Rn & A, 18 NMAC 19.3.9, 9/14/00]

#### **18.19.3.10 INSPECTORS OF VEHICLE IDENTIFICATION NUMBERS AND SAFETY EQUIPMENT:**

A. The purpose of 18.19.3.10 NMAC is to expedite the process of registering and titling motor vehicles by authorizing certain individuals (other than division employees) to perform the inspections of vehicle identification numbers and safety equipment required under Sections 66-3-8 and 66-3-801 through 887 NMSA 1978. To protect the public, certain conditions must be met by any individual desiring to become an inspector.

B. An "authorized inspector" is an individual, other than an officer or employee of the division, to whom the director has delegated, under the provisions of 18.19.3.10 NMAC, the authority to conduct specified inspections of vehicles.

C. For the purposes of Sections 66-3-8 and 66-3-801 through 887 NMSA 1978, the division will accept an inspection of vehicle identification numbers and safety equipment performed by an authorized inspector as if the inspection had been performed by one of its own officers or employees as long as the inspection was performed in accordance with the Motor Vehicle Code and the regulations thereunder and the policies of the division.

D. The director may appoint any individual to be an authorized inspector if that individual has met the requirements of 18.19.3.10 NMAC. Appointments may be made for specified periods of time. The director may terminate the appointment of any individual as an authorized inspector at any time, without prior notice or explanation.

E. Any individual desiring to become an authorized inspector must:

- (1) be eighteen years of age or older;
- (2) not have been convicted of a felony;
- (3) demonstrate to the division's satisfaction that he or she has completed satisfactorily training in:
  - (a) conducting inspections of the standard vehicle identification number provided by the manufacturers and
  - (b) inspecting vehicles which have been assembled or re-assembled to verify that such vehicles have the safety equipment set forth in Sections 66-3-801 through 66-3-887 and 66-7-401 through 66-7-416 NMSA 1978 or as set forth by federal law or regulation; and
- (4) post, in accordance with the Bond Surety Act (Sections 10-2-13 through 10-2-16 NMSA 1978), a bond in the amount of \$30,000 which indemnifies and protects the division against any and all liability in the event that any person is injured or suffers property damage as a result of the actions of the individual in the performance of the duties delegated through 18.19.3.10 NMAC.

F. An individual appointed as an inspector is authorized only to inspect vehicles on behalf of the division for vehicle identification numbers and for verification of safety equipment required by Sections 66-3-801 through 66-3-887 and 66-7-401 through 66-7-416 NMSA 1978 or by federal law or regulation. The authorized inspector may not permit any other individual to perform in the name of the authorized inspector any of the duties delegated under the appointment.

[4/7/89, 7/19/94, 10/31/96; 18.19.3.10 NMAC - Rn & A, 18 NMAC 19.3.10, 9/14/00]

#### **18.19.3.11 [RESERVED]**

#### **18.19.3.12 SEAT BELT STANDARDS:**

Safety belts, anchorages and the installation of the safety belts and anchorages meeting the requirements of federal Motor Vehicle Safety Standard Number 209 (seat belt assemblies-passenger cars, multipurpose passenger vehicles, trucks, and buses) and federal Motor Vehicle Safety Standard Number 210 (seat belt assembly anchorages-passenger cars, multipurpose passenger vehicles, trucks, and buses) issued by the United States secretary of transportation, which incorporate the specifications of the society of automotive engineers, are accepted as approved.

[7/20/90, 7/19/94, 10/31/96; 18.19.3.12 NMAC - Rn, 18 NMAC 19.3.14, 9/14/00]

### **18.19.3.13 OFF-HIGHWAY MOTOR VEHICLES - AFFIXING OF REGISTRATION PLATES:**

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

[2/6/91, 7/19/94, 10/31/96; 18.19.3.13 NMAC - Rn, 18 NMAC 19.3.15, 9/14/00]

### **18.19.3.14 TEMPORARY OPERATION STICKER - USE OF STICKER TO DEFACE REGISTRATION PLATE:**

A. The temporary operation sticker provided for in Section 66-5-205.1 NMSA 1978 shall be approximately 4 inches in height by 12 inches in width. The sticker shall consist of two sections separated by perforations.

(1) The first section shall be approximately 4 inches in height and 8 inches in width; this section shall be affixed to the registration plate or the vehicle in accordance with 18.19.3.14 NMAC. This section shall be backed with a self-destruct adhesive material, such as the backing of "evidence tape". The background color shall be any highly luminous color, such as "day-glo" pink or orange; the lettering shall be black. Upon the face of the sticker, in letters at least one-half inch high, shall be printed the words: "uninsured vehicle". Information with respect to the purpose and usage of the sticker and other related material may also be printed. A space shall be provided for the law enforcement officer to write the expiration date of the temporary operation sticker.

(2) The second section shall be approximately four inches in height and 4 inches in width; this section shall be mailed or delivered to the division. Upon this section shall be printed the words "uninsured vehicle" in an appropriate size. Space shall be provided for the law enforcement officer to write the registration plate number of the vehicle and the expiration date of the temporary operation sticker.

B. If the registration plate is removed from the vehicle, the first section of the temporary operation sticker shall be placed on the motor vehicle in such a manner that the face of the sticker is properly oriented and clearly visible from a position directly behind the rear of the vehicle.

C. If the registration plate is not removed but is to be defaced, the registration plate will be considered defaced by application of the first section of the sticker to the face



side of the registration plate in such a manner that the entire first section of the sticker is displayed on the registration plate.

[12/29/89, 8/20/93, 10/31/96; 18.19.3.14 NMAC - Rn & A, 18 NMAC 19.3.16, 9/14/00]

#### **18.19.3.15 METRIC ODOMETERS:**

A. In completing a title application, the seller may report the equivalent reading in miles of an odometer reading displayed in kilometers. For this purpose, one kilometer equals 0.6214 miles. In such a case the seller must attach to the application a document showing the actual kilometer reading of the odometer and the calculation of the conversion from kilometers to miles.

B. When federal law or regulation requires an odometer displaying kilometers to be replaced with an odometer displaying miles, the document required by 18.19.3.15 NMAC must include a statement that the odometer displaying miles has been set at the mileage shown by the conversion of kilometers to miles at the time the odometer was replaced and the document must be notarized.

[12/31/97; 18.19.3.15 NMAC - Rn & A, 18 NMAC 19.3.17, 9/14/00]

#### **18.19.3.16 DEACTIVATION OF TITLE TO A MANUFACTURED HOME:**

Title issued pursuant to the provisions of the Motor Vehicle Code to a manufactured home shall be deactivated by the department when:

A. the person in whose name the manufactured home is titled requests in writing that the department deactivate the title;

B. the title is free and clear of all recorded liens and encumbrances; and

C. the valuation authority certifies to the department that, once title is deactivated, the housing structure will be taxed as real property.

[7/15/98; 18.19.3.16 NMAC - Rn, 18 NMAC 19.3.18, 9/14/00]

#### **18.19.3.17 REACTIVATION OF A TITLE TO A MANUFACTURED HOME:**

If the owner of a housing structure, title to which had been issued pursuant to the Motor Vehicle Code as a manufactured home and which title is deactivated, may request that the title issued pursuant to the Motor Vehicle Code be reactivated. The department shall reactivate the title as a manufactured home pursuant to the provisions of the Motor Vehicle Code and reissue it to the owner only upon receipt of documentation that all liens or mortgages against the housing structure and the land upon which it is affixed have been released. The department shall notify the valuation authority that the title has been reactivated.

[7/15/98; 18.19.3.17 NMAC - Rn, 18 NMAC 19.3.19, 9/14/00]

#### **18.19.3.18 ATVS ARE OFF-ROAD VEHICLES:**

All-terrain vehicles (ATVs) are off-road vehicles and must be registered as such, whether or not the manufacturer supplies the New Mexico dealer with a manufacturer's certificate of origin for the ATVs.

[18.19.3.18 NMAC - N, 3/14/01]

#### **18.19.3.19-18.19.3.49 [RESERVED]**

#### **18.19.3.50 SALVAGE-BRANDED TITLES - DEFINITIONS:**

For the purposes of 18.19.3.50 through 18.19.3.53 NMAC:

A. "salvage-branded title" or "salvage title" means a title issued by the motor vehicle division which title indicates the subject vehicle is a salvage vehicle; and

B. "salvage vehicle" means a vehicle that meets the definition of a salvage vehicle as defined in Subsection C of Section 66-1-4.16 NMSA 1978 of the Motor Vehicle Code.

[3/6/92, 7/19/94, 10/31/96; 18.19.3.50 NMAC - Rn & A, 18 NMAC 19.3.11.1, 9/14/00; A, 9/15/06]

#### **18.19.3.51 SALVAGE-BRANDED TITLES – STOLEN VEHICLES:**

A. A salvage-branded title need not be issued to a stolen but unrecovered vehicle.

B. If, subsequent to the recovery of a stolen vehicle, it is determined that it meets the definition of a salvage or non-repairable motor vehicle as set forth in Subsection C of Section 66-1-4.16 NMSA 1978 or Subsection A of Section 66-1-4.12 NMSA 1978, the owner must follow the procedures set forth in statute or regulation for obtaining a salvage title or non-repairable certificate.

[3/6/92, 7/19/94, 10/31/96; 18.19.3.51 NMAC - Rn, 18 NMAC 19.3.11.2, 9/14/00; A, 9/15/06]

#### **18.19.3.52 SALVAGE-BRANDED TITLES - SALVAGE VEHICLES:**

A. A salvage-branded title must be issued to transfer title to a salvage vehicle.

B. In determining whether a vehicle is a salvage vehicle, only costs related to returning the vehicle to a road-worthy condition shall be included as costs of repairing the vehicle. Costs which are beyond those necessary to make a damaged vehicle safely operable on the highways, such as replacing a clear windshield with a tinted one or

adding racing stripes, shall be excluded. Payments not related to the repair of the vehicle, such as compensation for medical costs, car rentals, lost work time and the like, shall also be excluded. Fair market value shall be that indicated for the make and model in the national automobile dealers association used car pricing guide, or equivalent publication, exclusive of the fair market value of accessories, such as a stereo system.

C. Example: The interior of a vehicle is vandalized. A stereo system is ripped out and destroyed; the interior is set on fire. The market value of the vehicle, exclusive of the stereo, is \$1,000 prior to the incident. The stereo was worth \$1,500. Costs of restoring the interior to allow safe operation on the highways is \$800. This vehicle is not a salvage vehicle. The costs of repairing the vehicle so that it is safe to operate is \$800, which is less than the \$1,000 fair market value of the vehicle itself, exclusive of the stereo.

D. The declaration by an insurance company that a vehicle is a salvage or non-repairable vehicle makes the vehicle a salvage vehicle or non-repairable vehicle regardless of the relative amounts of repair costs versus fair market value.

E. Example: If, in the preceding example, an insurance company settled claims with respect to the vehicle for \$2,200 and declared the vehicle a salvage or non-repairable vehicle, the vehicle is a salvage vehicle or non-repairable vehicle, depending on the determination of the insurance company, so long as that determination is not inconsistent with statutory definitions.

[3/6/92, 7/19/94, 10/31/96; 18.19.3.52 NMAC - Rn, 18 NMAC 19.3.11.3, 9/14/00; A, 9/15/06]

### **18.19.3.53 SALVAGE-BRANDED TITLES - BRANDING OF TITLE:**

A. The procedures specified in 18.19.3.53 NMAC govern the transfer of title to a salvage or non-repairable vehicle.

**B. Transfer to an insurance company:** The steps below are to be followed when an insurance company takes title to a salvage vehicle or non-repairable vehicle in exchange for a payment to a person making a claim for vehicle damages.

(1) The insurance company or its authorized agent shall obtain the title or manufacturer's certificate of origin (MCO) for the vehicle and verify that the document is in the name of the former owner.

(2) The former owner or the former owner's authorized agent shall sign the title or MCO on the seller's release line. If a business was the former owner, the name of the business must appear with the signature of the business's owner, officer or agent.

(3) The name of the insurance company shall be entered in the purchaser section of the title or MCO.

(4) The insurance company shall apply for a salvage title or non-repairable certificate in its name before transferring title to the vehicle.

(5) The insurance company shall submit the endorsed title or MCO to the motor vehicle division, together with a written explanation of the reason for the branding. In the case of a salvage vehicle, a statement must be included of the costs of repair to make the vehicle safe for operation on the highways and the estimate of its fair market value immediately prior to damage. If the title was issued by a jurisdiction other than New Mexico, a copy of the title must be sent to the issuing jurisdiction with a completed "statement of loss".

**C. Transfer to person other than an insurance company:** The steps below are to be followed whenever the owner of a salvage vehicle or a non-repairable vehicle transfers title to any person other than an insurance company.

(1) The transferee will make reasonable efforts to verify that the title or manufacturer's certificate of origin (MCO) is properly in the name of the transferor.

(2) The transferor or transferor's authorized agent shall sign the title or MCO on the seller's release line. If a business is the transferor, the name of the business must appear with the signature of the business's owner, officer or agent.

(3) The name of the transferee shall be entered in the purchaser section of the title or MCO.

(4) If the title or MCO is not already branded with the word "SALVAGE" or "NON-REPAIRABLE", the transferor shall stamp or otherwise mark in ink the face of the title or MCO with the word "SALVAGE" or "NON-REPAIRABLE" in letters no less than one-half inch high, at an angle of approximately 45 degrees to the text of the title or MCO. The branding shall not cover the portion of the title or MCO which describes the vehicle.

(5) If the vehicle is a non-repairable vehicle, the owner may not transfer ownership to any person who is not a licensed auto recycler.

(6) The transferor shall submit a copy of the branded title or MCO to the motor vehicle division. If the title or MCO had not previously been branded with the word "SALVAGE" or "NON-REPAIRABLE", the transferor shall submit with the title or MCO a written explanation explaining the reason for the branding.

**D.** Once a title has been salvage-branded, all subsequent transfers of title must be by salvage-branded title. Once a non-repairable vehicle certificate has been issued for a vehicle, the motor vehicle division shall not issue further ownership certificates for that vehicle.

[3/6/92, 7/19/94, 10/31/96; 18.19.3.53 NMAC - Rn & A, 18 NMAC 19.3.11.4, 9/14/00; A,

9/15/06]

**18.19.3.54-18.19.3.59 [RESERVED]**

**18.19.3.60 PRESTIGE PLATES - DEFINITIONS:**

As used in 18.19.3.60 through 18.19.3.63 NMAC:

A. "set" means the combination of symbols selected by an applicant to appear on a prestige plate; and

B. "prestige plate" means the special registration plates authorized by Section 66-3-15 NMSA 1978.

[9/1/88, 7/19/94, 10/31/96; 18.19.3.60 NMAC - Rn & A, 18 NMAC 19.3.12.1, 9/14/00]

**18.19.3.61 PRESTIGE PLATES - FORMAT - PERMISSIBLE CHARACTERS:**

A. The set on prestige plates, other than motorcycles prestige plates, will consist of a combination of not fewer than one nor more than seven characters. The set on motorcycle prestige plates will consist of a combination of not fewer than one nor more than six characters.

B. Only the letters, numerals or special symbols used by the division for registration plates may be selected as characters for inclusion in a set, except that a full space between letters, numerals or special symbols is also a permissible character. The wheelchair symbol may be selected only by those persons who are eligible for a special registration plate under Section 66-3-16 NMSA 1978.

[9/1/88, 7/19/94, 10/31/96; 18.19.3.61 NMAC - Rn & A, 18 NMAC 19.3.12.2, 9/14/00]

**18.19.3.62 PRESTIGE PLATES - CONTENT OF SET - REVIEW OF SET BY DIVISION:**

A. Except as otherwise provided in 18.19.3.62 NMAC, a set may be composed of any permissible characters in any order as long as the set is consistent with the requirements of 18.19.3.61 NMAC. Prior to approval for the establishment and issuance of the prestige plate, the division will review the set.

B. No prestige plate will be established or approved for issuance which displays a set that:

(1) duplicates that of any existing registration plate or registration plate or set for which an application is in process;

(2) the division finds to be derogatory or obscene; or

(3) falsely states or implies that the vehicle or the driver represents the authority of a governmental agency or official.

[9/1/88, 7/19/94, 10/31/96; 18.19.3.62 NMAC - Rn & A, 18 NMAC 19.3.12.3, 9/14/00]

#### **18.19.3.63 PRESTIGE PLATES - APPEAL TO DIRECTOR:**

Any person whose selected set for a prestige plate is found by the division to be derogatory or obscene or a false representation of governmental authority may appeal that finding to the director within thirty days of the day on which the person is notified of the finding. The applicant may present arguments and evidence that the set is not derogatory or obscene or a false representation of governmental authority. The director, in his discretion, may hold a hearing on the matter and may delegate conduct of the hearing. In any such hearing, the technical rules of evidence shall not apply but, in ruling on the admissibility of evidence, the officer conducting the hearing may require reasonable substantiation of statements or records, the accuracy or truth of which is in reasonable doubt. The rules of civil procedure for the district courts shall not apply but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. Based upon the arguments and evidence presented, the director will decide whether the set is derogatory, obscene or a false representation of governmental authority; the decision is final. Only if the director finds the set to be not derogatory, obscene or a false representation of governmental authority will the prestige plate with that set be established and issued.

[9/1/88, 7/19/94, 10/31/96; 18.19.3.63 NMAC - Rn, 18 NMAC 19.3.12.4, 9/14/00]

#### **18.19.3.64-18.19.3.69 [RESERVED]**

#### **18.19.3.70 COMPLETE VEHICLE IDENTIFICATION NUMBER REQUIRED:**

In order to establish a security interest in and a lien upon the manufactured home, the notification of property tax delinquency must include both the location of the manufactured home and the complete vehicle identification number of the manufactured home. Notifications of property tax delinquency on manufactured homes which do not contain the complete vehicle identification number do not contain sufficient information to establish whether or not a manufactured home is registered with the motor vehicle division. Therefore such copies will not be filed and will not constitute a security interest in and a lien upon the vehicle.

[7/19/94, 10/31/96; 18.19.3.70 NMAC - Rn, 18 NMAC 19.3.13, 9/14/00]

#### **18.19.3.71 DEACTIVATION OF TITLE TO A MANUFACTURED HOME:**

Title issued pursuant to the provisions of the Motor Vehicle Code to a manufactured home shall be deactivated by the department when:

A. the person in whose name the manufactured home is titled requests in writing that the department deactivate the title;

B. the title is free and clear of all recorded liens and encumbrances; and

C. the valuation authority certifies to the department that, once title is deactivated, the housing structure will be taxed as real property.

[7/15/98; 18.19.3.71 NMAC - Rn, 18 NMAC 19.3.18, 9/14/00]

#### **18.19.3.72 REACTIVATION OF A TITLE TO A MANUFACTURED HOME:**

If the owner of a housing structure, title to which had been issued pursuant to the Motor Vehicle Code as a manufactured home and which title is deactivated, may request that the title issued pursuant to the Motor Vehicle Code be reactivated. The department shall reactivate the title as a manufactured home pursuant to the provisions of the Motor Vehicle Code and reissue it to the owner only upon receipt of documentation that all liens or mortgages against the housing structure and the land upon which it is affixed have been released. The department shall notify the valuation authority that the title has been reactivated.

[7/15/98; 18.19.3.72 NMAC - Rn, 18 NMAC 19.3.19, 9/14/00]

### **PART 4: LICENSING**

#### **18.19.4.1 ISSUING AGENCY:**

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

[9/14/96; 18.19.4.1 NMAC - Rn, 18 NMAC 19.4.1, 9/14/00]

#### **18.19.4.2 SCOPE:**

This part applies to all dealers, wreckers, wholesalers and distributors of motor vehicles and title service companies.

[9/14/96, 11/30/99; 18.19.4.2 NMAC - Rn, 18 NMAC 19.4.2, 9/14/00]

#### **18.19.4.3 STATUTORY AUTHORITY:**

Section 9-11-6.2 NMSA 1978.

[9/14/96; 18.19.4.3 NMAC - Rn, 18 NMAC 19.4.3, 9/14/00]

#### **18.19.4.4 DURATION:**

Permanent.

[9/14/96; 18.19.4.4 NMAC - Rn, 18 NMAC 19.4.4, 9/14/00]

**18.19.4.5 EFFECTIVE DATE:**

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 18.19.4.5 NMAC - Rn & A, 18 NMAC 19.4.5, 9/14/00]

**18.19.4.6 OBJECTIVE:**

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code.

[9/14/96; 18.19.4.6 NMAC - Rn, 18 NMAC 19.4.6, 9/14/00]

**18.19.4.7 DEFINITIONS:**

As used in 18.19.4 NMAC,

A. "appellant" means the applicant for a license which the department refuses to issue or the person to whom a license has been issued which license the department proposes to cancel or suspend;

B. "license", unmodified, means a license authorized pursuant to Sections 66-4-1, 66-4-1.1 or 66-4-2.1 NMSA 1978;

C. "licensee" means a person to whom a license has been issued for conducting a type of business described in Sections 66-4-1 or 66-4-1.1 NMSA 1978; and

D. "wrecker" means an "auto recycler" as that term is defined in Section 66-1-4.1 NMSA 1978.

[9/14/96; - Rn & A, 18 NMAC 19.4.10.1, 11/30/99; 11/30/99; 18.19.4.7 NMAC - Rn & A, 18 NMAC 19.4.7, 9/14/00; A, 9/15/06]

**18.19.4.8 APPLICATION FOR LICENSE - SURETY BONDS:**

A. Each applicant for a license shall apply to the dealer section of the motor vehicle division of the department on a form provided by the department.

B. Each application shall be accompanied by an original corporate surety bond that complies with the provisions of Section 66-4-7 NMSA 1978. The corporate surety bond must remain in effect throughout the period for which the license is issued. The



corporate surety bond must be issued in the same business name and trade name, if any, shown on the application for license.

[7/19/94, 9/14/96, 11/30/99; 18.19.4.8 NMAC - Rn & A, 18 NMAC 19.4.8.1, 9/14/00]

#### **18.19.4.9 APPLICATIONS FOR SUPPLEMENTAL LICENSE:**

Any dealer or wrecker who desires to open any additional place of business shall:

A. at least fourteen days prior to the sale of any vehicles at the additional place of business, submit an application for a supplemental license to the dealer section of the motor vehicle division of the department on a form provided by the department;

B. submit either an original rider to the dealer or wrecker's existing corporate surety bond or an original corporate surety bond in compliance with the provisions of Section 66-4-7 NMSA 1978 to cover the proposed additional place of business; photocopies or other facsimiles are not acceptable; only original documents will be considered;

C. submit proof satisfactory to the department that the dealer or wrecker has or will have exclusive control over the location of the proposed additional place of business; proof may be submitted in the form of, but is not limited to, an executed lease, an executed contract for purchase of the location or a document such as a deed or, in the case of a temporary place of business, a letter of permission from the land owner or permanent tenant; and

D. comply with Section 66-4-2B(2) NMSA 1978 and, with respect to temporary places of business, comply with 18.19.4.18 NMAC or, with respect to other places of business, provide the necessary documentation to establish that the proposed additional place of business meets the requirements of an established place of business, except that the books and records of an additional place of business need not be kept there.

[7/19/94, 9/14/96; 18.19.4.9 NMAC - Rn & A, 18 NMAC 19.4.8.2, 9/14/00; A, 10/13/00]

#### **18.19.4.10 INSPECTION OF PREMISES BY DEPARTMENT:**

A. The secretary, or the secretary's authorized representative, shall inspect each proposed new business location of a dealer or wrecker for compliance with the provisions of the Motor Vehicle Code and must approve the location before a dealer or wrecker license is issued. Inspection of each proposed new business location may be accomplished at the discretion of the secretary, or the secretary's authorized representative, by either:

- (1) a physical inspection of the proposed location, or

(2) an inspection of plans and architectural or schematic drawings or photographs.

B. The secretary, or the secretary's authorized representative, may inspect or reinspect a business location of any licensee at any time between 8:00 a.m. and 5:00 p.m., Monday through Saturday, holidays excepted, for the purpose of determining compliance with the provisions of the Motor Vehicle Code.

C. The secretary may authorize any employee of the department, any employee of the department of public safety, or any employee of the manufactured housing division of the regulation and licensing department to perform any initial or subsequent inspection.

D. Any violation found during a subsequent inspection shall be reported to the dealer section of the motor vehicle division of the department.

[7/19/94, 9/14/96, 11/30/99; 18.19.4.10 NMAC - Rn, 18 NMAC 19.4.9.1, 9/14/00]

#### **18.19.4.11 COMPLIANCE WITH LOCAL ZONING REQUIREMENTS:**

A representative of the municipality or county in which the licensee proposes a business location must certify on the inspection form that the place of business is in compliance with all local zoning requirements.

[7/19/94, 9/14/96, 11/30/99; 18.19.4.11 NMAC - Rn, 18 NMAC 19.4.9.2, 9/14/00]

#### **18.19.4.12 LICENSE TO BE DISPLAYED:**

A. A dealer or wrecker shall display the business license issued by the department in a conspicuous place at the dealer's or wrecker's established place of business at all times.

B. A dealer or wrecker shall display the supplemental business license issued by the department in a conspicuous place at the dealer's or wrecker's additional place of business at all times.

[7/19/94, 9/14/96; 18.19.4.12 NMAC - Rn, 18 NMAC 19.4.9.3, 9/14/00]

#### **18.19.4.13 SUPPLEMENTAL LICENSE REQUIREMENTS - COMPLIANCE WITH SECTION 66-4-2B(2) NMSA 1978:**

A. Any dealer or wrecker applying for a supplemental license to conduct business at a location that is not an established place of business must comply with the provisions of Paragraph (2) of Subsection B of Section 66-4-2 NMSA 1978.

B. Compliance with Section 66-4-2B(2) NMSA 1978 shall be established by providing to the department:

- (1) a copy of the letter sent to a majority of the dealers in the county of the proposed additional place of business;
- (2) verification that the letter was sent first class mail, postage prepaid, and the date of the mailing; and
- (3) a list of the dealers to whom it was sent.

C. The letter to a majority of the dealers in the county shall state, at a minimum, that the:

- (1) sale is offered at all times during which the applying dealer will be offering vehicles for sale; and
- (2) the required payment, if any, will not be greater than a fair share of the actual expenses incurred.

[7/19/94, 9/14/96; 18.19.4.13 NMAC - Rn & A, 18 NMAC 19.4.9.4, 9/14/00]

#### **18.19.4.14 APPLICATION OF CRIMINAL OFFENDER EMPLOYMENT ACT:**

A. For the purposes of Section 66-4-4 NMSA 1978, only those felonies related to the use, sale or exchange of a motor vehicle will be considered by the department for the purposes of granting, renewing, revoking or suspending a license.

B. A conviction of a corporate officer, general or limited partner or sole proprietor for a felony related to the use, sale or exchange of a motor vehicle is a disqualifying condition under Section 66-4-4 NMSA 1978.

C. The conviction of a corporate officer, general or limited partner or sole proprietor for a felony related to the use, sale or exchange of a motor vehicle subsequent to the issuance of a license by the department is a disqualifying condition under Section 66-4-4 NMSA 1978.

[7/19/94, 9/14/96, 11/30/99; 18.19.4.14 NMAC - Rn & A, 18 NMAC 19.4.11, 9/14/00]

#### **18.19.4.15 INSPECTION DURING REASONABLE BUSINESS HOURS:**

All records of a licensee required to be maintained under the provisions of Section 66-4-5 NMSA 1978 shall be available for inspection at any time between 8:00 am and 5:00 pm on any business day, exclusive of Sundays and holidays by any peace officer or by the secretary or the secretary's authorized representative.

[7/19/94, 9/14/96, 11/30/99; 18.19.4.15 NMAC - Rn & A, 18 NMAC 19.4.12, 9/14/00]

**18.19.4.16 VALID CORPORATE SURETY BOND REQUIRED AS A CONDITION OF LICENSE:**

A. The corporate surety bond required by Section 66-4-7 NMSA 1978 shall be continuous in form and must remain in effect throughout the period for which the license is issued.

B. If the corporate surety bond is allowed to lapse or is otherwise rendered ineffective or invalid, the department may demand, by certified mail or in person, that a new, original corporate surety bond be provided to the department. If the licensee does not comply within five (5) business days, the license issued by the department is deemed invalid and the department may institute proceedings to enjoin that licensee from engaging in business in New Mexico in accordance with the provisions of Section 66-4-1 NMSA 1978.

[7/19/94, 9/14/96; 18.19.4.16 NMAC - Rn & A, 18 NMAC 19.4.14.1, 9/14/00]

**18.19.4.17 SUBSTITUTION OF BOND AT REQUEST OF CORPORATE SURETY:**

Any corporate surety on any bond furnished by any licensee as required by Section 66-4-7 NMSA 1978 shall be released and discharged from any and all liability accruing on the bond after the expiration of ninety days from the date on which the corporate surety files with the department a written request to be released and discharged. Such a request shall not operate to release or discharge the corporate surety from any liability already accrued or that shall accrue before the expiration of the ninety day period, unless a new, original corporate surety bond is filed during the ninety day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such a request, the department shall promptly notify the licensee who furnished the bond that the licensee shall, on or before the expiration of the ninety day period, file with the department a new, original corporate surety bond with a surety satisfactory to the department in the amount and form required by Section 66-4-7 NMSA 1978.

[7/19/94, 9/14/96; 18.19.4.17 NMAC - Rn & A, 18 NMAC 19.4.14.2, 9/14/00]

**18.19.4.18 ADDITIONAL REQUIREMENTS FOR TEMPORARY PLACE OF BUSINESS:**

In addition to the requirements set forth in 18.19.4.9 NMAC, the following requirements must also be met when a dealer's application for a supplemental license relates to a temporary place of business:

A. the dealer provides to the motor vehicle division evidence acceptable to the department that it has made the offer required by Paragraph (2) of Subsection B of

Section 66-4-2 NMSA 1978 and is not conditioning the offer upon the payment of any fee greater than a fair share of the actual expenses; a "fair share" shall not be greater than the total allowable expenses divided by the number of participating dealers; such evidence shall include a list of all the dealers in the county, a list of those to whom the invitation has been extended and a copy of the invitation;

B. a statement signed by the appropriate official that the sale of motor vehicles at the site and all other uses of the site are in compliance with applicable zoning and planning requirements; and

C. certification by the dealer that all of the information tendered is true and correct and acknowledging that providing untrue or incomplete information could lead to a loss of the dealer's license.

[18.19.4.18 NMAC - N, 10/13/00]

**18.19.4.19-18.19.4.29 [RESERVED]**

**18.19.4.30 TIMELY RENEWAL OF ANNUAL LICENSE:**

A. The failure by a licensee to timely renew the license issued by this department may be considered reasonable cause for this department to refuse to renew the license.

B. For the purposes of 18.19.4.30 NMAC, an application for renewal, accompanied by the proper fee and the required original corporate surety bond, must be received by the department on or before the expiration of the current license to be considered timely.

[7/19/94, 9/14/96; 18.19.4.30 NMAC - Rn & A, 18 NMAC 19.4.10.2, 9/14/00]

**18.19.4.31 CANCELLATION, SUSPENSION, REVOCATION, OR REFUSAL TO GRANT OR CONTINUE A LICENSE:**

A. The department may refuse to grant a license to any person if the person does not meet the requirements of the Motor Vehicle Code, if the person is a delinquent taxpayer pursuant to Section 7-1-16 NMSA 1978 or has not filed all state tax returns the person is required to file. The person may request a hearing on the refusal.

B. The department may also cancel, suspend, revoke or refuse to continue the license of any licensee if the licensee does not meet the requirements of the Motor Vehicle Code, if the licensee is a delinquent taxpayer pursuant to Section 7-1-16 NMSA 1978 or if the person has not filed all state tax returns the person is required to file. If the department cancels, suspends, revokes or refuses to continue the license of any licensee, the license may be reinstated on a showing by the licensee that the licensee is in compliance with the requirements of the Motor Vehicle Code and, if applicable, the

person is no longer a delinquent taxpayer and has filed all required returns. [7/19/94, 9/14/96, 11/30/99; 18.19.4.31 NMAC - Rn & A, 18 NMAC 19.4.10.3, 9/14/00]

**18.19.4.32 [RESERVED]**

[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.32 NMAC - Rn, 18 NMAC 19.4.10.4, 9/14/2000; Repealed, 5/24/2022]

**18.19.4.33 [RESERVED]**

[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.33 NMAC - Rn, 18 NMAC 19.4.10.5, 9/14/2000; Repealed, 5/24/2022]

**18.19.4.34 [RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.34 NMAC - Rn, 18 NMAC 19.4.10.6, 9/14/200; Repealed, 5/24/2022]

**18.19.4.35 [RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.35 NMAC - Rn, 18 NMAC 19.4.10.7, 9/14/2000; Repealed, 5/24/2022]

**18.19.4.36 [RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.36 NMAC - Rn, 18 NMAC 19.4.10.8, 9/14/2000; Repealed, 5/24/2022]

**18.19.4.37 [RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.37 NMAC - Rn, 18 NMAC 19.4.10.9, 9/14/2000; Repealed, 5/24/2022]

**18.19.4.38 [RESERVED]**

[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.38 NMAC - Rn & A, 18 NMAC 19.4.10.10, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.39 [RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.39 NMAC - Rn, 18 NMAC 19.4.10.11, 9/14/2000; Repealed, 5/24/2022]

**18.19.4.40 [RESERVED]**

[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.40 NMAC - Rn, 18 NMAC 19.4.10.12;

9/14/2000, Repealed, 5/24/2022]

**18.19.4.41 [RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.41 NMAC - Rn, 18 NMAC 19.4.10.13, 9/14/2000; Repealed, 5/24/2022]

**18.19.4.42 [RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.42 NMAC - Rn, 18 NMAC 19.4.10.14, 9/14/2000; Repealed, 5/24/2022]

**18.19.4.43-18.19.4.49 [RESERVED]**

**18.19.4.50 ESTABLISHED PLACE OF BUSINESS - GENERAL:**

A. An established place of business must be devoted exclusively to the business for which the dealer is licensed and to any business incidental to the dealer's principal activity. Incidental business may include, but is not limited to, sales of automobile liability insurance, maintenance contracts, repairs, motor vehicle parts and after market accessories.

B. An established place of business must be located in an enclosed building on a permanent foundation that meets all local zoning requirements.

C. If a location proposed as an established place of business is to be leased, the lease shall be for a term of not less than six months. Lease provisions which allow for cancellation of the remaining lease term by either the lessor or lessee at his sole discretion shall be deemed to create a term of less than six months. Any lease which the department finds to be a sham or artificial transaction shall be deemed to create a term of less than six months.

[7/19/94, 9/14/96; 18.19.4.50 NMAC - Rn, 18 NMAC 19.4.13.1, 9/14/00]

**18.19.4.51 ESTABLISHED PLACE OF BUSINESS - COMMON AREAS OR AREAS OPEN TO THE GENERAL PUBLIC NOT QUALIFIED:**

A. An established place of business can not be located in common areas, such as at a shopping mall, or in areas open to the general public, such as parking lots for buildings not devoted exclusively to the business of the dealer. Absent clearly convincing evidence to the contrary, such location shall be presumed not to be devoted exclusively to the business for which the dealer is licensed. The burden of proof shall be on the dealer to show that the common area or other area open to the general public is physically restricted to the exclusive use of the dealership. This burden may be met by submitting evidence of physical barriers, such as walls or permanent fences, or other

means which preclude all uses of the area other than for those associated with the dealer's business.

B. If the proposed established place of business is located within a portion of a larger structure, such as a shopping mall, which also contains other types of businesses, the established place of business must be within a permanently enclosed area which forms part of the larger structure. While the established place of business may be one of the tenants in the mall, the established place of business can not be located in or on the common areas of the mall. The established place of business must meet all the other requirements of Section 66-1-4.5(B) NMSA 1978.

[7/19/94, 9/14/96; 18.19.4.51 NMAC - Rn & A, 18 NMAC 19.4.13.2, 9/14/00]

#### **18.19.4.52 ESTABLISHED PLACE OF BUSINESS - PORTION OF BUILDING NOT QUALIFIED:**

A. A portion of an enclosed building shall not qualify as an established place of business if it is within a building which houses activities other than those of the dealer, or the dealer's incidental business activity; and either:

- (1) contains equipment or records not related to the dealership, or
- (2) is not suited by size, configuration or access to human use or occupation.

B. The burden of proof shall be on the dealer to show that a portion of an enclosed building should be qualified as an established place of business.

[7/19/94, 9/14/96; 18.19.4.52 NMAC - Rn, 18 NMAC 19.4.13.3, 9/14/00]

#### **18.19.4.53 ESTABLISHED PLACE OF BUSINESS - ONE LICENSE PER LOCATION -EXCEPTION:**

A. Only one dealer, wrecker, wholesaler or distributor license may be issued to a location. If an established place of business is subdivided to accommodate more than one dealer, wrecker, wholesaler or distributor, each subdivided area must satisfy the requirements of Section 66-1-4.5(B) NMSA 1978. A location may not be subdivided for use by another person who is not a licensed dealer, wrecker, wholesaler or distributor.

B. If two or more licensed dealers, wreckers, wholesalers or distributors share a common boundary, a reasonable person must be able to identify those boundaries by means of a fence, rope or other physical barrier. The secretary, or the secretary's authorized representative, must approve the subdividing of a business location.

[7/19/94, 9/14/96; 18.19.4.53 NMAC - Rn & A, 18 NMAC 19.4.13.4, 9/14/00]



#### **18.19.4.54 ESTABLISHED PLACE OF BUSINESS - DISPLAY AND PARKING AREAS:**

A. An established place of business for a dealer must have adequate space to safely display at least one vehicle of the type sold by the dealer.

B. An established place of business for a dealer or wrecker must have adequate space for customer parking, and be in compliance with local zoning ordinances regarding required parking spaces.

[7/19/94, 9/14/96; 18.19.4.54 NMAC - Rn, 18 NMAC 19.4.13.5, 9/14/00]

#### **18.19.4.55 ESTABLISHED PLACE OF BUSINESS - MAINTENANCE AND STORAGE OF BOOKS AND RECORDS:**

An established place of business must have adequate space to accommodate customers, must be equipped with office furniture and equipment reasonably necessary for conducting the business of the dealer or wrecker and must have adequate space for maintaining and storing the books and records of the dealer or wrecker.

[7/19/94, 9/14/96; 18.19.4.55 NMAC - Rn, 18 NMAC 19.4.13.6, 9/14/00]

#### **18.19.4.56 ESTABLISHED PLACE OF BUSINESS - BOOKS AND RECORDS MUST BE AVAILABLE FOR INSPECTION:**

A dealer or wrecker must keep his vehicle inventory books, accounts and records at his established place of business and must allow the secretary, the secretary's authorized representative, or any authorized representative of a law enforcement agency to inspect the books, accounts and records at any time between 8:00 a.m. and 5:00 p.m., Monday through Saturday, holidays excepted.

[7/19/94, 9/14/96; 18.19.4.56 NMAC - Rn, 18 NMAC 19.4.13.7, 9/14/00]

#### **18.19.4.57 ESTABLISHED PLACE OF BUSINESS - PROMINENT SIGNS REQUIRED AT ESTABLISHED AND ADDITIONAL PLACES OF BUSINESS:**

A. Signage at an established place of business shall clearly identify the licensed dealer or wrecker or the trade name, if used, as listed on the business license and corporate surety bond.

B. Signage at an additional place of business shall clearly identify the licensed dealer or wrecker or the trade name, if used, as displayed at the established place of business and as listed on the business license and corporate surety bond.

[7/19/94, 9/14/96; 18.19.4.57 NMAC - Rn, 18 NMAC 19.4.13.8, 9/14/00]

## **PART 5: DRIVER'S LICENSE**

### **18.19.5.1 ISSUING AGENCY:**

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

[18.19.5.1 NMAC - Rp, 18.19.5.1 NMAC 3/14/2023]

### **18.19.5.2 SCOPE:**

Holders of and applicants for any type of New Mexico driver's license or permit; employers of individuals holding commercial driver's licenses; persons whose driving license or privilege to drive has been suspended or revoked; uninsured motorists.

[18.19.5.12 NMAC - Rp, 18.19.5.2 NMAC 3/14/2023]

### **18.19.5.3 STATUTORY AUTHORITY:**

Section 9-11-6.2 NMSA 1978.

[18.19.5.3 NMAC - Rp, 18.19.5.3 NMAC 3/14/2023]

### **18.19.5.4 DURATION:**

Permanent.

[18.19.5.4 NMAC - Rp, 18.19.5.4 NMAC 3/14/2023]

### **18.19.5.5 EFFECTIVE DATE:**

March 14, 2023, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[18.19.5.5 NMAC - Rp, 18.19.5.5 NMAC 3/14/2023]

### **18.19.5.6 OBJECTIVE:**

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code, including compliance with regulations for the REAL ID Act of 2005, Title 6 C.F.R. Chapter 1, Section 37.

[18.19.5.6 NMAC - Rp, 18.19.5.6 NMAC 3/14/2023]

### **18.19.5.7 DEFINITIONS:**

**A.** As used in regulations under the provisions of the New Mexico Commercial Driver's License Act:

**(1) "commercial driver's license"** means a license issued by a state or other jurisdiction which authorizes the holder to operate a commercial motor vehicle;

**(2) "commercial motor vehicle"** means a motor vehicle of a type used in commerce:

(a) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

(b) if the vehicle is designed to transport sixteen or more passengers, including the driver; or

(c) if the vehicle is transporting hazardous materials and is required to be placarded pursuant to applicable law;

**(3) "combination vehicle"** means a power or tractor unit with one or more semi-trailers, trailers or semi-trailers converted to trailers by means of a converter gear;

**(4) "disqualified"** means a driver who has had the qualification to drive a commercial motor vehicle removed and whose New Mexico commercial driver's license is canceled; for purposes of this definition and Section 66-5-68 NMSA 1978, "canceled" shall mean that the commercial driver's license is in "revocation" as that term is defined in Subsection B of Section 66-5-1 NMSA 1978, and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed; and

**(5) "resident"** means a person who intends to reside in New Mexico evidenced by registration to vote or other action acceptable to the motor vehicle division.

**B.** As used in Subsection C of Section 66-5-6 NMSA 1978, "healing arts practitioner" means a person licensed to practice in this state medicine, osteopathic medicine, oriental medicine, chiropractic, or similar medical services for human beings. The term also includes a person licensed to practice in this state as a certified nurse practitioner, clinical nurse specialist, physician assistant or osteopathic physician assistant.

**C.** As used in regulations under the provisions of the New Mexico Motor Vehicle Code:

**(1) "driver's license"** means any license, permit or driving authorization card issued by a state or other jurisdiction recognized under the laws of New Mexico pertaining to the authorizing of persons to operate motor vehicles and including a REAL ID-compliant driver's license and a standard driver's license;

(2) **"identification card"** means a document issued by the department or the motor vehicle administration of a state or other jurisdiction recognized under the laws of New Mexico that identifies the holder and including a REAL ID-compliant identification card and a standard identification card;

(3) **"license"** without modification means any license, permit or driving authorization card issued by a state or other jurisdiction under the laws of New Mexico pertaining to authorizing of persons to operate motor vehicles including a REAL ID-compliant driver's license and a standard driver's license;

(4) **"REAL ID-compliant driver's license"** means a license or a class of license issued by a state or other jurisdiction pertaining to the authorizing of persons to operate motor vehicles and that meets federal requirements to be accepted by federal agencies for official federal purposes;

(5) **"REAL ID-compliant identification card"** means an identification card that meets federal requirements to be accepted by federal agencies for official federal purposes;

(6) **"sex"** male, female or gender x;

(7) **"standard driver's license"** means a license or a class of license issued by a state or other jurisdiction recognized by the law of New Mexico that authorizes the holder to operate motor vehicles and is not guaranteed to be accepted for official federal purposes;

(8) **"standard identification card"** means an identification card that is not guaranteed to be accepted for official federal purposes.

[18.19.5.7 NMAC - Rp, 18.19.5.7 NMAC 3/14/2023]

#### **18.19.5.8 [RESERVED]**

#### **18.19.5.9 PRORATING OF DRIVER'S LICENSE FEES:**

**A.** The fees imposed for the issuance of a driver's license or commercial driver's license may be prorated if the licensure period is shortened pursuant to Section 66-5-19 NMSA 1978. Fees shall be prorated on an annual basis. In no case shall the fee be less than the prorated fee for one full year.

**B.** A person whose license or identification card expires on or after July 1, 2020 may apply for a license or identification card acceptable for federal purposes upon submission of all required documents. The person shall receive a new license or identification card that contains the same expiration date as the one previously issued. The person shall receive credit for the period remaining on the license or identification card toward the cost of the new license or identification card.

[18.19.5.9 NMAC - Rp, 18.19.5.9 NMAC 3/14/2023]

#### **18.19.5.10 DRIVER'S LICENSES - MEMBER OF A NATO FORCE:**

**A.** For purposes of 18.19.5.10 NMAC:

(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the north Atlantic treaty;

(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the north Atlantic treaty; and

(3) "member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

**B.** Pursuant to Article IV(a) of the north Atlantic treaty the department will accept as valid, without a written or driving test or fee, the driving permit or license or military driving permit issued by the NATO force or NATO signatory or any sub-division thereof to a member of a force.

**C.** Pursuant to Article IV(b) of the north Atlantic treaty, at the member's request the department shall issue, without a written or driving test or fee, a driver's permit or license to a member of a force who holds the driving permit or license or military driving permit issued by the NATO force or NATO signatory or any sub-division thereof.

[18.19.5.10 NMAC - Rp, 18.19.5.10 NMAC 3/14/2023]

#### **18.19.5.11 CONTRACTING DRIVER'S KNOWLEDGE AND SKILL TESTS:**

**A.** Under Subsection C of Section 66-5-14 NMSA 1978, the department is permitted to contract for certain testing of individuals applying for driver's licenses. Any contract entered into may provide that all or only some of the individuals applying for driver's licenses are to be tested by the contractor. Any contract entered into may be limited to testing at certain field offices or within certain political subdivisions or geographic areas.

**B.** Only the following persons are eligible to enter into contracts authorized under Subsection C of Section 66-5-14 NMSA 1978:

(1) public educational institutions; and

(2) commercial driving schools licensed by the department of transportation pursuant to the Driving School Licensing Act and regulations thereunder.

**C.** Any contract entered into will specify an expiration date, provided the department may terminate the contract prior to its expiration date.

[18.19.5.11 NMAC - Rp, 18.19.5.11 NMAC 3/14/2023]

**18.19.5.12 REAL ID-COMPLIANT DRIVER'S LICENSES AND IDENTIFICATION CARDS FOR UNITED STATES CITIZENS, UNITED STATES NATIONALS OR PERMANENT RESIDENT ALIENS:**

**A.** A United States citizen, United States national or permanent resident alien applying for a REAL ID compliant New Mexico driver's license or identification card, other than a commercial driver's license, must provide documentary proof of their identification number, identity, age, indication of sex, lawful status and New Mexico residency.

**B. Proof of identity and age:** To establish identity and age the applicant must present at least one of the following documents:

- (1) a valid, unexpired United States passport;
- (2) a valid, unexpired United States passport card;
- (3) a valid foreign passport with I-551 stamp;
- (4) an original or a certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place (state) of birth;
- (5) a consular report of birth abroad (CRBA) issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;
- (6) a valid, unexpired permanent resident card (form I-551) issued by the U.S. department of homeland security (DHS) or immigration and naturalization service (INS);
- (7) a certificate of naturalization issued by DHS, form N-550 or form N-570;
- (8) a certificate of citizenship, form N-560 or form N-561, issued by DHS;
- (9) a valid unexpired employment authorization document (EAD) issued by DHS, form I-766 or form I-688B, verified through the systematic alien verification for entitlement system (SAVE);
- (10) a foreign passport with unexpired U.S. visa affixed, accompanied by the approved I-94 form documenting the applicant's most recent admittance into the U.S., verified by SAVE;
- (11) REAL ID driver's license or ID card combined proof of legal presence if legal presence is temporary; or
- (12) other documents as allowed by an approved DHS exception process.

**C. Proof of Identification number:** Along with the proof of identity and age document listed above, an applicant must also present one the following documents, provided that the document bears the applicant's social security number:

- (1) a social security number (SSN) card;
- (2) a W-2 form;
- (3) a social security administration (SSA)-1099 form;
- (4) a non-SSA-1099 form; or
- (5) a pay stub with the applicant's name and social security number on it.

**D. Proof of New Mexico residency:** The applicant must present at least two of the following documents that include the individual's name and principal residence:

- (1) a current real property rental agreement or a purchase agreement;
- (2) a utility bill dates within 60 days of the application and that is not a cellular phone bill;
- (3) an insurance bill, card or binder dated within the past six months of the application;
- (4) a bank or credit card statement dated within 60 days of the application;
- (5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;
- (6) a local property tax statement from the county assessor's office of the county where the property is located;
- (7) a documentation from an educational institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;
- (8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;
- (9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;
- (10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian; or

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

**E. Indication of Sex:** An applicant must indicate their sex as either male, female or gender x.

**F. Proof of lawful status:** An applicant must present one of the documents listed in Paragraph (1) a valid unexpired US passport, Paragraph (2) a valid unexpired US passport card, Paragraph (4) an original or a certified copy of birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place (state) of birth, Paragraph (5) a consular report of birth abroad, Paragraph (6) a valid unexpired permanent resident card, or Paragraph (7) a certificate of naturalization of Subsection (B) of 18.19.5.12 NMAC.

**G. Exceptions process:** A process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity or age. Alternative documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship. Circumstances deemed "beyond the person's control" include but are not limited to: an event occurred prior to the year official documents are available from the state or territory; natural disaster circumstances; customer provides proof from the issuing agency that documents were destroyed; or non-issuance of official records.

(1) Defined exception process #1: Certified letter of enrollment or of Indian blood and affidavit of birth. If the applicant is a member of a federally- recognized Indian nation, tribe or pueblo and does not have a birth certificate because they were not born in a hospital, the motor vehicle division will accept their certified letter of enrollment or valid identification card issued by a federally recognized Indian nation, tribe or pueblo and the applicant's birth registration notification issued by the U.S. census office for the applicant's federally- recognized Indian nation, tribe or pueblo so long as the letter contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital statistics rejecting the applicant's request for a delayed birth registration. The combination of these documents provides proof of U.S. citizenship and identity.



(2) Defined exception process #2: Certified letter of enrollment or valid identification card issued by a federally recognized Indian Nation, tribe or pueblo as proof of age. If the applicant is a member of a federally- recognized Indian nation, tribe or pueblo and does not have a birth certificate to demonstrate proof of age, the applicant may use a certified letter of enrollment or valid photo-identification card issued by a federally- recognized Indian nation, tribe or pueblo as documentary proof of the applicant's age so long as the letter contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital statistics rejecting the applicant's request for a delayed birth registration.

(3) Defined exception process #3: Baptismal certificate as proof of age. If the applicant was born before December 31, 1941, the applicant may use an original baptismal record or certified copy of a baptismal record as documentary proof of the applicant's age so long as the baptismal record contains the applicant's name and date of birth or date of baptism and the applicant provides a letter from the New Mexico department of health, bureau of vital records and health statistics rejecting the applicant's request for a delayed birth registration.

(4) Defined exception process #4: Military records as proof of age. If the applicant was born before December 31, 1941, the applicant may use a certified copy of military records as documentary proof of the applicant's age so long as the record contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital records and health statistics rejecting the applicant's request for a delayed birth registration.

[18.19.5.12 NMAC - Rp, 18.19.5.12 NMAC 3/14/2023]

#### **18.19.5.13 [RESERVED]**

#### **18.19.5.14 REAL ID-COMPLIANT DRIVER'S LICENSE AND IDENTIFICATION CARDS FOR LAWFUL UNITED STATES RESIDENTS:**

**A.** A person who is legally in the United States but not a United States citizen, United States national or permanent resident alien may apply for a REAL ID compliant New Mexico driver's license, or identification card other than a commercial driver's license, and must provide documentary proof of their identification number, identity, age, indication of sex, lawful status and New Mexico residency.

**B. Proof of identity and age:** To establish identity and age, the applicant must present one of the following documents:

(1) an unexpired employment authorization document issued by U.S. department of homeland security (DHS), form I-766 or form I-688B, verified by the systematic alien verification for entitlements system (SAVE);

(2) an unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States, verified by SAVE. This document can be used to satisfy both the identity and age requirement, and proof of identification number requirement for a REAL ID compliant credential.

(3) REAL ID driver's license or identification card issued in compliance with the standards established by this part.

**C.** If the identity document submitted is a REAL ID driver's license or identification card as listed in Paragraph (3) of Subsection B of 18.19.5.14 NMAC, then to establish legal or lawful presence in the United States, the applicant must present one of the following documents issued by the U.S. federal government verified through SAVE:

(1) an unexpired immigrant or nonimmigrant visa status for admission into the United States;

(2) a pending or approved application for asylum in the United States;

(3) documentation of admission into the United States as a refugee;

(4) a pending or approved application for temporary protected status in the United States;

(5) documentation of approved deferred action status;

(6) a pending application for adjustment of status to legal permanent resident or conditional resident;

(7) conditional permanent resident alien status; or

(8) other documents as DHS may designate by notice published in the federal register.

**D. Proof of identification number:** An applicant must also present documentary evidence of their identification number from one of the following documents:

(1) if, eligible for social security number, one the following documents, provided that the document bears the applicant's social security number:

(a) a social security number (SSN) card;

(b) a W-2 form;

(c) a SSA-1099 form;

(d) a non-SSA-1099 form;

(e) a pay stub with the applicant's name and social security number on it; or.

(2) an unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States, verified by SAVE. This document can be used to satisfy both the identity and age requirement, and identification number requirement for a Real ID compliant credential.

**E. Indication of sex:** an applicant must indicate their sex as either male, female or gender x.

**F. Proof of New Mexico residency:** The applicant must present at least two of the following documents that include the individual's name and principal residence:

- (1) a current real property rental agreement or a purchase agreement;
- (2) a utility bill dates within 60 days of the application and that is not a cellular phone bill;
- (3) an insurance bill, card or binder dated within the past six months of the application;
- (4) a bank or credit card statement dated within 60 days of the application;
- (5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;
- (6) a local property tax statement from the county assessor's office of the county where the property is located;
- (7) documentation from an educational institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;
- (8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;
- (9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;
- (10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian; or

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

[18.19.5.14 NMAC - Rp, 18.19.5.14 NMAC 3/14/2023]

**18.19.5.15 STANDARD DRIVER'S LICENSE OR STANDARD IDENTIFICATION CARD THAT IS NOT ACCEPTABLE FOR FEDERAL PURPOSES:**

**A.** Applicants for a New Mexico standard license or standard identification card that is not acceptable for federal purposes must provide documentary proof of their identity, indication of sex, age and New Mexico residency.

**B. Proof of identity and age:** To establish identity and age, applicants can use one of the following documents if it contains the applicant's name and date of birth, to provide documentary proof of their identity and age. If the document does not contain the applicant's name and date of birth, two of the following documents will be required:

(1) an original or certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;

(2) a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

(3) an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;

(4) an identification card issued by a foreign consulate, such as the consulate of Mexico in El Paso, Texas, or Albuquerque, New Mexico.

(5) a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;

(6) a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;

(7) certified copy of foreign birth certificate issued by the applicant's place or birth, provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;

(8) affidavit of Indian birth;

(9) a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(10) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(11) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(12) an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

(13) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

(14) an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center identification card;

(15) a valid United States active duty/retiree/reservist military identification card (DOD ID DD-2);

(16) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;

(17) N560 certificate of citizenship if verified in SAVE;

(18) N550 certificate of naturalization if verified in SAVE;

(19) a valid permanent resident card issued by the United States government if verified in SAVE;

(20) a valid I-551 resident alien card issued since 1997 if verified in SAVE;

(21) a valid New Mexico license or identification card;

(22) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

(23) a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;

(24) a social security card;

(25) military discharge/separation papers (DD 214);

(26) selective service card;

(27) an I-94 form presented without a passport if it contains the applicant's photo;

(28) a military dependent identification card that includes the applicant's photo;

(29) a medical insurance card or documentation of medical insurance coverage or eligibility containing an insurance identification number including a Medicaid or Medicare card;

(30) a passport or passport card from the applicant's country of citizenship;

(31) a passport or passport card from the United States if verified through systematic alien verification for entitlements system (SAVE);

(32) individual tax identification number (ITIN);

(33) a medical record less than one year old that is not from a visit to an emergency room or urgent care facility;

(34) proof of eligibility for and receipt of public assistance benefits, including general assistance, temporary assistance for needy families and the supplemental nutrition assistance program with a copy of the state human services department eligibility profile page dated with the last year.

**C. Proof of New Mexico residence:** A person must present at least two of the following documents that include the individual's name and principal residence:

(1) a current real property agreement or a purchase agreement;

(2) a utility bill dated within 60 days of the application and does not include a cell phone bill;

- (3) an insurance bill, card or binder dated within the past six months of the application;
- (4) a bank or credit card statement dated within 60 days of the application;
- (5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;
- (6) a local property tax statement from the county assessor's office of the county where the property is located;
- (7) documentation from an education institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;
- (8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;
- (9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;
- (10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;
- (11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;
- (12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian;
- (13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

**D.** Applicants for a standard driver's license or standard identification card not acceptable for federal purposes who are homeless or in temporary lodging and unable to provide two of the documents identified in Subsection C of 18.19.5.15 NMAC may provide an affidavit or a notarized letter from a representative of a New Mexico governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house attesting to the address where the applicant resides or receives services in lieu of the documents required in Subsection C of 18.19.5.15 NMAC.

**E. Indication of sex:** an applicant must indicate their sex as either male, female or gender x.

[18.19.5.15 NMAC - Rp, 18.19.5.15 NMAC 3/14/2023]

**18.19.5.16-18.19.5.29 [RESERVED]**

**18.19.5.30 DRIVER LICENSE CLASSIFICATIONS:**

**A.** Driver's licenses, other than licenses issued under the New Mexico Commercial Driver's License Act, shall be issued under the following classifications:

Class — Vehicles Licensee Authorized to Drive

**D Until October 1, 1996:** Other than any vehicle included in class C, any single vehicle less than 26,001 pounds gross vehicle weight, and such vehicles towing vehicles weighing:

(1) not more than 10,000 pounds gross vehicle weight, provided that the towing vehicle is of equal or greater weight than the vehicle being towed; or

(2) more than 10,000 pounds gross vehicle weight provided that either the towing vehicle is of equal or greater weight than the vehicle being towed or, if the towing vehicle is of lesser weight than the towed vehicle, the weight in the towed vehicle does not exceed the manufacturer's rated capacity and:

(a) the towing vehicle has either a class 4 or higher equalizing hitch or a fifth wheel;

(b) the vehicle being towed is a trailer; or

(c) the vehicle combination properly displays slow-moving insignia and moves at speeds of 25 mph or less.

**On and after October 1, 1996:** Other than any vehicle included in class C, any single vehicle less than 26,001 pounds gross vehicle weight, and such vehicles towing vehicles provided that:

(1) the towing vehicle is of equal or greater weight than the vehicle being towed; or

(2) if the towing vehicle is of lesser weight than the towed vehicle, the weight in the towed vehicle does not exceed the manufacturer's rated capacity and:

(a) the towing vehicle has either a class 4 or higher equalizing hitch or a fifth wheel;



(b) the vehicle being towed is a trailer; or

(c) the vehicle combination properly displays slow-moving insignia and moves at speeds of 25 mph or less.

In order to operate a motorcycle a driver must have a motorcycle endorsement.

E Any vehicle or combination of vehicles described in 18.19.5.112 NMAC (vehicle drivers excluded from the requirement to hold a commercial driver's license) and any class D vehicle. In order to operate a motorcycle a driver must have a motorcycle endorsement.

M Two- or three-wheeled motorcycles. This classification of license must have an endorsement of "Z", "Y" or "W" to be valid. This class of license is issued to drivers who drive only a motorcycle vehicle.

**B.** New Mexico driver's licenses classes 1 through 5 issued under the former classification system remain valid until expiration, replacement with a class A, B, C, D, E or M driver's license or revocation or cancellation under the provisions of the Motor Vehicle Code.

**C.** A class E license will be issued only to individuals who are exempt from the requirements of the New Mexico Commercial Driver's License Act.

[18.19.5.30 NMAC - Rp, 18.19.5.30 NMAC 3/14/2023]

#### **18.19.5.31 DRIVER LICENSE ENDORSEMENTS:**

Driver's licenses, other than licenses issued under the New Mexico Commercial Driver's License Act, may be issued with one of the following endorsements:

<u>Endorsement</u>	<u>Authorizes Licensee to Operate</u>
Z	Any two- or three-wheeled motorcycle with an engine of less than 50 cubic centimeters piston displacement.
Y	Any two- or three-wheeled motorcycle with an engine of at least 50 but less than 100 cubic centimeters piston displacement.
W	Any two- or three-wheeled motorcycle with an engine of 100 or more cubic centimeters piston displacement.

[18.19.5.31 NMAC - Rp, 18.19.5.31 NMAC 3/14/2023]

#### **18.19.5.32 DRIVER LICENSE RESTRICTIONS:**

Driver's licenses, other than licenses issued under the New Mexico Commercial Driver's License Act, may be issued with one or more of the following restrictions:

<u>Restriction Code</u>	<u>Restriction</u>
-------------------------	--------------------

B	Driver must wear corrective lenses while driving.
C	Driver limited to vehicles equipped with suitable mechanical aids such as special brakes, hand controls or other adaptive devices.
D	Driver must use prosthetic aids (other than corrective lenses) while driving, except as otherwise provided in Subsection C of 18.19.5.33 NMAC.
E	Driver limited to vehicles with automatic transmissions.
F	Driver limited to vehicles with outside mirrors.
G	Driver limited to driving a vehicle during daylight hours only.
H	Driver limited to driving a vehicle for employment reasons only.
I	Limited - other.

[18.19.5.32 NMAC - Rp, 18.19.5.32 NMAC 3/14/2023]

### **18.19.5.33 RESTRICTED LICENSE - INTRASTATE COMMERCIAL DRIVING:**

**A.** A restricted license in Class A, B or C may be issued to an applicant who does not meet the medical requirements for a license issued under the New Mexico Commercial Driver's License Act if the applicant applies for and is granted a waiver pursuant to 18.19.5.33 NMAC.

**B.** A restricted license pursuant to 18.19.5.33 NMAC authorizes a driver to operate a commercial motor vehicle only within New Mexico. Any restricted license issued pursuant to 18.19.5.33 NMAC will be issued for a reduced period of time.

**C.** Waivers may be granted only for one or more of the following diseases or conditions:

(1) diabetes mellitus or other metabolic disorders provided that:

(a) in the case of diabetes mellitus, the disease is stabilized with no episodes of ketosis or altered consciousness for one year and the medication and dosage has not changed within that year; and

(b) in the case of other metabolic disorders, the condition has stabilized under treatment with minimal symptoms which do not affect driving;

(2) cardiovascular disorders:

(a) general heart disease, provided that the condition is AHA Class I with no symptoms;

(b) arrhythmia, provided that the arrhythmia is stabilized with a pace maker for at least six months and the pace maker is certified for a minimum of one year beyond the six-month stability period;

(c) myocardial infarct or surgical treatment for myocardial infarct, provided that at least one year has elapsed since the incident and no symptoms have appeared; and

(d) hypertension, provided that the condition is controlled by medication;

(3) pulmonary disorders, provided that the applicant exhibits symptoms only with greater than ordinary activity and uses steroids no more than intermittently such that FVC and FEV1 is greater than seventy percent of the predicted normal;

(4) neurologic disorders, provided that the degree of impairment does not prevent the applicant from controlling equipment, driving, walking, lifting or carrying light loads;

(5) epilepsy and other episodic disorders, provided that the applicant is free of any seizures or episodes for at least six months and either is not under medication or is taking medication without side effects;

(6) visual acuity limitations, provided that the condition is correctable to at least 20/40 in one eye with at least 70 degrees in the horizontal meridian; or

(7) loss of limb or appendage which occurred as a result of genetic disorder, birth defect, accident or surgical procedure, provided that a currently-licensed medical doctor attests that the impairment does not prevent the applicant from controlling equipment, walking, driving, or lifting or carrying light loads; the doctor's statement must specify whether or not prosthetic or other adaptive devices are required to allow the applicant to control equipment, walk, drive or lift or carry light loads; if prosthetic devices are not required, the waiver may also permit the applicant to operate commercial vehicles of the type applied for without use of prostheses.

**D.** The waiver and restricted license provided by 18.19.5.33 NMAC may be applied for by having a licensed medical doctor complete the appropriate medical form and mailing or delivering it, together with the application for the waiver, to the director, motor vehicle division.

**E.** The application for waiver will be referred to the medical review board for its recommendation of approval or disapproval. The director, motor vehicle division, shall decide whether to grant or deny the waiver, taking cognizance of the board's recommendation and any other relevant evidence.

**F.** Any applicant not satisfied with the decision of the director may request an informal hearing. The request and the conduct of the hearing will be as set forth in 18.19.5.56 NMAC.

**G.** By accepting issuance of a restricted commercial driver's license pursuant to 18.19.5.33 NMAC, the licensee agrees to notify, in accordance with Section 66-5-15.1

NMSA 1978, the motor vehicle division of any change in the licensee's physical or mental condition which would impair the licensee's ability to operate a commercial motor vehicle. Failure to so notify the motor vehicle division cancels the restricted commercial driver's license.

**H.** A waiver and the restricted commercial driver's license issued based upon the waiver may be granted for a period of no more than one year. The holder of a restricted commercial driver's license who so wishes may apply for another waiver and restricted commercial driver's license, to be valid for a period not to exceed one year following the expiration of the current waiver and restricted license, at any time within the three months immediately prior to the expiration of the current waiver and restricted license.

**I.** Any waiver granted pursuant to 18.19.5.33 NMAC and any restricted commercial driver's license issued on the basis of that waiver is canceled when any of the conditions under which the waiver was issued no longer exists. Upon occurrence of an event or condition which cancels the restricted commercial driver's license, the licensee must surrender the restricted commercial driver's license to the motor vehicle division and, if employed as a driver of commercial motor vehicles, notify the licensee's employer. A driver whose waiver has terminated may re-apply for a waiver when the conditions set forth in 18.19.5.33 NMAC are met.

[18.19.5.33 NMAC - Rp, 18.19.5.33 NMAC 3/14/2023]

#### **18.19.5.34 SHORTENING OF LICENSURE PERIOD:**

**A.** The division, whenever good cause appears, may issue a restricted license that has a shortened licensure period pursuant to Section 66-5-19 NMSA 1978. The licensure period for a restricted license may be shortened to a period of less than one year depending on the nature of the restriction.

**B.** Example: Y, who has been issued a New Mexico driver's license, has had a seizure and has informed the motor vehicle division. In order to remain validly licensed in New Mexico, Y must first submit to the division a statement from a licensed physician or licensed osteopathic physician, on the appropriate medical form supplied by the division, attesting that Y has been free of any seizures or episodes for at least six months and either is not under medication or is taking medication without side effects.

[18.19.5.34 NMAC - Rp, 18.19.5.34 NMAC 3/14/2023]

#### **18.19.5.35-18.19.5.49 [RESERVED]**

#### **18.19.5.50 POINT SYSTEM - PURPOSE - DEFINITIONS:**

**A.** Section 66-5-30 NMSA 1978 authorizes the department to suspend the driver's license of an individual who has been convicted of violations of the traffic laws with such frequency as to show disrespect for those laws or has been found to be an habitually

reckless or negligent driver of a motor vehicle. To provide a reasonable, objective and fair method by which the department may determine whether an individual shows disrespect for the traffic laws of this state through frequency of conviction for violations or is habitually reckless or negligent and to promote the public safety by removing such drivers from the roads, the department establishes a "point system" with 18.19.5.50 through 18.19.5.56 NMAC. This point system continues the point system in effect prior to July 1, 1992.

B. For the purposes of 18.19.5.50 through 18.19.5.56 NMAC, "conviction" means an adjudication of guilt including a finding of guilty by a court, a plea of guilty entered by the court, a plea of nolo contendere accepted by the court, a plea of guilty pursuant to a penalty assessment misdemeanor (Sections 66-8-116 through 66-8-119 NMSA 1978 or the forfeiture of bail or other collateral deposited to secure the violator's appearance in court; "conviction" also includes a conviction for a traffic violation in any other state, territory or possession of the United States, the District of Columbia and any province of the Dominion of Canada so long as the conviction in that jurisdiction is for a violation of a traffic law for which points would be assessed if the conviction were for a violation of the traffic laws of this state. "Conviction" does not include the imposition of sentence.

C. For the purposes of 18.19.5.50 through 18.19.5.56 NMAC, "driver" means an individual who operates a motor vehicle upon the traffic-ways of this state whether or not that individual holds a valid driver's license issued either by this state under the provisions of the Motor Vehicle Code or by another jurisdiction under the laws of that jurisdiction.

D. For the purposes of 18.19.5.50 through 18.19.5.56 NMAC, "traffic-way" means a public highway or any other place, such as a parking lot, which is open for driving of motor vehicles by members of the general public and which is subject to the traffic control regulation of the state or a political subdivision of the state.

[18.19.5.50 NMAC - Rp, 18.19.5.50 NMAC 3/14/2023]

#### **18.19.5.51 POINT SYSTEM - ASSESSMENT AND EXPUNGING OF POINTS FOR VIOLATIONS OF TRAFFIC LAWS:**

A. Violations for which points shall be assessed are either violations pursuant to the traffic laws of this state or violations of the traffic laws of other jurisdictions for which points would be assessed if the violation had occurred in New Mexico. Points shall be assessed by the department in accordance with the schedule in 18.19.5.52 NMAC following conviction for any scheduled traffic law violation or the equivalent violation in the other jurisdiction if the violation occurred in another jurisdiction. Notification of a conviction of a traffic violation subject to the assessment of points shall be forwarded to the department by the convicting court. Points shall be assessed regardless of whether the violation occurred on a state, county or municipal road or on another traffic-way. The department shall keep a record of points assessed for a period of one year from the date the violation occurred.

**B.** Points assessed to a driver will be expunged by the department automatically at the end of the twelfth month following the month in which the violation for which the points were assessed occurred.

[18.19.5.51 NMAC - Rp, 18.19.5.51 NMAC 3/14/2023]

#### **18.19.5.52 POINT SYSTEM - SCHEDULE OF POINTS FOR VIOLATIONS:**

**A.** Points to be assessed for conviction of violations on or after October 1, 1996 of provisions of the Motor Vehicle Code are scheduled in Subsections B through G below.

**B.** Eight (8) points for violation of the following section:

- |          |  |
|----------|--|
| 66-7-301 | Speeding 26 or more mph over the posted speed limit on any traffic-way if the limit is 15, 30 or 75 mph  |
| 66-7-301 | Speeding 26 or more mph over the posted speed limit on any traffic-way if the limit is other than 15, 30 or 75 mph and the speed was at least 76 mph |

**C.** Six (6) points for violations of the following sections:

- |          |  |
|----------|--|
| 66-7-347 | Passing school bus taking on or discharging passengers or displaying warning not to pass |
| 66-8-113 | Reckless driving   |
| 66-8-115 | Contest racing on public traffic-way   |

**D.** Five (5) points for violation of the following section:

- |          |  |
|----------|--|
| 66-7-301 | Speeding 16 to 25 mph over the posted speed limit on any traffic-way if the limit is 15, 30 or 75 mph  |
| 66-7-301 | Speeding 16 to 25 mph over the posted speed limit on any traffic-way if the limit is other than 15, 30 or 75 mph and the speed was at least 76 mph |

**E.** Four (4) points for violations of the following section:

- |          |  |
|----------|--|
| 66-7-332 | Failure to yield right of way to an authorized emergency vehicle |
|----------|--|

**F.** Three (3) points for violations of the following sections:

(1) CARELESSNESS

- |          |                  |
|----------|------------------|
| 66-8-114 | Careless Driving |
|----------|------------------|

(2) FAILURE TO YIELD/OBEY TRAFFIC CONTROL DEVICES

66-7-104	Failure to obey traffic instructions stated on traffic sign or shown by traffic control device
66-7-328	Failure to yield right of way in a manner required at unsigned intersection
66-7-329	Vehicles turning left at intersection
66-7-330	Failure to yield right of way at yield sign, after stop sign or when emerging from private traffic-way
66-7-331	Failure to yield right of way at yield sign, after stop sign or when emerging from private traffic-way
66-7-341	Failure to obey traffic instructions stated on traffic sign or shown by traffic control device
66-7-342	Failure to obey traffic instructions stated on traffic sign or shown by traffic control device
66-7-343	Certain vehicles must stop at railroad grade crossings
66-7-346	Failure to yield right of way at yield sign, after stop sign or when emerging from private traffic-way

(3) FOLLOWING/BACKING

66-7-318	Following too closely
66-7-354	Improper backing

(4) TURNING MOVEMENTS/LANE POSITION

66-7-322	Making improper turn
66-7-323	Making improper turn

(5) PASSING/LEFT OF CENTER

66-7-308	Failure to drive on right side of roadway when required
66-7-309	Passing vehicles proceeding in opposite directions
66-7-310	Improper overtaking or passing of a vehicle
66-7-311	Improper overtaking or passing of a vehicle
66-7-312	Passing with insufficient distance allowed for other vehicles or with inadequate visibility
66-7-313	Driving to the left of center of roadway when prohibited
66-7-315	Passing where prohibited by posted signs or pavement markings

(6) SPEEDING

66-7-301	Speeding 6 to 15 mph over the posted speed limit on any traffic-way if the limit is 15, 30 or 75 mph
66-7-301	Speeding 6 to 15 mph over the posted speed limit on any traffic-way if the limit is other than 15, 30 or 75 mph and the speed is at least 76 mph

**G.** Two (2) points for violations of the following sections:

66-3-801	Operating with any defective equipment resulting in inability to control vehicle movement properly
66-3-840	Operating with defective brakes
66-3-901	Operating with any defective equipment resulting in inability to control vehicle movement properly
66-7-325	Failure to signal intention to change vehicle direction or to reduce speed suddenly
66-7-326	Giving wrong signal
66-7-357	Overloading vehicle with passengers or cargo
66-7-369	Failure to restrain child passenger properly
66-7-372	Failure to use seatbelt properly

[18.19.5.52 NMAC - Rp, 18.19.5.52 NMAC 3/14/2023]

**18.19.5.53 POINT SYSTEM - WARNING AT 6 POINTS:**

Upon the accumulation by the driver of at least six points, the department may warn the driver of the possibility of suspension of the driver's license.

[18.19.5.53 NMAC - Rp, 18.19.5.53 NMAC 3/14/2023]

**18.19.5.54 POINT SYSTEM - SUSPENSION OF DRIVER'S LICENSE AT 7 TO 10 POINTS:**

If a driver has been assessed from seven to ten points for violations occurring within a period of one year and the department receives a recommendation from a municipal or magistrate judge that the driver's license be suspended for a period not to exceed three months, the department shall automatically suspend the license for the period recommended by the municipal or magistrate judge up to a period of three months. If the judge does not specify the recommended length of the period of suspension, the department will presume that the recommendation is for a period of three months. The department shall notify the driver of the fact of the suspension of the driver's license and of the beginning and ending dates of the suspension.

[18.19.5.54 NMAC - Rp, 18.19.5.54 NMAC 3/14/2023]

**18.19.5.55 POINT SYSTEM - SUSPENSION AT 12 POINTS:**

Upon the assessment of points to a driver which causes the total points accumulated by that driver to equal or exceed twelve points for violations occurring within a period of twelve consecutive months, the department shall suspend the driver's license for a period of twelve months. The department shall notify the driver of the fact of the suspension of the driver's license under 18.19.5.55 NMAC, the beginning date of the suspension and the driver's right to a hearing under the provisions of Subsection B of



Section 66-5-30 NMSA 1978. The driver shall surrender the driver's license to the department immediately upon receiving notice of the suspension unless the driver requests a hearing under the provisions of Subsection B of Section 66-5-30 NMSA 1978, in which case the license shall be surrendered immediately upon a final decision adverse to the driver.

[18.19.5.55 NMAC - Rp, 18.19.5.55 NMAC 3/14/2023]

#### **18.19.5.56 POINT SYSTEM - HEARINGS:**

**A.** Any hearing conducted pursuant to Subsection B of Section 66-5-30 NMSA 1978 shall be conducted before the director of the motor vehicle division or a person designated by the director. The officer conducting the hearing may postpone or continue the hearing on the officer's own motion or upon application from the driver for good cause shown.

**B.** At the beginning of the hearing, the officer conducting the hearing shall inform the driver of the driver's right to representation. In such hearings, the technical rules of evidence shall not apply but, in ruling on the admissibility of evidence, the officer conducting the hearing may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt. The rules of civil procedure for the district courts shall not apply but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the officer conducting the hearing shall hear arguments, entertain and dispose of motions, require written expositions of the case as circumstances justify and render a decision in accordance with the law and the evidence presented and admitted.

**C.** The officer conducting the hearing shall make and preserve a complete record of the proceedings. The officer conducting the hearing may announce the decision at the conclusion of the hearing or may take the matter under advisement but shall, in either case, within 20 days inform the driver in writing of the decision and, if the decision is unfavorable to the driver, of the driver's right to and requirements for review of the matter by the courts.

**D.** Failure of the driver to appear without good cause at the hearing is grounds for an adverse decision.

[18.19.5.56NMAC - Rp, 18.19.5.56 NMAC 3/14/2023]

#### **18.19.5.57 REINSTATEMENT OF SUSPENDED LICENSE - CONDITIONS:**

The department shall not reinstate a driver's license to any person whose license has been suspended under the provisions of 18.19.5.55 NMAC unless the conditions specified in 18.19.5.57 NMAC are met.

**A.** That person presents proof satisfactory to the department showing successful completion in a timely manner by that person of an approved driver improvement course. The course must be approved by the traffic safety bureau of the state highway and transportation department. Completion of the course must have occurred within 90 days immediately preceding the application for reinstatement of the license.

**B.** The driver must also successfully complete the written driver's examination and the vision examination which are administered by the department prior to the reinstatement of the driver's license.

[18.19.5.57 NMAC - Rp, 18.19.5.57 NMAC 3/14/2023]

**18.19.5.58-18.19.5.69 [RESERVED]**

**18.19.5.70 LIMITED DRIVER'S LICENSE - PURPOSE - CRITERIA:**

**A.** The director of the motor vehicle division may grant a limited driver's license so that an individual whose driving privileges have been suspended or revoked may obtain or continue to hold employment or to attend school, except in the instances specifically enumerated in Subsection A of Section 66-5-35 NMSA 1978.

**B.** A limited driver's license is the granting of a privilege to operate a motor vehicle upon the highways of this state but only during certain hours of the day. Unless evidence demonstrates that the limitation is unreasonable for a particular applicant, the general privilege is limited to days in which the applicant works or attends school. Each day the applicant works or attends school, the applicant's driving is limited to a period starting one hour before the applicant's time of beginning work or attending school and terminating one hour after the applicant's time of ending work or attending school. Limited licenses will not be issued for commercial driver's licenses. Limited licenses are available only for class D, E and M licenses.

**C.** With respect to driver's licenses suspended or revoked on or after July 1, 1999, all of the following criteria must be met by an applicant for a limited license.

(1) The suspension or revocation of the applicant's general driver's license must not have been a result of:

(a) a revocation for the fourth or subsequent time pursuant to Subsection C of Section 66-8-111 NMSA 1978 or any revocation pursuant to Subsection B of Section 66-8-111 NMSA 1978;

(b) a conviction for committing great bodily harm by vehicle or great bodily injury by vehicle;

(c) a court order resulting from a finding of delinquency, pursuant to the Children's Code;

(d) a failure to appear in court or to pay a penalty assessment; or

(e) non-payment of a judgment or default in payment under a settlement agreement resulting from a motor vehicle accident.

(2) The applicant must be self-employed, gainfully employed by another or enrolled in school.

(a) If the applicant is or will be employed by another person, that current or prospective employer must certify in writing the applicant's employment and the certification must include:

(i) a description of the days and hours during which the applicant is working or will work each week;

(ii) a brief description of the applicant's work duties;

(iii) the specific duties of the applicant which require the operation of a motor vehicle on the job; and

(iv) a brief explanation of how, if at all, the lack of a driver's license would adversely affect the applicant's ability to hold or secure gainful employment with the employer.

(b) If self-employed, the applicant must certify in writing the self-employment and the certification must include:

(i) a description of the days and hours during which the applicant works each week;

(ii) a brief description of the applicant's business or professional activity;

(iii) the number, if any, of the applicant's employees; and

(iv) a brief explanation of why the employees, if any, could not perform all of the motor vehicle operations required by the applicant's business or professional activity.

(c) For the purposes of 18.19.5.70 NMAC, "school" includes any school, institute, college or university, whether public or private, offering courses of instruction to the public. If the applicant is attending school, the school must certify in writing the applicant's attendance and the certification must include:

(i) a description of the days and hours the applicant is required to attend;

(ii) a brief description of the program or course(s) the applicant is taking, the expected date of completion and whether the applicant is meeting program requirements; and

(iii) a brief explanation of how, if at all, the lack of a driver's license would adversely affect the applicant's ability to complete the course of instruction.

(3) The applicant must meet the requirements of the Mandatory Financial Responsibility Act. If the applicant meets the requirements through automobile insurance, the automobile insurance policy must identify the applicant as the insured and must be maintained for the term of any limited driver's license or permit granted.

(4) The applicant must take and pass any examination required for the class of license applied for.

(5) The applicant must agree to notify the motor vehicle division of any change in the applicant's circumstances affecting the limited license, including change in employment or enrollment, change in employment or enrollment status, a failure to meet the requirements of the Mandatory Financial Responsibility Act or any other circumstance required by the director. In addition, an applicant who is required to have an ignition interlock on each vehicle the applicant drives must also agree to inform the motor vehicle division whenever the applicant is permitted to drive additional vehicles.

(6) The applicant pays any required fee for the limited license.

(7) Applicants whose driver's license was revoked for a first, second or third time pursuant to Subsection C of Section 66-8-111 NMSA 1978 of the Implied Consent Act or was revoked as a result of a second or third conviction for driving under the influence of intoxicating liquor or drugs may not be granted a limited license until at least thirty days after the date of revocation. Such applicants must furnish documentation of:

(a) enrollment in an approved DWI school: proof that the applicant enrolled in an approved DWI school subsequent to the applicant's latest conviction for violation of the Implied Consent Act and completed the course prior to application for a limited license meets this requirement; and

(b) enrollment in an approved alcohol screening program: proof that the applicant enrolled in an alcohol screening program subsequent to the applicant's latest conviction for violation of the Implied Consent Act and completed the program prior to application for a limited license meets this requirement.

(8) An applicant whose driver's license was revoked pursuant to Paragraph (3) of Subsection C of Section 66-8-111 NMSA 1978 of the Implied Consent Act shall provide proof that an ignition interlock is installed and operated according to the rules of the traffic safety bureau on every vehicle the applicant is to operate. The applicant must

provide a list of vehicles to be operated by the applicant and proof that an approved and functioning ignition interlock is installed on each listed vehicle.

(9) An applicant whose driver's license was revoked as a result of a second or third conviction of driving under the influence of intoxicating liquor or drugs shall provide a copy of his judgment and sentence, which must attest that the applicant shall provide proof that each motor vehicle to be operated by the applicant is equipped with an ignition interlock of a type approved by the traffic safety bureau, and shall provide proof that an ignition interlock is installed and operated according to the rules of the traffic safety bureau on every vehicle the applicant is to operate. The applicant must provide a list of vehicles to be operated by the applicant and proof that an approved and functioning ignition interlock is installed on each listed vehicle.

**D.** Failure at any time during the period for which the limited license is granted to meet a requirement specified in 18.19.5.72 NMAC that is to be met during the entire period for which the limited license is granted is cause for revocation of the limited license.

[18.19.5.70 NMAC - Rp, 18.19.5.70 NMAC 3/14/2023]

#### **18.19.5.71 LIMITED DRIVER'S LICENSE - APPLICATION - HEARING:**

**A.** Applications for a limited driver's license are to be submitted to the director of the motor vehicle division for consideration. Upon receipt of the application, the director will determine whether the applicant is eligible to apply for a limited license, based on the reason for the suspension or revocation of the applicant's driving privileges and the requirements of 18.19.5.70 NMAC, and either grant or deny the application. If the application is denied, the department shall schedule a hearing in the applicant's county of residence, unless the applicant and the department agree to hold the hearing at another place.

**B. [RESERVED]**

**C. [RESERVED]**

**D. [RESERVED]**

**E. [RESERVED]**

**F.** The hearing will be conducted by a hearing officer designated by the department. During the hearing, the technical rules of evidence will not apply but the hearing shall be conducted in a manner which allows the applicant ample opportunity to present arguments and evidence in support of the request for a limited driver's license. The applicant's driver history will be part of the evidence introduced and considered.

**G.** At the conclusion of the hearing, the designated hearing officer shall review the evidence presented and either grant or deny the application for a limited driver's license. A written order shall be entered embodying the decision.

**H.** Any limited driver's license shall be in standard form approved by the director whether it is issued for employment or school attendance. It is also subject to the condition that the licensee must inform the motor vehicle division immediately of any change in the licensee's circumstances affecting the issuance of the license, including any change in employment, employment status or enrollment status.

**I.** The application and related documentation shall be retained by the department as part of the applicant's driver history.

**J.** A limited license issued under Section 66-5-35 NMSA 1978 may be suspended or revoked as any other driver's license or for any violation of the conditions to which the limited license is subject.

[18.19.5.71 NMAC - Rp, 18.19.5.71 NMAC 3/14/2023]

**18.19.5.72 APPROVED DWI SCHOOL AND APPROVED ALCOHOL SCREENING PROGRAM:**

**A.** An approved DWI school is any DWI school approved by the traffic safety bureau of the state highway and transportation department.

**B.** An approved alcohol screening program is any alcohol screening program certified by the traffic safety bureau of the state highway and transportation department as having been approved by any court, as provided for in Section 66-8-102(H) NMSA 1978.

[18.19.5.72 NMAC - Rp, 18.19.5.72 NMAC 3/14/2023]

**18.19.5.73-18.19.5.99 [RESERVED]**

**18.19.5.100 COMMERCIAL DRIVER'S LICENSE - THIRD PARTY SKILLS TESTING:**

**A.** The department may enter into contracts with public agencies or private entities to administer the skills tests required by Section 66-5-60 NMSA 1978. Any such contract shall specify the area of the state for which the contractor is to provide the testing service, the frequency of the test offerings, the community locations where testing will be offered and a time schedule when testing will be conducted in each location. The contractor shall be fully responsible for all equipment and the state of New Mexico shall have no liability for such equipment owned, rented or otherwise used by the contractor.

B. The contractor is authorized to charge a fee, as determined in the contract with the department, for the administration of each skill test.

[18.19.5.100 NMAC - Rp, 18.19.5.100 NMAC 3/14/2023]

**18.19.5.101 COMMERCIAL DRIVER'S LICENSE - NOTIFICATION BY DRIVER:**

A. Any driver who holds a class A, B or C driver's license issued by the department and who is convicted of a violation of a state law or local ordinance relating to motor vehicle traffic control, other than parking violations, shall notify the motor vehicle division by sending a letter, postmarked within thirty days of conviction, setting out the following:

- (1) name of licensee;
- (2) licensee's New Mexico driver's license number;
- (3) date of violation;
- (4) date of conviction;
- (5) offense for which convicted;
- (6) state in which violation occurred;
- (7) court in which convicted; and
- (8) whether or not a fine was paid.

B. The letter must be sent to driver services bureau, motor vehicle division, P. O. Box 1028, Santa Fe, N.M. 87504-1028.

[18.19.5.101 NMAC - Rp, 18.19.5.101 NMAC 3/14/2023]

**18.19.5.102 COMMERCIAL DRIVER'S LICENSE - DISQUALIFICATION FOR VIOLATION OF OUT-OF-SERVICE ORDER:**

As used in Section 66-5-71 NMSA 1978, "first violation" means the first violation within the ten-year period ending on the date of the driver's conviction of violating an out-of-service order.

[18.19.5.102 NMAC - Rp, 18.19.5.102 NMAC 3/14/2023]

**18.19.5.103 COMMERCIAL DRIVER'S LICENSE - DISQUALIFICATION PURSUANT TO PARENTAL RESPONSIBILITY ACT - GENERAL - REINSTATEMENT SURCHARGE:**

**A.** The terms "suspension" or "revocation" as used in the Parental Responsibility Act (Laws 1995, Chapter 25) are equivalent to "disqualification" as that term is used in the New Mexico Commercial Driver's License Act.

**B.** A disqualification pursuant to the Parental Responsibility Act will be entered by the human services department. In accordance with Section 66-5-30 NMSA 1978, the taxation and revenue department will issue a notice to the driver. The driver may request a hearing on the disqualification in accordance with 18.19.5.104 NMAC.

**C.** Unless reinstatement is required as a result of a hearing, a disqualification pursuant to the Parental Responsibility Act will continue until:

(1) the human services department issues a written certificate of compliance to the driver;

(2) the driver presents the certificate of compliance to the motor vehicle division; and;

(3) the driver pays motor vehicle division both the reinstatement fee required by Section 66-5-33.1 NMSA 1978 and the reinstatement surcharge.

**D.** Under the authority granted by Section 40-5A-12 NMSA 1978, a reinstatement surcharge of twenty-five dollars (\$25.00) is imposed on reinstatement of a commercial driver's license that had been disqualified pursuant to the Parental Responsibility Act. The surcharge is to cover the costs of implementing and administering the Parental Responsibility Act.

**E.** This regulation is applicable to disqualifications by the human services department under the Parental Responsibility Act on or after August 1, 1995.

[18.19.5.103 NMAC - Rp, 18.19.5.103 NMAC 3/14/2023]

#### **18.19.5.104 [RESERVED]**

[18.19.5.104 NMAC - Rp, 18.19.5.104 NMAC 3/14/2023]

#### **18.19.5.105 [RESERVED]**

[18.19.5.105 NMAC - Rp, 18.19.5.105 NMAC 3/14/2023]

### **18.19.5.106 COMMERCIAL DRIVER'S LICENSE - REDUCTION OF LIFETIME DISQUALIFICATION - GUIDELINES:**

**A.** A driver who has been disqualified for life under Subsection C of Section 66-5-68 NMSA 1978 may apply to the department to have the disqualification period reduced to



a period of not less than ten years after meeting the following guidelines and submitting a letter requesting a review of the disqualification when that driver:

(1) Received a lifetime disqualification resulting from two convictions for driving under the influence of alcohol, or two convictions for driving under the influence of a controlled substance, or a combination of one conviction for driving under the influence of alcohol and one conviction for driving under the influence of a controlled substance. The driver may apply to the department for a review of a lifetime disqualification from driving a commercial motor vehicle when the driver has:

(a) Successfully completed a (licensed) alcohol rehabilitation program if the disqualification is a result of two convictions for driving under the influence of alcohol; or

(b) Successfully completed a (certified) drug rehabilitation program if the disqualification is a result of two convictions for driving under the influence of a controlled substance; or

(c) Successfully completed a (licensed) program in alcohol rehabilitation and a separate (certified) program in drug rehabilitation if the disqualification is a result of one conviction for driving under the influence of alcohol and one conviction for driving under the influence of a controlled substance.

(2) Provides information, satisfactory to the department, that the driver has not abused the use of alcohol or a controlled substance for a period of at least five consecutive years immediately prior to the application for review.

(3) Has held a valid class D license for at least five consecutive years immediately prior to the date of the application for review, and during that time the driver's record has no convictions for moving violations and no convictions for any offense relating to the use of alcohol or any controlled substance.

**B.** Lifetime disqualifications which were imposed because of convictions resulting from:

(1) Leaving the scene of an accident involving a commercial vehicle; or

(2) Using a commercial motor vehicle in the commission of a felony; or

(3) A combination of A and B above, may apply to the department for a review of a lifetime disqualification from driving a commercial motor vehicle when the driver has held a valid class D license for at least five consecutive years immediately prior to the date of the application for review and during that time the driver's record contains no convictions for moving violations.

**C.** A lifetime disqualification may be reduced to not less than 10 years when a driver meets the minimum qualifications set out in the guidelines and submits a letter of

request to the director of the motor vehicle division along with any substantiating material. If the director satisfied with the information submitted, the director may reduce the lifetime disqualification to a period of time which, when added to the period of time that has elapsed since the date of the disqualification, will be not less than 10 years.

[18.19.5.106 NMAC - Rp, 18.19.5.106 NMAC 3/14/2023]

**18.19.5.107 COMMERCIAL DRIVER'S LICENSE - REDUCTION OF LIFETIME DISQUALIFICATION - REQUEST FOR HEARING - CONDUCT OF HEARING:**

**A.** Any driver who has requested a review of a lifetime disqualification, who is not satisfied with the decision of the director of the motor vehicle division may request an informal hearing. Requests for an informal hearing must be in writing and must be received by the motor vehicle division or postmarked within ten days after receipt of the notification of the director's decision. Requests for an informal hearing received after this time will not be honored.

**B.** The time and place of hearing shall be established by the motor vehicle division and notice of such informal hearing shall be given to the requestor by certified mail.

**C.** The director may designate a hearing officer to conduct the hearing and issue a decision on behalf of the motor vehicle division.

**D.** The director or hearing officer shall have the duty to conduct a fair and impartial hearing, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain good order and decorum.

**E.** Failure of the driver to appear at a scheduled hearing will result in forfeiture of the opportunity for a review and the determination of the director shall be conclusive.

**F.** The director or hearing officer shall provide the requestor with a written decision which shall be sent by certified mail not more than 10 days after the close of the informal hearing.

[18.19.5.107 NMAC - Rp, 18.19.5.107 NMAC 3/14/2023]

**18.19.5.108 COMMERCIAL DRIVER'S LICENSE - NO "EMPLOYMENT ONLY" COMMERCIAL DRIVER'S LICENSES:**

During any period in which an individual's commercial driver's license is suspended or revoked, if the individual is eligible for a limited driving privilege under Section 66-5-35 NMSA 1978, the limited driving privilege shall apply only to a Class D, E or M license. The limited driving privilege available under Section 66-5-35 NMSA 1978 does not apply to commercial driver's licenses.

[18.19.5.108 NMAC - Rp, 18.19.5.108 NMAC 3/14/2023]

#### **18.19.5.109 COMMERCIAL DRIVER'S LICENSE - CONSEQUENCES OF SECOND DISQUALIFICATION FOR LIFE:**

A driver whose lifetime disqualification has been reduced to a period of not less than ten years under the provisions of this section and regulations thereunder who is again convicted of a violation resulting in a disqualification for life is not eligible to apply to the department for reduction of the disqualification period resulting from the second conviction. Any application for reduction of the subsequent disqualification for life made by such a driver will be disapproved and the department will not grant a hearing with respect to that disapproval.

[18.19.5.109 NMAC - Rp, 18.19.5.109 NMAC 3/14/2023]

#### **18.19.5.110 CANCELLATION OF COMMERCIAL DRIVER'S LICENSE FOR FALSE INFORMATION:**

Within ten days of discovery of the falsification, the department shall cancel the commercial driver's license of a driver who falsified any material information on any application or certification required to obtain that license. The driver is disqualified from applying for another commercial driver's license for sixty days following the date of cancellation.

[18.19.5.110 NMAC - Rp, 18.19.5.110 NMAC 3/14/2023]

#### **18.19.5.111 COMMERCIAL DRIVER'S LICENSE - COMMERCIAL DRIVER'S LICENSE TESTING:**

**A.** A New Mexico commercial driver's license shall not be issued to any person who has not successfully completed the knowledge and skills tests specified by 18.19.5.111 NMAC. The knowledge tests for New Mexico are in two forms, form A and form B, for each of seven areas of knowledge: general knowledge, air brakes, combination vehicles, passenger transport, tank vehicles, doubles/triples and hazardous materials (HAZMAT). If a driver fails to pass a knowledge test, either form A or B, the alternate form shall be administered the next time the driver takes the test. Passing grades for each separate test shall be eighty percent or higher. Any driver who does not achieve a score of eighty percent or higher on any knowledge or skill test may retake a test on that subject after one week or more has intervened since the date last tested. The director, motor vehicle division, however, may waive the time limit when the driver demonstrates that the one week wait would cause undue hardship.

**B.** A school bus endorsement shall not be issued to any person who has not successfully completed a knowledge test and a skills test in both a passenger commercial motor vehicle and a school bus.

**C.** The skills tests for New Mexico shall be composed of the three parts set forth in Subsections D through F of 18.19.5.111 NMAC.

**D.** The pre-trip test which shall consist of at least the following parts:

(1) Tractor-trailer addressing the following elements:

- (a) Engine compartment
- (b) Engine start
- (c) Front of vehicle
- (d) Left or right side of vehicle
- (e) Coupling system
- (f) Rear of vehicle

(2) Straight truck:

- (a) Engine compartment
- (b) Engine start
- (c) Front of vehicle
- (d) Left or right side of vehicle
- (e) Rear of vehicle

(3) School bus, coach bus, transit bus:

- (a) Engine compartment
- (b) Engine start
- (c) Front of vehicle
- (d) Right side of vehicle
- (e) Passenger compartment
- (f) Rear of vehicle

**E.** The basic skills tests which shall consist of one of the following forms:

(1) Form 1 addressing at least the following:

- (a) Alley dock
  - (b) Straight line backing
  - (c) Sight side parallel park
  - (d) Conventional parallel park
- (2) Form 2 addressing at least the following:
- (a) Right turn
  - (b) Alley dock
  - (c) Conventional parallel park
  - (d) Backing serpentine
- (3) Form 3 addressing at least the following:
- (a) Alley dock
  - (b) Straight line backing
  - (c) Conventional parallel park
  - (d) Backing serpentine

**F. The road test shall consist of the following maneuvers:**

- (1) Four left turns
- (2) Four right turns
- (3) One stop intersection
- (4) One through intersection
- (5) Urban straight section
- (6) Expressway section or rural section if no expressway available
- (7) One drive down grade and one simulated drive down grade
- (8) One drive up grade

- (9) Stop on downgrade or stop on upgrade
- (10) One underpass or one bridge (tractor-trailer only)
- (11) One curve (left or right)
- (12) Railroad crossing:

(a) For non-bus and non-HAZMAT: One railroad crossing or one extra through intersection

(b) For bus or HAZMAT: One railroad crossing or one simulated railroad crossing.

**G.** The skills test required by 18.19.5.111 NMAC shall be deemed to have been met by a driver who has been qualified and employed as a commercial driver for two or more years at the time of application for a class A, B, or C license, and who has not been convicted of a point assessment violation nor had an accident with fault while driving a commercial vehicle within the last three years.

[18.19.5.111 NMAC - Rp, 18.19.5.111 NMAC 3/14/2023]

#### **18.19.5.112 COMMERCIAL DRIVER'S LICENSE - VEHICLE DRIVERS EXCLUDED FROM THE REQUIREMENT TO HOLD A COMMERCIAL DRIVER'S LICENSE:**

For purposes of licensing drivers of commercial vehicles and issuing commercial drivers licenses, the driver of one of the following vehicles is not required to have a commercial drivers license to operate such a vehicle upon the public roads and highways in New Mexico:

**A.** Recreational vehicles - a vehicle licensed as a recreational vehicle under the provisions of Section 66-1-4 NMSA 1978 and used as a recreational vehicle;

**B.** Farm and ranch vehicles - vehicles that meet the following criteria:

- (1) controlled and operated by a farmer or rancher or an employee of a farmer or rancher;
- (2) used to transport agricultural products, agricultural machinery or agricultural supplies to or from a farm or ranch;
- (3) used within 150 miles of the persons farm or ranch;
- (4) not used in the operations of a common or contract motor carrier or otherwise used "for hire";

**C.** Firefighting vehicles - vehicles manufactured for and equipped to fight fires and equipped with audible and visual signals and operated by a person who is a member of a volunteer or paid fire organization; or

**D.** Military vehicles - all vehicles owned or operated by the department of defense and operated by non-civilian operators.

[18.19.5.112 NMAC - Rp, 18.19.5.112 NMAC 3/14/2023]

### **18.19.5.113 COMMERCIAL DRIVER'S LICENSE - CLASSIFICATIONS OF COMMERCIAL DRIVER'S LICENSES:**

**A.** Commercial driver's licenses shall be issued under the following classifications:

<u>Class</u>	<u>Vehicles Licensee Authorized to Operate</u>
A	Any combination of vehicles with a gross combined vehicle weight rating of 26,001 or more pounds provided the gross vehicle weight rating of the vehicle(s) being towed is in excess of 10,000 pounds, and all lesser classes (B, C and D) of vehicles except motorcycles. In order to drive a motorcycle a driver must have a motorcycle endorsement.
B	Any single vehicle with a gross vehicle weight rating of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds gross vehicle weight rating, and all lesser classes (C and D) of vehicles except motorcycles. In order to drive a motorcycle a driver must have a motorcycle endorsement.
C	Any single vehicle less than 26,001 pounds gross vehicle weight rating, or any such vehicle towing a vehicle not in excess of 10,000 pounds gross vehicle weight rating, and all lesser classes (D) of vehicles except motorcycles. In order to drive a motorcycle a driver must have a motorcycle endorsement. This "C" classification applies only to vehicles placarded for hazardous materials or designed to transport 16 or more passengers, including the driver.

**B.** New Mexico's driver's licenses classes 6 through 10 issued under the former classification system are no longer valid.

[18.19.5.113 NMAC - Rp, 18.19.5.113 NMAC 3/14/2023]

### **18.19.5.114 COMMERCIAL DRIVER'S LICENSE - ENDORSEMENTS TO COMMERCIAL DRIVER'S LICENSES:**

**A.** Commercial driver's licenses may have one or more of the following endorsements:

Endorsement Authorizes Licensee to Operate

T	Combination vehicles with double trailers.
N	A tank vehicle intended for hauling liquids in bulk.
P	Any vehicle designed to transport 16 or more passengers, including the driver.
H	Any vehicle used to transport hazardous materials.
X	Any tank vehicle used to transport placarded amounts of hazardous material. This is a combination of endorsements "N" and "H".
S	A school bus.
Z	Any two- or three-wheeled motorcycle with an engine of less than 50 cubic centimeters piston displacement.
Y	Any two- or three-wheeled motorcycle with an engine of at least 50 but less than 100 cubic centimeters piston displacement.
W	Any two- or three-wheeled motorcycle with an engine of 100 or more cubic centimeters piston displacement.
O	Other - Reserved for future use.

**B.** In Subsection D of Section 66-5-65 NMSA 1978, Paragraphs (1) and (3) through (7) specify endorsements.

[18.19.5.114 NMAC - Rp, 18.19.5.114 NMAC 3/14/2023]

#### **18.19.5.115 COMMERCIAL DRIVER'S LICENSE - RESTRICTIONS TO COMMERCIAL DRIVER'S LICENSES:**

**A.** Commercial driver's licenses may have one or more of the following restrictions placed upon the license:

<u>Restriction Code</u>	<u>Restriction</u>
B	Driver must wear corrective lenses while driving.
C	Driver limited to vehicles equipped with suitable mechanical aids such as special brakes, hand controls or other adaptive devices.
D	Driver must use prosthetic aids (other than glasses) while driving.
E	Driver limited to vehicles with automatic transmissions.



K	Driver limited to driving a commercial vehicle in intrastate commerce only.
L	Driver limited to driving commercial vehicles which do not have air brakes.
M	Driver not authorized to drive a Class A bus.
N	Driver not authorized to drive a Class A or Class B bus.
O	Driver not authorized to drive a Class A tractor trailer combination vehicle.
R	Driver limited to operating a school bus.
S	Driver authorized to operate only a commercial motor vehicle owned by a governmental entity, and only as a government employee.
T	Driver authorized only to operate a Class B or Class C bus.

**B.** Paragraph (2) of Subsection D of Section 66-5-65 NMSA 1978 specifies a restriction.

[18.19.5.115 NMAC - Rp, 18.19.5.115 NMAC 3/14/2023]

#### **18.19.5.116 COMMERCIAL DRIVER'S LICENSE - SPECIAL REQUIREMENTS FOR COMMERCIAL DRIVER'S LICENSE:**

**A.** Applicants for a commercial driver's license must be 21 years of age or older, and shall have a valid class D license in their possession.

**B.** Drivers at least 18 but not over 21 years of age may apply for a commercial driver's license with restriction "K" on the license, which restricts its use to driving in intrastate commerce only. An applicant for the intrastate commercial driver's license must have a valid class D license in his or her possession. Applicants for a hazardous material endorsement must be 21 years of age to transport placarded amounts of hazardous material in intrastate commerce.

[18.19.5.116 NMAC - Rp, 18.19.5.116 NMAC 3/14/2023]

#### **18.19.5.117 COMMERCIAL DRIVER'S LICENSE – RECIPROCITY:**

##### **A. COMMERCIAL DRIVER'S LICENSE - RECIPROCITY WITH CANADA:**

Pursuant to agreements entered into by the United States, reciprocity is also extended to any person who holds a commercial driver's license issued by the national government of Canada or any of the provinces of Canada if the license is not

suspended, revoked or canceled and if the person is not disqualified from driving a commercial motor vehicle or subject to an out-of-service order.

**B. COMMERCIAL DRIVER'S LICENSE - MEXICAN DRIVER'S LICENSES:** A Mexican national issued a licencia federal de conductor by the secretariat of communication and transport of the United Mexican States may operate a commercial vehicle in New Mexico.

[18.19.5.117 NMAC - Rp, 18.19.5.117 NMAC 3/14/2023]

#### **18.19.5.118 INSTRUCTION PERMIT - PURPOSE - CRITERIA:**

**A.** For purposes of 18.19.5.118 NMAC:

**(1) "alternative test"** means a test provided by the PED or approved by the PED pursuant to its rules and procedures and administered in a public school, non-public school or by a home school operator to measure a student's proficiency in reading and math in the eighth grade;

**(2) "IDEA"** means the Individuals with Disabilities Education Improvement Act of 2004 [20 U.S. Code Sec. 1400 et seq.], which is a comprehensive federal law that addresses specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disabilities;

**(3) "IEP"** means an individualized education program, which is a written statement designed to meet the unique educational needs of a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Sections 300.320 through 300.324;

**(4) "minor"** means a person under the age of eighteen (18) years, but at least fifteen (15) years old;

**(5) "nearing an academic proficiency score in reading and math in the eighth grade"** means attaining a minimum score in reading and math during a student's eighth grade as established by the laws, rules or procedures of the PED on the New Mexico standards based assessment;

**(6) "New Mexico standards based assessment"** means a system for testing students in various grades for their proficiency in the subject areas of mathematics, reading and language arts, writing, science and social studies; pursuant to the Assessment and Accountability Act 22-2C-1 to 22-2C-11 NMSA 1978 and procedures of the PED, assessments on various subject areas that include science, mathematics and reading are administered annually to students in different grades;

**(7) "ninety percent school attendance"** means one of several indicators used pursuant to the Assessment and Accountability Act 22-2C-1 to 22-2C-11 NMSA

1978 and procedures of the PED to measure public school improvement, but would not include excused absences;

**(8) "PED"** means the public education department;

**(9) "Section 504"** means Section 504 of the Rehabilitation Act of 1973 29 U.S. Code Section 794 and its implementing regulations, which provide that "no otherwise qualified individual with a disability shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and

**(10) "Section 504 plan"** means the accommodation plan required if the individual has a mental or physical impairment that substantially limits one or more of the person's major life activities, including learning, but is not already receiving special education services under the eligibility requirements of the IDEA.

**B.** The director may issue an instruction permit to a minor under the provisions of Subsection D of Section 66-5-8 NMSA 1978. In order to motivate minors to attend school and succeed in their studies, beginning with applications submitted to the director on or after September 1, 2011, a minor applying for an instruction permit shall provide evidence of ninety percent school attendance during their ninth grade year and at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

**C.** A minor applying for an instruction permit must provide the following:

(1) satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC;

(2) proof of attendance in or completion of a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school;

(3) a school compliance verification form approved by the director that shall include parental consent for the release of certain educational information to the director; the school compliance verification form shall be certified by a school official and signed by a parent to indicate consent to release the minor's student information to the director; the form shall certify that the applicant has:

(a) achieved ninety percent school attendance, not including excused absences, during the ninth grade year or portion of the ninth grade year prior to applying for the instructional permit; and

(b) demonstrated at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

**D.** The school compliance verification form shall permit children with disabilities as described in the IDEA and in federal and state regulations and children for whom Section 504 plans are in place to obtain certifications that consider the effect if any of their disabilities in meeting ninety percent school attendance during the ninth grade year or portion of the ninth grade year or demonstrating at least nearing an academic proficiency score in reading and math in the eighth grade. Any such certification must be based on a written IEP or Section 504 team recommendation contained in the IEP or Section 504 plan of a child with a disability. In making the recommendation to the person or official who enters the certification on the school compliance verification form where a child with a disability fails to satisfy the attendance or proficiency requirements discussed in this rule, the IEP or Section 504 team shall, pursuant to rules and procedures of the PED, consider whether a child's disability affected their ability to satisfy either or both the attendance or proficiency requirements.

**E.** In lieu of a school compliance verification form, an applicant may provide:

- (1) proof of graduation from a high school; or
- (2) proof of having received a general educational development certificate.

**F.** A minor enrolled in non-public school or in a home school shall submit satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC, proof of attendance, and proof of ninety percent school attendance and at least nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test, as established by the laws, rules or procedures of the PED. This evidence shall be submitted on a form approved by the director that shall include parental consent for the release of certain educational information to the director.

**G.** Failure to demonstrate ninety percent school attendance will result in the minor being ineligible to be issued an instruction permit until six months from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

**H.** Failure to demonstrate nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test will result in the minor being ineligible to be issued an instruction permit until six months from the date of application.

**I.** Failure to demonstrate both ninety percent school attendance and nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test will result in the minor being

ineligible to be issued an instruction permit until one year from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

[18.19.5.118 NMAC - Rp, 18.19.5.118 NMAC 3/14/2023]

## **PART 6: PENALTY**

### **18.19.6.1 ISSUING AGENCY:**

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

[10/31/96; 18.19.6.1 NMAC - Rn, 18 NMAC 19.6.1, 9/14/00]

### **18.19.6.2 SCOPE:**

This Part applies to every person who violate the provisions of the Motor Vehicle Code.

[10/31/96; 18.19.6.2 NMAC - Rn, 18 NMAC 19.6.2, 9/14/00]

### **18.19.6.3 STATUTORY AUTHORITY:**

Section 9-11-6.2 NMSA 1978.

[10/31/96; 18.19.6.3 NMAC - Rn, 18 NMAC 19.6.3, 9/14/00]

### **18.19.6.4 DURATION:**

Permanent.

[10/31/96; 18.19.6.4 NMAC - Rn, 18 NMAC 19.6.4, 9/14/00]

### **18.19.6.5 EFFECTIVE DATE:**

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 18.19.6.5 NMAC - Rn & A, 18 NMAC 19.6.5, 9/14/00]

### **18.19.6.6 OBJECTIVE:**

The objective of this Part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code.

[10/31/96; 18.19.6.6 NMAC - Rn, 18 NMAC 19.6.6, 9/14/00]

#### **18.19.6.7 DEFINITIONS:**

**[RESERVED]**

[10/31/96; 18.19.6.7 NMAC - Rn, 18 NMAC 19.6.7, 9/14/00]

#### **18.19.6.8 IMPOSITION OF PENALTY:**

A. A penalty in the amount of twenty dollars (\$20.00) will be imposed under Section 66-6-34 NMSA 1978 for each instance in which a check tendered to the department is not paid upon presentment. This penalty is in addition to any other penalty imposed under the Motor Vehicle Code.

B. 18.19.6.8 NMAC applies to every dishonoring of a check on or after January 1, 1995.

[10/28/94, 10/31/96; 18.19.6.8 NMAC - Rn & A, 18 NMAC 19.6.8, 9/14/00]

### **PART 7: MOTORCYCLES**

#### **18.19.7.1 ISSUING AGENCY:**

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

[10/31/96; 18.19.7.1 NMAC - Rn, 18 NMAC 19.7.1, 9/14/00]

#### **18.19.7.2 SCOPE:**

This Part applies to persons who own, operate, control or sell or otherwise transfer motorcycles.

[10/31/96; 18.19.7.2 NMAC - Rn, 18 NMAC 19.7.2, 9/14/00]

#### **18.19.7.3 STATUTORY AUTHORITY:**

Section 9-11-6.2 NMSA 1978.

[10/31/96; 18.19.7.3 NMAC - Rn, 18 NMAC 19.7.3, 9/14/00]

#### **18.19.7.4 DURATION:**

Permanent.

[10/31/96; 18.19.7.4 NMAC - Rn, 18 NMAC 19.7.4, 9/14/00]

#### **18.19.7.5 EFFECTIVE DATE:**

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 18.19.7.5 NMAC - Rn & A, 18 NMAC 19.7.5, 9/14/00]

#### **18.19.7.6 OBJECTIVE:**

The objective of this Part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code.

[10/31/96; 18.19.7.6 NMAC - Rn, 18 NMAC 19.7.6, 9/14/00]

#### **18.19.7.7 DEFINITIONS:**

[RESERVED]

[10/31/96; 18.19.7.7 NMAC - Rn, 18 NMAC 19.7.7, 9/14/00]

#### **18.19.7.8 WINDSHIELD STANDARDS:**

Motorcycle windshields which meet the requirements for motorcycle windshields of Federal Motor Vehicle Safety Standard Number 205 (Glazing Materials--Passenger Cars, Multipurpose Passenger Vehicles, Motorcycles, Trucks, and Buses) issued by the United States secretary of transportation are approved for use in New Mexico.

[7/20/90, 10/14/92, 10/31/96; 18.19.7.8 NMAC - Rn, 18 NMAC 19.7.8, 9/14/00]

#### **18.19.7.9 HELMET STANDARD:**

A helmet to be used by a person under the age of eighteen in connection with the operation of a motorcycle must meet Federal Motor Vehicle Safety Standard Number 218 (Motorcycle Helmets) issued by the United States secretary of transportation. Only helmets meeting Federal Motor Vehicle Safety Standard Number 218 are approved for use in New Mexico.

[7/20/90, 10/14/92, 10/31/96; 18.19.7.9 NMAC - Rn, 18 NMAC 19.7.9, 9/14/00]

### **PART 8: HEIGHT AND LENGTH OF VEHICLES AND LOADS**

#### **18.19.8.1 ISSUING AGENCY:**

Department of Public Safety.

[18.19.8.1 NMAC - Rp, 18.19.8.1 NMAC, 2-12-2016]

#### **18.19.8.2 SCOPE:**

This rule applies to every person or entity involved with the movement on the highways of this state of vehicles, combinations of vehicles or loads that, individually or together, exceed size or weight limitations specified in Sections 66-7-401 through 66-7-416 NMSA 1978 and to all persons charged with enforcing provisions of the Motor Vehicle Code.

[18.19.8.2 NMAC - Rp, 18.19.8.2 NMAC, 2-12-2016]

#### **18.19.8.3 STATUTORY AUTHORITY:**

Section 9-19-6 NMSA 1978; Sections 66-7-401 through 66-7-416 NMSA 1978.

[18.19.8.3 NMAC - Rp, 18.19.8.3 NMAC, 2-12-2016]

#### **18.19.8.4 DURATION:**

Permanent.

[18.19.8.4 NMAC - Rp, 18.19.8.4 NMAC, 2-12-2016]

#### **18.19.8.5 EFFECTIVE DATE:**

February 12, 2016, unless a later date is cited at the end of a section.

[18.19.8.5 NMAC - Rp, 18.19.8.5 NMAC, 2-12-2016]

#### **18.19.8.6 OBJECTIVE:**

The objective of this rule is to interpret and implement provisions of the Motor Vehicle Code relating to the movement of oversize and overweight vehicles on the highways of this state.

[18.19.8.6 NMAC - Rp, 18.19.8.6 NMAC, 2-12-2016]

#### **18.19.8.7 DEFINITIONS:**

**A. "Accumulated traffic"** means a build-up of six or more vehicles, other than escort vehicles, or any vehicle being detained for more than ten minutes behind a vehicle or load required to be escorted; provided that, if the escorted vehicle or load is traveling consistently at a speed within five miles per hour of the maximum legal speed for the highway being traveled upon, the term means a build-up of eight or more vehicles, other than escort vehicles, or any vehicle being detained for more than ten minutes;



**B. "Applicant"** means a person or entity applying for a special permit;

**C. "Continuous movement"** means movement during all hours, day or night, on any day of the week except on a holiday; provided that "continuous movement" does not include movement during inclement weather, traffic hazards or other occurrences that affect the safe movement of vehicles on a highway;

**D. "Counter-flow"** means the movement of or obstruction by a vehicle, combination, structure or load upon a roadway designated for traffic flowing in the opposite direction;

**E. "Daylight movement"** means movement 30 minutes before sunrise until 30 minutes after sunset on any day of the week, except on a holiday; provided that "daylight movement" does not include movement during inclement weather, traffic hazards or other occurrences that affect the safe movement of vehicles on a highway;

**F. "DOT"** means the department of transportation;

**G. "DPS"** means the department of public safety;

**H. "Height"** means a measurement from the uppermost point of the vehicle, combination of vehicles or load to the roadbed;

**I. "Highway" or "street"** means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

**J. "Holiday"** means 12:01 am until 11:59 pm on the calendar day of any of the following holidays:

- (1) New year's day;
- (2) Memorial day;
- (3) Independence day;
- (4) Labor day;
- (5) Thanksgiving day;
- (6) Christmas day; and
- (7) any other holiday that may be designated by the DOT;

**K. "Inclement weather"** means a natural occurrence that may create dangerous driving conditions and includes any of the following:

- (1) snow;
- (2) ice;
- (3) fog;
- (4) rain;
- (5) dust;
- (6) a weather condition that limits visibility to less than 1,000 feet, or approximately two-tenths of one mile;
- (7) for oversize vehicles, combinations or loads, wind speeds of 25 miles per hour or more as determined by the National Weather Service, nearest airport, New Mexico port of entry or government controlled weather station; or
- (8) a weather condition that is determined by the DPS or DOT or a law enforcement official to create a safety hazard;

**L. "Irreducible load"** means a vehicle or load exceeding size or weight limitations that cannot reasonably be reduced to legal limits and that, if separated into multiple or smaller loads or vehicles, would:

- (1) compromise the intended use of the vehicle or load, rendering it unable to perform the function for which it was intended;
- (2) destroy the value of the vehicle or load, making it unusable for its intended purpose; or
- (3) require more than eight work hours to dismantle using appropriate equipment;

**M. "Length"** means a measurement from the foremost point to the rearmost point of a vehicle, combination of vehicles or load;

**N. "Manufactured home"** means a movable or portable housing structure that exceeds either a width of eight feet or a length of 40 feet, constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy;

**O. "Movement" or "move"** means the movement of an oversize or overweight vehicle, combination or load on a highway of this state requiring a special permit;

**P. "Oversize" or "overweight"** means exceeding a maximum dimension or weight specified in Sections 66-7-401 through 66-7-416 NMSA 1978;

**Q. "Permittee"** means a person or entity that has been issued a special permit to move a specific vehicle, combination or load;

**R. "Route survey"** means actual physical measurements conducted by an applicant or an applicant's designee of the width and height of the load or vehicle to be moved compared with actual physical measurements of the width and height of structures and property to be cleared by the load or vehicle throughout the entirety of the proposed route to be traveled;

**S. "Special permit"** means a written permit issued by the DOT that authorizes a permittee to move an oversize or overweight vehicle, combination or load on a highway in this state;

**T. "Utility service vehicle"** means a vehicle used in the furtherance of repairing, maintaining, or operating any structure or other physical facility necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, television cable or community antenna service; and

**U. "Width"** means a measurement from the extreme outermost point of one side of the vehicle or combination of vehicles or load to the extreme outermost point of the opposite side of the vehicle, combination of vehicles or load.

[18.19.8.7 NMAC - Rp, 18.19.8.7 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.8 SPECIAL PERMIT REQUIRED:**

Unless specifically exempted by law, a vehicle, combination of vehicles or a load that exceeds a maximum size or weight limitation established by Sections 66-7-401 through 66-7-416 NMSA 1978 shall not move on a public highway or street without a valid special permit issued by the DOT.

[18.19.8.8 NMAC - Rp, 18.19.8.10 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.9 SPECIAL PERMIT FOR IRREDUCIBLE LOADS - EXCEPTIONS:**

**A.** Except as otherwise provided in this section, a special permit shall be issued only for an irreducible load. An applicant shall demonstrate that the load to be moved cannot reasonably be dismantled, reduced or disassembled. Reductions shall be made whenever possible, even if use of additional vehicles becomes necessary.

**B.** The following reducible loads may be issued a special permit:

(1) vehicle or combination of vehicles with a gross weight not exceeding 96,000 pounds within 12 miles of a port of entry on the border with Mexico, and within the area described in Section 66-7-413 NMSA 1978 for the port of entry at Santa Teresa, as provided in Section 66-7-413 NMSA 1978;

(2) an over-width vehicle or load used to transport loads of hay, as provided in Section 66-7-413.1 NMSA 1978, for a distance up to 50 miles;

(3) liquid hauling tank vehicle, as provided in Section 66-7-413.4 NMSA 1978;

(4) agricultural products, as provided in Section 66-7-413.7 NMSA 1978;

(5) specialized haul vehicles, as provided in Section 66-7-413.8 NMSA 1978;  
or

(6) emergency response vehicles, including those loaded with salt, sand, chemicals or a combination and being used for the purpose of spreading the material on highways that are or may become slick or icy.

**C.** The DOT may issue special permits for casks designed for the transport of spent nuclear materials and for military vehicles transporting marked military equipment or material.

**D.** When an integral part of a machine or other equipment is removable, and the load without that part is oversize or overweight, the DOT may allow that part to be included in the permitted load; provided that the inclusion of the removable part does not increase the dimensions of the load.

[18.19.8.9 NMAC - Rp, 18.19.8.12 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.10 APPLICATION FOR A SPECIAL PERMIT:**

**A.** Only a person or entity that owns and operates the transporting vehicle or that operates the transporting vehicle under a lease agreement may apply for a special permit.

**B.** An applicant for a special permit shall be in compliance with and shall ensure that the transporting vehicle and the specific vehicle, combination or load to be moved is in compliance with motor vehicle registration laws, tax laws and regulations and any applicable public regulation commission rules and requirements.

**C.** An applicant for a special permit shall:

(1) indicate the type of special permit requested;

(2) provide contact information for the person or entity requesting the permit;

- (3) specifically identify the vehicle, combination or load to be moved;
- (4) provide the width, length and height of the vehicle, combination or load and identify the size and location of any overhangs;
- (5) provide the gross vehicle weight;
- (6) provide all axle information requested, including number and spacing of axles, number and type of tires on each axle and the weight on each axle;
- (7) describe the type of load being moved and the type of vehicle;
- (8) identify the points of origin and destination;
- (9) describe the route of travel;
- (10) indicate whether a route survey has been conducted and provide a copy of the route survey, if requested;
- (11) indicate whether certified escort vehicle or vehicles will accompany the move, if required;
- (12) if required, demonstrate that a feasibility study of the proposed movement has been made or that an engineering analysis or investigation of the route to be traveled has been completed;
- (13) provide proof of insurance coverage in accordance with New Mexico's financial responsibility laws and requirements of the public regulation commission; and
- (14) provide other information as requested by the DOT.

**D.** An applicant for a special permit shall obtain any required maps, restricted roads, structures or bridges required by the DOT for the move. Required maps and other documents are available by electronic link on the special permit application.

[18.19.8.10 NMAC - Rp, 18.19.8.14 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.11 PROOF OF FINANCIAL RESPONSIBILITY:**

**A.** A person applying for a special permit shall submit to the DOT proof of financial responsibility as required by New Mexico law.

**B.** An applicant shall submit a certificate of insurance issued by an insurance carrier authorized to transact business in this state in accordance with public regulation commission requirements. The certificate of insurance shall indicate the following minimum coverage:

(1) bodily injury liability in the amounts of \$50,000 for each person and \$100,000 for each accident; and

(2) property damage liability in the amount of \$25,000 for each accident.

**C.** A certificate of insurance shall identify:

(1) the vehicle covered by year, make, type, capacity, license number and serial number or indicate that the vehicle is included under an all owned, non-owned and hired vehicle clause;

(2) the effective dates of coverage; and

(3) the name and address of the insured.

**D.** The DOT may accept other evidence of financial responsibility that shows compliance with the certification, operating authority and insurance requirements of the public regulation commission; provided that the minimum liability coverage required by this section is met.

**E.** An applicant or permittee shall notify the DOT in writing of any material change or cancellation of insurance coverage at least 10 days prior to the effective date of such change or cancellation. The DOT shall void any outstanding special permits if insurance is canceled and not replaced before the expiration date noted on the special permit.

**F.** If the required insurance coverage is not on file with the DOT, the special permit application will be held in abeyance until satisfactory proof of coverage is provided.

[18.19.8.11 NMAC - Rp, 18.19.8.52 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.12 NON-TRANSFERABLE:**

A special permit is specific to a vehicle, combination or load and is not transferable from carrier to carrier or vehicle to vehicle.

[18.19.8.12 NMAC - Rp, 18.19.8.21 NMAC, 2-12-2016]

#### **18.19.8.13 CARRIED IN VEHICLE:**

A special permit shall be carried in the vehicle to which it applies, along with any required surveys, maps or lists of structures, and be presented for inspection to any peace officer, authorized employee of the DOT or the DPS or an escort vehicle driver who is escorting the vehicle. The special permit and any other required document may be carried on an electronic device and presented in electronic form as long as it is legible.

[18.19.8.13 NMAC - Rp, 18.19.8.20 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.14 COMPLIANCE WITH OTHER LAWS:**

Any movement under a special permit shall comply with all applicable laws, ordinances and regulations. A special permit does not release a permittee from requirements of federal, state or local laws that may apply to the vehicle, the driver or the movement of the vehicle.

[18.19.8.14 NMAC - Rp, 18.19.8.22 NMAC, 2-12-2016]

**18.19.8.15 EXCEPTIONS STATED IN SPECIAL PERMIT:**

A permittee and an escort vehicle driver shall comply with all applicable provisions of this rule. Any exception or variation is valid only if specifically stated in the special permit.

[18.19.8.15 NMAC - N, 2-12-2016]

**18.19.8.16 SURETY BOND MAY BE REQUIRED:**

If requested by the DOT or by a municipality, an applicant shall execute and deliver to the DOT or municipality a surety bond, cash equivalent or other security satisfactory to the DOT or municipality in an amount sufficient to cover any damages anticipated to road surfaces, bridges, culverts, structures or appurtenances that may be caused by the proposed movement. The amount of the security shall be determined by the DOT or municipality following an analysis of the proposed move and the roadways and structures along its route.

[18.19.8.16 NMAC - Rp, 18.19.8.15 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.17 PERMITTEE LIABLE FOR PROPERTY DAMAGE AND PERSONAL INJURY:**

The granting of a special permit shall not be construed to relieve a permittee of any responsibility or liability under motor vehicle or other laws. A permittee assumes all responsibility for injury to persons or damage to public or private property, including injury to the driver and damage to the driver's property or the load being transported, caused directly or indirectly by the movement of the vehicle, combination or load. A permittee shall hold the state harmless from all suits, claims, damages or proceedings of any kind and shall indemnify the state for any claim that the state may be required to pay arising from damage or injury caused directly or indirectly by the movement.

[18.19.8.17 NMAC - Rp, 18.19.8.25 NMAC, 2-12-2016]

**18.19.8.18 SPECIAL PERMIT NOT GUARANTEE OF INFRASTRUCTURE:**

Issuance of a special permit is not a guarantee of the sufficiency or clearance of any highway or structure included in the authorized route of the move. It is an unreasonable use of any bridge or structure to operate a vehicle, load, tractor or engine not in accordance with the provisions of the New Mexico Motor Vehicle Code.

[18.19.8.18 NMAC - Rp, 18.19.8.26 NMAC, 2-12-2016]

#### **18.19.8.19 PRELIMINARY APPROVAL FOR A SPECIAL PERMIT:**

A person may request from the DOT preliminary approval of a proposed movement of an oversize or overweight vehicle, combination or load. Sufficient data shall be submitted to allow the DOT to evaluate the proposed move. If it is determined that the proposed move is feasible, the mover will be notified that a special permit can be issued upon notification to the DOT and payment of the proper fee. The DOT may retract its preliminary approval if circumstances change.

[18.19.8.19 NMAC - Rp, 18.19.8.51 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.20 ENTRY INTO NEW MEXICO:**

**A.** An oversize or overweight vehicle, combination or load shall have a special permit issued by the DOT before entry into this state. Any required escort vehicle shall be certified by the DOT or DPS before entry into this state.

**B.** If an escort vehicle is not certified before entry, the escort vehicle and the escorted vehicle or load shall stop outside the state. The escort vehicle driver shall turn off or remove all exterior lighting and equipment, remove or cover any signs and remove the amber lights and flags. The escort vehicle shall then drive to the nearest port of entry where the vehicle and equipment can be checked and verified for certification. After the escort vehicle has been certified, it shall drive back, without display of lighting, signs, flags or equipment, to where the escorted load has stopped outside the state. All required lighting, equipment, flags and signs shall then be repositioned on the escort vehicle, and the permitted load and escort vehicle shall enter the state.

**C.** A special permit may be obtained by submitting an electronic application over the internet at <https://permits.dot.state.nm.us>.

[18.19.8.20 NMAC - Rp, 18.19.8.13 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.21 BEFORE COMMENCEMENT OF MOVE - AMENDED SPECIAL PERMIT:**

**A.** Prior to starting the move, a permittee shall:

(1) review the special permit for accuracy of information contained in the special permit;



(2) ensure that any required survey, maps or lists of structures are included with the special permit;

(3) fully understand all the conditions and restrictions contained in the special permit;

(4) know the route to be traveled; and

(5) be aware, as reasonably possible, of any special circumstances that may be encountered along the route.

**B.** If a permittee finds that the special permit does not cover the entire move or that it is incorrect, the permittee shall contact the DOT and request the necessary changes or amendments to the special permit. The permittee shall not commence the move until such changes have been made and a correct or amended special permit has been issued. A special permit that contains incorrect information is void.

**C.** The DOT may, depending upon circumstances, issue a supplemental special permit or amend an existing special permit to address a situation that did not exist or was not anticipated at the time of issuance of the original special permit. In such cases, additional documentation may be required by the DOT to support the issuance of a supplemental special permit or the amendment of an existing special permit.

[18.19.8.21 NMAC - Rp, 18.19.8.19 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.22 MOVEMENT LIMITED TO CERTAIN HIGHWAYS:**

A. A special permit authorizes the movement of a vehicle, combination or load only on the highways designated in the special permit as the route of travel. Permission from local authorities may be required if a portion of the move is to be made over local streets.

B. Unless otherwise indicated on a special permit, movement may not be made over a bridge posted for a specific load limit that is less than the permitted load.

[18.19.8.22 NMAC - Rp, 18.19.8.23 NMAC, 2-12-2016]

#### **18.19.8.23 MOVEMENT RESTRICTED TO SINGLE TRAFFIC LANE - FLOW OF TRAFFIC:**

A. Insofar as practical, movement shall be confined to a single traffic lane and shall not unnecessarily obstruct the flow of traffic or the roadway. Other traffic shall be given the right-of-way whenever possible.

B. The driver of a permitted vehicle shall remove the vehicle from the roadway when necessary to allow accumulated traffic to pass or when so directed by a peace officer.

The driver shall observe the speed specified in the special permit, maintain a proper interval between vehicles and provide vehicles an opportunity to pass to avoid creating traffic congestion.

[18.19.8.23 NMAC - Rp, 18.19.8.24 NMAC, 2-12-2016]

#### **18.19.8.24 DAYLIGHT MOVEMENT:**

**A.** Unless continuous movement is specifically allowed on a special permit, there shall be no movement thirty minutes after sunset until thirty minutes before sunrise.

**B.** There shall be no movement during inclement weather or on holidays.

**C.** The DOT may grant an exception, considering, among other factors:

- (1) the size or weight of the vehicle, combination or load;
- (2) the route to be traveled;
- (3) safety to the motoring public;
- (4) advice of the DOT and law enforcement officials; and
- (5) any other consequence of allowing the move during those times.

[18.19.8.24 NMAC - Rp, 18.19.8.34 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.25 CONTINUOUS MOVEMENT:**

**A.** A special permit that allows for continuous movement may be issued for a vehicle, combination or load that does not exceed:

- (1) a width of 10 feet;
- (2) a height of 14 feet six inches;
- (3) a length of 120 feet; or
- (4) a weight of 140,000 pounds.

**B.** Lighting requirements shall be in accordance with the Code of Federal Regulations, Title 49, Section 393.11, and all lights shall meet a five hundred foot visibility requirement. In addition, for an over-width or over-length vehicle, combination or load, at least one rotating, flashing, strobe or LED amber light at the rear of the vehicle and two rotating, flashing, strobe or LED amber lights on the power unit are required.

**C.** Continuous movement is allowed only if specifically stated on the special permit and does not include movement on holidays or during inclement weather.

**D.** Additional conditions and requirements may be imposed by the DOT, including requiring additional equipment or imposing restrictions applicable to specific roads and highways.

[18.19.8.25 NMAC - Rp, 18 19.8.32 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.26 MOVEMENT DURING HEAVY TRAFFIC:**

**A.** Unless otherwise specified in a special permit, movement on weekdays between the hours of 7 a.m. and 9 a.m. and between the hours of 4 p.m. and 6 p.m. is prohibited on:

(1) interstate highways, U.S. highways and state roads within the city limits of Santa Fe and Las Cruces;

(2) Interstate 25 between Santa Fe and Los Lunas and within the city limits of Los Lunas;

(3) U.S. 285 between Santa Fe and Espanola and within the city limits of Espanola; and

(4) Interstate 10 from mile marker 139 to mile marker 145, and Interstate 25 from mile marker 0 to mile marker 9, in the Las Cruces area.

**B.** Unless otherwise specified in a special permit, movement on weekdays between the hours of 7 a.m. and 9 a.m. and between the hours of 4 p.m. and 7 p.m. is prohibited on interstate highways, U.S. highways and state roads within the city limits of Albuquerque and Rio Rancho.

**C.** The DOT may restrict movement during heavy traffic in other locations or time periods.

[18.19.8.26 NMAC - N, 2/12/2016; A, 6/1/2022]

#### **18.19.8.27 MOVEMENT OVER BRIDGES:**

Two or more permitted vehicles, combinations or loads shall not traverse a bridge or other structure at the same time.

[18.19.8.27 NMAC - N, 2-12-2016]

#### **18.19.8.28 CERTAIN VIOLATIONS RENDER SPECIAL PERMIT VOID:**

**A.** A special permit is null and void if any of the following violations occur:

(1) commencing a move under a special permit that contains incorrect information, unless amendments to the permit have been issued by the DOT correcting the information;

(2) the movement is made on a highway or street other than those specifically noted on the special permit, unless necessary to detour around construction zones or to avoid obstructions;

(3) movement is made on a highway or street that is closed;

(4) use of a bridge or structure not authorized by the special permit;

(5) size or weight limitations specified in the special permit are exceeded;

(6) improper identification or substitution of a vehicle, combination or load;

(7) the special permit, route survey, bridge map, list of structures or other required document is not in possession of or carried electronically by the driver during the move;

(8) the permittee is not the owner or lessee of the permitted vehicle;

(9) speeds specified in the special permit are not observed;

(10) special provisions contained in the special permit to protect highways and structures are not observed;

(11) the application for the special permit or the special permit contains misrepresentations;

(12) the special permit has been altered, is fraudulent or is used for a fraudulent or unauthorized purpose;

(13) absence or cessation of a required escort vehicle during the movement;

(14) insurance coverage is canceled, expired, insufficient or otherwise does not meet the requirements of law or this rule; or

(15) failure to comply with any condition or restriction specified in the special permit.

**B.** Violation of a special permit may be cause for suspension or cancellation of all special permit privileges of the permittee. Based on the severity of the violation, the DOT may cancel any or all special permits issued to the permittee for current or future

movements and may suspend the permittee's right to apply for special permits in the future.

**C.** The effect of a void special permit is the same as if no special permit had been issued, and the violator, in addition to any other violations, may be subject to prosecution pursuant to the provisions of Sections 66-7-413, 66-7-413.2 and Section 66-7-416 NMSA 1978. No refund shall be made or credit given for fees paid for a special permit that is rendered void. A special permit issued after a violation does not nullify the violation.

[18.19.8.28 NMAC - Rp, 18.19.8.28 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.29 SECURING A NEW SPECIAL PERMIT FOLLOWING A VOIDED SPECIAL PERMIT:**

A special permit that is void shall be surrendered, upon demand, to a peace officer or authorized DOT or DPS personnel. A new special permit is required before movement move can be resumed. The issuance of a new special permit will be withheld until all conditions that caused the voiding and seizure of the original permit have been corrected to meet the requirements imposed by the DOT for the move.

[18.19.8.29 NMAC - Rp, 18.19.8.30 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.30 ROUTE SURVEY MAY BE REQUIRED:**

**A.** Based on the dimensions of a vehicle, combination or load or the route requested, the DOT may require that a route survey be conducted and submitted to the DOT prior to issuance of a special permit. When a route survey is required, it shall be carried in the permitted vehicle at all times during the move.

**B.** A route survey is valid for a period of fourteen days but is subject to change by the DOT at any time depending on circumstances, including inclement weather, highway construction, utility work, roadway design, and traffic patterns.

**C.** The DOT may extend the validity period of a route survey at its discretion for carriers engaged in moving the same dimensions or in moving similar loads where there are no structural clearance issues.

**D.** A route survey shall be in a written form approved by the DOT.

[18.19.8.30 NMAC - N, 2/12/2016; A, 6/1/2022]

#### **18.19.8.31 TOWING UNIT WHEELBASE AND MIRRORS:**

**A.** Except for a unit used to move manufactured homes, a towing unit shall have an overall wheelbase of at least ninety-nine inches and shall be of sufficient capacity that

the transporting or pulling of an oversize or overweight vehicle or load will not create any unnecessary hazard to the motoring public.

B. A towing unit shall be equipped with two outside rear view mirrors, one on each side, that provide a field of view to the driver of the road on both sides of the load and beyond the rear of the load.

C. A towing unit shall comply with all other safety requirements, equipment and restrictions applicable to the movement of the unit with the vehicle, combination and load being towed.

[18.19.8.31 NMAC - Rp, 18.19.8.39 NMAC, 2-12-2016]

#### **18.19.8.32    LOADING REQUIREMENTS:**

A. No vehicle or combination shall be driven or moved unless it is constructed, loaded, secured or covered so as to prevent any of its load from dropping, sifting, leaking or otherwise escaping. A load and any covering shall be securely fastened so as to prevent the covering or the load from becoming loose, detached or in any manner hazardous to other users of the highway.

B. Consistent with safety considerations, oversize objects shall be positioned in a manner that:

- (1)     minimizes the number of dimensions exceeding the legal limit; and
- (2)     does not result in exceeding the maximum legal gross weight or axle weight.

C. A load having two dimensions that exceed the limitations for width, height or length shall be loaded in a manner that minimizes the overall combination of dimensions.

D. Positioning of an object in a manner that causes a load to be oversize, but that in another position would remain within the legal limits, is considered a reducible arrangement and a special permit shall not be issued in such cases.

E. Consideration shall be given to the weight and balance of a load to assure stability of the load and safety of the move.

[18.19.8.32 NMAC - Rp, 18.19.8.40 NMAC, 2-12-2016]

#### **18.19.8.33    FLAGS REQUIRED:**

A. An oversize vehicle, combination or load shall be properly flagged at all times.

B. Flags shall be red, florescent red or florescent orange and square or rectangular measuring no less than eighteen inches on any one side.

C. For single vehicles flags shall be placed as follows:

(1) front and rear: fastened to each corner of the vehicle at the widest points of the vehicle;

(2) side: fastened to mark any extremity of size when wider than the front or rear of the vehicle; and

(3) overhangs: for front overhangs that exceed the vehicle by three feet or more and for rear overhangs that exceed the vehicle by four feet or more, the extreme point of overhang shall be marked with a flag on each corner of the overhang; provided that when the overhang width is less than two feet, it may be marked with only one flag.

D. For combination vehicles, flags shall be placed as follows:

(1) front: fastened to each front corner of the power unit vehicle at the widest points of the vehicle;

(2) at the four corners of the trailer or load, whichever is greater in width: fastened to each front corner of the trailer or load at the forward-most part of the trailer or load and fastened to each rear corner of the trailer or load at the rear-most part of the trailer or load;

(3) sides: fastened to mark any extremity of size if wider than the front or rear of the trailer or load; and

(4) overhangs: for front overhangs that exceed the front of the vehicle combination by two feet or more and for rear overhangs that exceed the rear of the vehicle combination by four feet or more, the extreme point of overhang shall be marked with a flag on each corner of the overhang; provided that when the overhang width is less than two feet, it may be marked with only one flag.

[18.19.8.33 NMAC - Rp, 18.19.8.41 NMAC, 2-12-2016]

#### **18.19.8.34 OVERSIZE SIGNS REQUIRED:**

A. Oversize signs shall be properly affixed on the front and rear of all oversize vehicles, combinations or loads. The signs shall read "OVERSIZE", "OVERWIDTH", "OVERLENGTH" or "OVERHEIGHT". An "OVERSIZE" sign may be used to designate an over-width, over-length or over-height vehicle or load.

B. The signs shall be at least five feet wide by twelve inches high with a bright yellow background and black lettering. The letters shall be at least one inch wide by ten inches high.

C. The front sign shall be placed on the front of the foremost vehicle or on top of the cab of the power unit in the foremost position. The front sign shall be mounted or affixed in a position that is visible to motorists and that does not interfere with the clearance lights located on the top of the power unit vehicle in accordance with lighting requirements for commercial vehicles.

D. The rear sign shall be placed on either the rear of the load or the rear of the rearmost vehicle as long as it is clearly visible to motorists and does not obscure any required equipment or license plates.

[18.19.8.34 NMAC - Rp, 18.19.8.42 NMAC, 2-12-2016]

#### **18.19.8.35 OVERWIDTH MEASUREMENT - BLOCKING OF ATTACHMENTS:**

A. The overall width of a vehicle, combination or load includes any projections, lashing, chains, cables, load binders, or any object or device that constitutes the extreme width unless such devices are used exclusively to secure the load and do not exceed three inches on either side.

B. When an overwide load includes a bulldozer or construction equipment with a blade or other attachments, such attachments shall be completely lowered and angled as much as possible to minimize the width and shall be secured to the vehicle.

[18.19.8.35 NMAC - Rp, 18.19.8.43 NMAC, 2-12-2016]

#### **18.19.8.36 OVERHEIGHT VEHICLES OR COMBINATIONS:**

A. Special permits may be issued for vehicles, combinations or loads in excess of the statutory limit for heights of 14 feet. When the substitution of a different type of trailer would make the vehicle or load 14 or less in height, then the load shall be considered reducible and such substitution shall be made.

B. If a special permit is requested for a height greater than 14 but less than 15 feet six inches, the applicant shall check the desired route for clearance of overhead structures such as traffic signals, wires, utility lines, bridges and overpasses.

C. If a special permit is requested for a height of 15 feet six inches or greater, a route survey is required. The applicant shall check the desired route and conduct a route survey for clearance of overhead structures such as traffic signals, wires, utility lines, bridges and overpasses.



**D.** Certification in writing from utility companies is required for a vehicle or load that exceeds a height of 18 feet. No person, other than the utility owner, shall move, lift or in any fashion displace an overhead wire.

**E.** Movements that will not clear highway construction, wires, utility lines, bridges, overpasses or other overhead structures shall be rerouted. Use of off-ramps or frontage roads to clear overhead and other obstacles is permitted, provided overall traffic flow is not adversely affected and traffic safety is not jeopardized.

**F.** A permittee shall protect all overhead wires, structures and roadside property. Any damage to these or to the roadway, pavement, road guards or shoulders shall be restored at the sole expense of the permittee.

**G.** The DOT may require a flagman or an escort to check all overhead clearances during a move. Such requirement shall be stated on the special permit.

[18.19.8.36 NMAC - Rp, 18.19.8.45 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.37 OVERLENGTH VEHICLES OR COMBINATIONS:**

**A.** A single vehicle, including front and rear overhang, shall not exceed forty feet in length except by special permit.

**B.** A combination, including front and rear overhang, shall not exceed sixty-five feet in length except by special permit. A special permit may be issued for a combination that cannot be readily disassembled or dismantled.

**C.** Overlength special permits shall be denied when:

- (1) pipe, when welded together, is in excess of eighty feet in length; or
- (2) crane or tower booms, when bolted or pinned, are in excess of forty feet in length.

[18.19.8.37 NMAC - Rp, 18.19.8.46 NMAC, 2-12-2016]

#### **18.19.8.38 ACCESS TO FACILITIES FOR OVERLENGTH COMBINATIONS:**

In accordance with safety considerations and any county or municipal restrictions, a truck tractor semitrailer combination or a truck tractor semitrailer-trailer combination that exceeds an overall length of sixty-five feet pursuant to the provisions of Subsection D of Section 66-7-404 NMSA 1978 may travel a distance not to exceed twenty miles from the designated highway for:

- A. access to facilities offering food, fuel, repairs and rest;

- B. access to terminals for the purpose of loading or unloading; or
- C. delivery of the load or partial load.

[18.19.8.38 NMAC - Rp, 18.19.8.9 NMAC, 2-12-2016]

**18.19.8.39 SPECIAL PERMIT REQUIRED FOR PROJECTING LOADS:**

**A.** A special permit is required for a projecting load that extends:

- (1) more than three feet beyond the foremost part of a vehicle or the foremost part of the front vehicle of a vehicle combination; or
- (2) more than seven feet beyond the rearmost part of a vehicle or the rearmost part of the rear vehicle of a vehicle combination.

**B.** This section applies even if the overall length of the vehicle, combination or load would not require a special permit for movement.

**C.** A projecting load or overhang shall not cause excessive axle weight that would diminish the effectiveness of the steering axle or axles and shall not constitute a hazard.

**D.** When the substitution of an articulated vehicle for a single vehicle would make the load a smaller dimension, then the load shall be considered reducible and such substitution shall be made.

**E.** The DOT may require an escort as a condition of issuing a special permit for movements with a projecting load.

[18.19.8.39 NMAC - Rp, 18.19.8.47 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.40 ENGINEERING ANALYSIS FOR VEHICLES OR LOADS IN EXCESS OF ONE HUNDRED SEVENTY THOUSAND POUNDS:**

**A.** An application for a special permit for a vehicle, combination or load with a gross weight in excess of 170,000 pounds shall be forwarded to the DOT of transportation for approval.

**B.** No special permit shall be issued for a vehicle, combination or load with a gross weight in excess of 170,000 pounds unless an engineering analysis has been conducted for the proposed route and the move has been approved by the DOT.

**C.** An engineering analysis shall determine if the roads on the proposed route, including any bridges, culverts, overpasses and other structures, are adequate and capable of handling the overweight movement. The analysis may require specific restrictions to be imposed on the movement, such as requiring the overweight vehicle,

combination or load to significantly reduce its speed at certain structures, requiring a different route or requiring other maneuvers.

**D.** Data required from the applicant for an engineering analysis includes:

- (1) tire sizes;
- (2) axle loads;
- (3) axle spacings;
- (4) desired route to be traveled;
- (5) clearance documents if movement is overheight or overwide; and
- (6) any additional information requested by the DOT.

**E.** Unless an applicant submits an engineering analysis of the route to be traveled that is satisfactory to the DOT, the DOT shall perform its own analysis. The DOT may assess a fee for the cost of performing the analysis and such a fee shall be charged to the applicant as an added cost to the permit fee.

**F.** Once an engineering analysis has been conducted and the movement approved, the DOT may issue a special permit upon payment of the proper fee.

[18.19.8.40 NMAC - Rp, 18.19.8.48 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.41-18.19.8.49 [RESERVED]**

#### **18.19.8.50 SINGLE-TRIP SPECIAL PERMIT:**

Special permits for single-trip movements are issued for a single, one-way movement. A single-trip special permit is valid for five days.

[18.19.8.50 NMAC - Rp, 18.19.8.82 NMAC, 2-12-2016]

#### **18.19.8.51 MULTIPLE-TRIP SPECIAL PERMIT:**

A. A multiple-trip special permit allows the movement of a specific vehicle, combination or load multiple times in a specific area of the state consisting of four contiguous counties and three interstates. A multiple-trip special permit is valid up to one year from the date of issue or until the end of the coverage period noted on the applicant's certificate of insurance, whichever is earlier. An expiration date will be noted on the permit.

B. A multiple-trip special permit is specific for a particular vehicle or combination of vehicles and a particular load. It is not valid for any other vehicle or combination or any other type of load. Use of a multiple-trip special permit by other than the vehicle or combination for which it was issued or for a different type of load renders the multiple-trip special permit void.

C. A multiple-trip special permit may be issued for a vehicle, combination or load up to the following maximum size and weight limitations:

(1) a width of fourteen feet, a height of fifteen feet and a maximum overall length of one hundred twenty feet that may include a front overhang up to fifteen feet and a rear overhang up to twenty-five feet; and

(2) a weight of no more than one hundred forty thousand pounds; provided that the vehicle, combination or load has the proper number of axles and spacing between each axle to carry the weight.

D. When a multiple-trip special permit allows for excessive weight, the permittee will be furnished with locations of restricted structures in the area of operation.

E. Conditions or restrictions associated with a multiple-trip special permit, including specific routes, route surveys, bridge maps and restricted structures, are an integral part of the special permit and shall be attached to the permit at all times. Required documents, conditions and restrictions may be carried electronically. Violation of any condition or restriction renders the multiple-trip special permit void.

F. Multiple-trip special permits may be issued for daylight movement or for continuous movement.

G. The provisions of this section apply to all multiple-trip special permits, unless specifically provided otherwise.

[18.19.8.51 NMAC - Rp, 18.19.8.80 NMAC, 2-12-2016]

#### **18.19.8.52 WRECKER SERVICE - MULTIPLE-TRIP SPECIAL PERMIT:**

A. A multiple-trip special permit may be issued to a wrecker service, commensurate with the class of service authorized. A commercial motor carrier that operates wreckers for towing its own vehicles may also apply for this multiple-trip special permit.

B. A multiple-trip special permit for a wrecker service authorizes continuous movement and movement on holidays and during inclement weather on an emergency basis. The multiple-trip special permit may exclude movement over certain highways or structures.

**C.** The maximum width allowed when towing vehicles under a multi-trip special permit is 12 feet, including towing on a dolly. This limit includes the width of the towed vehicle plus all load binders or other equipment required to tie or hold the unit together.

**D.** The maximum height allowed when towing vehicles under a multi-trip special permit is 14 feet. If damage to the wrecked or disabled vehicle causes protruding pieces that cannot be reasonably removed before towing, a height up to 15 feet is allowed.

**E.** A disabled or wrecked vehicle that exceeds the maximum width or height provided in this section shall not be moved under a multiple-trip special permit. A single-trip special permit shall be obtained for the movement. The DOT may require an escort as a condition of the single-trip special permit.

**F.** In addition to any other restrictions, the following apply to a wrecker service operating under a multiple-trip special permit:

- (1) the towing of one motor vehicle and one trailer in combination is allowed;
- (2) a second trailer of a three-unit combination may be towed in combination to the nearest point of safety where it shall be disconnected from the combination being towed;
- (3) movement during inclement weather is restricted to movement from the site of disablement or crash to the nearest point of safety;
- (4) when towing a single vehicle or combination of vehicles, the driver shall comply with all safety regulations with respect to both the equipment and the driver;
- (5) when towing a single vehicle or a combination of vehicles, the wrecker vehicle and the towed vehicle or combination shall be properly flagged and equipped with oversize load signs and any other required warning devices;
- (6) unless the towed vehicle or combination has been issued a valid oversize or overweight special permit, the combined weight of the wrecker and the towed vehicle or combination shall not exceed the weight of the wrecker plus 86,400 pounds and the overall length shall not exceed 125 feet.
- (7) if the towed vehicle or combination has been issued a valid oversize or overweight special permit and the combined length of the vehicle or combination plus the length of the wrecker exceeds 125 feet or the combined weight of the towed vehicle or combination and the wrecker exceeds the weight of the wrecker plus 86,400 pounds, the vehicle or combination may be towed only to the nearest point of safety. Towing such a vehicle or combination beyond the nearest point of safety requires a single-trip special permit to be issued based on the combined length and weight of the wrecker and the towed vehicle or combination.

**G.** This section does not authorize trespass on private property.

**H.** The provisions of this section apply to all classes of wreckers and wrecker services.

**I.** As used in this section:

(1) "movement on an emergency basis" means the towing from a highway or right-of-way of a wrecked or disabled vehicle that cannot be moved under its own power, when such movement is necessary for the safety and convenience of the public, or when directed by a police officer. Unless other laws or regulations provide otherwise, "movement on an emergency basis" includes the movement of the vehicle from the site of the crash or disablement to the vehicle owner's premises, a repair facility or a storage facility operated by the wrecker service; and

(2) "nearest point of safety" is the closest area where the vehicle or combination can be temporarily parked clear of any motor vehicle traffic and at least 30 feet from the outer edge of the nearest traffic lane of any road or highway at the closest point. Private land shall not be used as the nearest point of safety without permission of the owner.

[18.19.8.52 NMAC - Rp, 18.19.8.49 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.53 OILFIELD EQUIPMENT TRANSPORT VEHICLE - MULTIPLE-TRIP SPECIAL PERMIT:**

A. A multiple-trip special permit may be issued for an oilfield equipment transport vehicle, combination or load used exclusively for hauling equipment or materials used in the production of oil or gas.

B. A multiple-trip special permit for an oilfield equipment transport vehicle includes all the requirements, conditions and restrictions applicable to multiple-trip special permits, except that this permit may be issued for the following dimensions:

- (1) a maximum width of twenty-two feet;
- (2) a maximum height of twenty feet; and
- (3) a maximum length of one hundred ten feet.

C. An oilfield equipment transport vehicle issued a multi-trip special permit shall abide by all other requirements and restrictions provided by law and in this rule.

[18.19.8.53 NMAC - N, 2-12-2016]

**18.19.8.54 UTILITY SERVICE VEHICLE - MULTIPLE-TRIP SPECIAL PERMIT:**

A multiple-trip special permit for a utility service vehicle authorizes continuous movement and movement on holidays and during inclement weather on an emergency basis. The multiple-trip special permit may exclude movement over certain highways or structures. Under certain circumstances, a single-trip special permit may be issued for movement not allowed under the multi-trip special permit.

[18.19.8.54 NMAC - N, 2-12-2016]

#### **18.19.8.55 SPECIALIZED HAUL VEHICLE - MULTIPLE-TRIP SPECIAL PERMIT:**

A. A multiple-trip special permit may be issued for a specialized haul vehicle pursuant to Section 66-7-413.8 NMSA 1978; provided that the weight of any one axle or wheel does not exceed the limits established by Section 66-7-409 NMSA 1978 for gross weight imposed on the highway.

B. A multiple-trip special permit for a specialized haul vehicle may be obtained for a fee of four hundred dollars (\$400) for movement in four contiguous counties and three interstates. Additional counties may be added to the special permit for a fee of one hundred dollars (\$100) per county.

C. A multiple-trip special permit for a specialized haul vehicle includes all the requirements, conditions and restrictions applicable to multiple-trip special permits and otherwise provided by law and in this rule, except that:

(1 an applicant shall not be required to demonstrate that the load is irreducible; and

(2 restriction on movement during heavy traffic periods, as provided in 18.19.8.26 NMAC, shall not apply to this special permit.

[18.19.8.55 NMAC - N, 2-12-2016]

#### **18.19.8.56 TRACTOR SEMITRAILER MULTIPLE-TRIP SPECIAL PERMIT:**

A multiple-trip special permit may be issued for a truck tractor semitrailer or a truck tractor semitrailer-trailer combination for statewide movement. All other requirements, conditions and restrictions for multiple-trip special permits and otherwise provided by law and in this rule apply to this special permit.

[18.19.8.56 NMAC - N, 2-12-2016]

#### **18.19.8.57 OTHER MULTIPLE-TRIP SPECIAL PERMITS:**

A multiple-trip special permit may be issued for:

A. a liquid hauling tank vehicle as provided in Section 66-7-413.4 NMSA 1978;

**B.** an agricultural product transport vehicle as provided in Section 66-7-413.7 NMSA 1978; or

**C.** other vehicles, combinations or loads as determined by the DOT.

[18.19.8.57 NMAC - N, 2/12/2016; A, 6/1/2022]

#### **18.19.8.58 SPECIAL PERMITS IN CASES OF EMERGENCY:**

**A.** In clear cases of emergency and when it is not possible to follow normal procedures for obtaining a special permit, a special permit may be issued outside of business hours.

**B.** During business hours, normal procedures shall be followed. If an emergency arises outside of business hours, an applicant for a special permit shall access the DOT's website and follow instructions for obtaining the special permit.

**C.** As used in this section, "business hours" means Monday through Friday from 8:00 a.m. to 5 p.m.

[18.19.8.58 NMAC - Rp, 18.19.8.38 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.59 SPECIAL PERMIT TO A GOVERNMENTAL ENTITY:**

A governmental entity, whether federal, state or local, is required to obtain a special permit before moving a vehicle, combination or load that exceeds legal limits. The governmental entity shall comply with all conditions and restrictions on the permit. No fee shall be charged for the issuance of a special permit to a governmental entity; provided that this fee waiver does not apply to a private contractor moving the vehicle, combination or load on behalf of the governmental entity.

[18.19.8.59 NMAC - Rp, 18.19.8.37 NMAC, 2-12-2016]

#### **18.19.8.60 SPECIAL PERMIT FOR CONSTRUCTION EQUIPMENT:**

The exception provided in Subsection B of Section 66-7-401 NMSA 1978 for road machinery engaged in highway construction or maintenance applies only to movement at a construction site. When road machinery or construction equipment is otherwise being moved, the provisions of Sections 66-7-401 through 66-7-416 NMSA 1978 and this rule apply.

[18.19.8.60 NMAC - Rp, 18.19.8.8 NMAC, 2-12-2016]

#### **18.19.8.61 IMPLEMENTS OF HUSBANDRY AND SPECIAL MOBILE EQUIPMENT:**



Special mobile equipment and implements of husbandry, as defined in the Motor Vehicle Code, shall not be issued special permits for the transportation of oversize vehicles or loads.

[18.19.8.61 NMAC - N, 2-12-2016]

**18.19.8.62 MOVEMENT OF A HOUSE, BUILDING OR SIMILAR STRUCTURE:**

**A.** A special permit is required for movement of a house, building or similar structure that exceeds statutory size or weight limitations. Movement of such a structure with a width in excess of 30 feet shall be approved by the DOT.

**B.** Porches or protruding sections are considered reducible and shall be removed to reduce the dimensions of the structure. Loose boards, bricks and similar items shall also be removed for safety.

**C.** A house, building or similar structure shall be moved in the following manner:

(1) mounted on house-moving dollies equipped with pneumatic tires and towed by a truck or truck tractor;

(2) loaded on a truck, semi-trailer or trailer and transported under the same requirements as the movement of oversize or overweight vehicles and loads; or

(3) by other means approved by the DOT.

**D.** A house, building or similar structure shall not be:

(1) pulled or towed by a farm tractor; or

(2) mounted on skids.

**E.** Vehicles used in moving a house, building or similar structure shall conform to all safety standards prescribed by law. Dollies and tires shall be in good condition and a sufficient number shall be used to carry the weight of the structure. A truck or tractor shall be in good condition and shall have the capacity and power to control the movement of the building or structure.

[18.19.8.62 NMAC - Rp, 18.19.8.50 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.63 MOVEMENT OF MANUFACTURED HOME - TAX RELEASE REQUIRED:**

**A.** An applicant for a special permit to move a manufactured home shall provide the DOT with a tax release document from the appropriate county assessor or treasurer if

the origin of the movement of the home is in a county of this state. The tax release document shall contain:

- (1) a full description of the manufactured home, including name of the manufacturer, model, license number and identification number;
- (2) a description of the exact location where the manufactured home is being moved from, including street address, city and county;
- (3) a description of the exact location where the manufactured home is being moved to, including street address, city and county;
- (4) the name of the registered owner of the manufactured home;
- (5) a statement by the county assessor, treasurer or an authorized delegate that all applicable property taxes have been paid or there is no liability for the current and previous years;
- (6) the date the release was issued; and
- (7) the signature of the assessor, treasurer or an authorized delegate of the assessor or treasurer.

**B.** The provisions of this section do not apply if the movement of the manufactured home originates from the lot or business location of a manufactured home dealer and the home was part of the dealer's inventory prior to the sale.

**C.** The provisions of this section apply to movement of a manufactured home from a non-dealer owner to a manufactured home dealer.

[18.19.8.63 NMAC - Rp, 18.19.8.200 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.64 DAYLIGHT MOVEMENT ONLY FOR MANUFACTURED HOMES:**

Movement of a manufactured home shall occur only during daylight hours on any day of the week that is not a holiday. No movement shall occur during inclement weather.

[18.19.8.64 NMAC - Rp, 18.19.8.33 NMAC, 2-12-2016]

#### **18.19.8.65 REQUIRED EQUIPMENT WHEN MOVING A MANUFACTURED HOME:**

A. A towing unit involved in the movement of an oversized manufactured home shall have a wheelbase of at least ninety-nine inches, a minimum of four tires on each drive axle and a gross vehicle weight rating of:

(1) six thousand pounds or more if the width of the manufactured home is ten feet or less;

(2) eight thousand pounds or more if the width of the manufactured home is greater than ten feet but not greater than twelve feet; or

(3) nine thousand pounds or more if the width of the manufactured home is greater than twelve feet.

B. A yellow sign at least five feet wide by twelve inches high reading "WIDE LOAD" or "OVERSIZE LOAD" with black letters at least ten inches high and one inch in thickness shall be displayed on the front of the towing unit and on the rear of the manufactured home.

C. A square or rectangular red or fluorescent orange flag, no less than eighteen inches on any side is required at each corner of the manufactured home and at each front corner of the towing vehicle.

D. The towing unit shall be equipped with two roof-mounted rotating, flashing, strobe or LED amber warning lights at the vehicle width or at a width not to exceed eight feet. At least one amber warning light shall be affixed to the rear of the manufactured home. The amber warning lights shall be of sufficient intensity to be seen at a distance of five hundred feet in bright sunlight.

E. The manufactured home shall be equipped with brake, turn signal and tail lights that are connected to the lighting system of the towing unit in order to warn approaching motorists of any braking or turning of the unit.

F. The towing unit shall be equipped with two outside rear view mirrors, one on each side, that provide a field of view to the driver of the road on both sides of the load and beyond the rear of the load.

[18.19.8.65 NMAC - Rp, 18.19.8.206 NMAC, 2-12-2016]

#### **18.19.8.66 LARGE MANUFACTURED HOMES - DOLLIES, SKIDS OR HOUSE MOVING EQUIPMENT REQUIRED:**

A manufactured home that exceeds eighteen feet in width or fifteen feet ten inches in height shall be moved on house moving equipment, skids or dollies. Movement of such a home without the required house moving equipment, skids or dollies is not permitted. Awnings, doorknobs or other fixtures extending beyond the body of an overwidth unit shall be included in the overall width measurement.

[18.19.8.66 NMAC - Rp, 18.19.8.201 NMAC, 2-12-2016]

**18.19.8.67-18.19.8.79 [RESERVED]**

#### **18.19.8.80 ESCORTS - PURPOSE AND REQUIREMENT:**

**A.** The purpose of an escort vehicle is to enhance the safety of moving an oversize vehicle or load over the highways, to reduce delays and inconveniences to the normal flow of traffic and to alert the motoring public to the presence or approach of an oversize vehicle or load.

**B.** The DOT, after evaluating the dimensions of a vehicle, combination or load and the route to be traveled, may require that one or more escort vehicles accompany the movement or part of the movement or may require that police escorts accompany the movement.

[18.19.8.80 NMAC - Rp, 18.19.8.100 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.81 ESCORT REQUIRED FOR CERTAIN OVERWIDTH VEHICLES:**

Escort vehicles are required for the movement of all widths at or exceeding 14 feet, and may be required for widths less than 14 feet depending on the routes to be traveled and in accordance with established widths for certain highways identified in the escort vehicle map developed and maintained by the DOT. The escort vehicle map is available by electronic link on the special permit application.

[18.19.8.81 NMAC - Rp, 18.19.8.108 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.82 ESCORT REQUIRED FOR CERTAIN OVERLENGTH VEHICLES:**

**A.** Escort vehicles are required for the movement of a vehicle, combination or load that exceeds 110 feet and one inch in length.

**B.** One escort vehicle will be required for each vehicle, combination or load which is greater than 110 feet and one inch in length but is equal to or less than 120 feet and one inch in length. Two escorts will be required for each vehicle, combination or load which is greater than 120 feet and one inch in length.

**C.** The movement of such a vehicle, combination or load may be restricted to certain highways as designated on the special permit. If so restricted, determination of the required number of escort vehicles shall be made by the DOT based on the route to be traveled and other relevant considerations.

[18.19.8.82 NMAC - Rp, 18.19.8.109 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.83 ESCORT REQUIRED FOR CERTAIN OVERHEIGHT VEHICLES:**

An escort vehicle or a person other than the driver of the permitted vehicle may be required to accompany the movement of a vehicle, combination or load that exceeds a height of 16 feet. The escort or additional person shall make immediate height

clearance verifications at each overhead clearance prior to the over-height vehicle moving through the clearance. The requirement for an additional escort or person will be stated on the special permit.

[18.19.8.83 NMAC - Rp, 18.19.8.110 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.84 POLICE ESCORTS:**

**A.** In the discretion of the DOT, police escorts may be required for movement of structures or loads with a width of 20 feet or more. The DOT may also require police escorts for movement on certain roads or for movement that, in the judgment of the DOT, may adversely affect traffic, create undue hazards, require counter-flow or in any manner jeopardize the safety of the motoring public.

**B.** An applicant for a special permit that requires a police escort shall cooperate with the DOT on the timing of the move and be prepared for special conditions or other factors that may delay the move.

**C.** The DOT may coordinate police escorts for the move and may charge a fee for the coordination and provision of police escorts. In certain circumstances, the applicant may be required to coordinate with municipal police for escort services.

**D.** If a route requiring a police escort moves through a municipality, the applicant shall obtain permission from and make arrangements with the municipality for the move, including obtaining any required permit. A special permit shall not be issued until the DOT is assured that the applicant has made satisfactory arrangements with the municipality.

**E.** If a move is entirely within a municipality, a permittee may use a police escort provided by the municipality. However, a special permit shall not be issued until the DOT is assured that the applicant has arranged with local police for assistance.

[18.19.8.84 NMAC - Rp, 18.19.8.102 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.85 PERMITTEE TO PROVIDE CERTIFIED ESCORT VEHICLES:**

Unless a police escort is required, a permittee shall furnish New Mexico certified escort vehicles as required by the DOT and specified on the face of the special permit. An escort vehicle map is available by electronic link on the special permit application.

[18.19.8.85 NMAC - Rp, 18.19.8.100 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.86 ESCORT VEHICLE CERTIFICATION:**

Only a vehicle certified by the DOT or the DPS may operate as an escort vehicle. The vehicle and all required equipment shall be inspected by the DOT or the DPS. Upon a satisfactory inspection, an escort vehicle certification will be issued for that vehicle for a

period of one year or until insurance coverage expires, whichever occurs first. An escort vehicle shall undergo inspection on an annual basis.

[18.19.8.86 NMAC - Rp, 18.19.8.103 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.87 ESCORT VEHICLE REQUIREMENTS:**

**A.** The wheelbase of an escort vehicle shall be at least 100 inches. Unless otherwise approved by the DOT upon written application, an escort vehicle shall not exceed a capacity of one and one-half tons as rated by the manufacturer.

**B.** An escort vehicle shall be registered in accordance with New Mexico's motor vehicle laws and insured in accordance with New Mexico's financial responsibility laws; provided that minimum coverage shall be:

- (1) bodily injury liability in the amounts of \$50,000 for each person and \$100,000 for each accident; and
- (2) property damage liability in the amount of \$25,000 for each accident.

**C.** An escort vehicle shall comply with all requirements imposed by the public regulation commission for escort vehicles.

**D.** An escort vehicle operated by an escort vehicle service company shall display the name, city, and state of the company on both sides of the vehicle. This information may be displayed using removable, magnetic signs.

**E.** An escort vehicle shall not display any sign, insignia, device or emblem that is similar in size, shape or color to any police insignia or badge.

**F.** An escort vehicle shall not tow a vehicle or trailer and shall not be loaded in a manner that obstructs the driver's vision in any direction.

[18.19.8.87 NMAC - Rp, 18.19.8.103 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.88 ESCORT VEHICLE EQUIPMENT:**

**A.** An escort vehicle shall have two rotating, flashing, strobe or LED amber lights on top of the vehicle at the vehicle width or at a width not to exceed eight feet. The amber lights shall be of sufficient intensity to be visible at a distance of at least 500 feet in normal sunlight.

**B.** An escort vehicle shall display a bright yellow sign at least five feet wide by 12 inches high with black lettering reading "OVERSIZE LOAD". The letters shall be at least one inch thick by 10 inches high.

**C.** An escort vehicle shall be equipped with two red or florescent orange flags when escorting a load. The flags shall be square or rectangular and no less than 12 inches on any one side.

**D.** The required flags and sign shall be mounted on the front bumper of a front escort vehicle, on the rear bumper of a rear escort vehicle, or on the roof of the front or rear escort vehicle, whichever position provides the greatest visibility for the motoring public.

**E.** An escort vehicle and the escorted oversize vehicle shall be equipped with two-way radios for direct communication between the two vehicles at all times.

**F.** An escort vehicle shall be equipped with at least one fire extinguisher of minimum size, with a capacity of two and one-half pounds carbon dioxide or dry chemical type, or an extinguisher of another type having equivalent or better extinguishing capacities. Extinguishers shall be mounted so as to be readily accessible for use.

**G.** An escort vehicle shall have on board at all times the safety equipment specified in Section 66-3-849 NMSA 1978 relating to flares and other warning devices.

**H.** An escort vehicle shall have on board all the equipment required for flagmen, as provided in 18.19.8.99 NMAC.

**I.** An escort vehicle shall be equipped with two outside rear view mirrors, one on the driver side and one on passenger side of the vehicle.

**J.** An escort vehicle shall carry at all times the escort vehicle map developed and maintained by the DOT.

[18.19.8.88 NMAC - Rp, 18.19.8.103 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.89 INSPECTION UPON DEMAND:**

An escort vehicle is subject to inspection by a peace officer or authorized DPS personnel at any time. The escort vehicle certification, escort vehicle map, required equipment, documentation of vehicle registration and insurance and any documents required by the public regulation commission shall be made available for inspection on demand.

[18.19.8.89 NMAC - Rp, 18.19.8.103 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.90 ESCORT VEHICLE DRIVER REQUIREMENTS:**

**A.** A driver of an escort vehicle shall be at least eighteen years of age and licensed in accordance with the licensing requirements for escort vehicle drivers in the jurisdiction where the driver resides.

**B.** At all times during a move, an escort vehicle driver shall carry a current driver's license, the escort vehicle certification issued by the DOT or the DPS, an escort vehicle map and any document required by the public regulation commission.

**C.** Escort vehicle drivers do not have police powers and shall not issue citations, attempt arrest or operate the escort vehicle as an emergency vehicle.

**D.** While performing escort vehicle services, an escort driver shall not:

(1) wear a uniform of a color or design similar to uniforms worn by law enforcement officers; or

(2) display any badge, shield or emblem of a type similar to police badges or emblems.

**E.** A person employed by the DPS shall not act as a driver of a private escort vehicle.

[18.19.8.90 NMAC - Rp, 18.19.8.104 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.91 DUTIES OF ESCORT DRIVER BEFORE MOVEMENT BEGINS:**

Before commencement of a move, an escort vehicle driver shall:

A. meet with the driver of the oversize vehicle or load to discuss the various aspects of the move;

B. review the route specified in the special permit and ensure that directions are understood by everyone involved in the move;

C. determine the position of the escort vehicle or vehicles throughout the route;

D. review the special permit for any special requirements, restrictions or instructions; and

E. ensure that all mandatory equipment is in proper working condition and that warning devices are in place.

[18.19.8.91 NMAC - Rp, 18.19.8.105 NMAC, 2-12-2016]

#### **18.19.8.92 DUTIES OF ESCORT DRIVER DURING THE MOVE:**



A. Escort vehicle drivers are responsible for controlling the movement of the escorted oversize vehicle in a manner that maximizes the safety of the motoring public and provides for a safe flow of traffic in the immediate area of the move.

B. Escort vehicle drivers and the oversize vehicle driver shall act as a team to ensure that safety of the motoring public is sustained. The escort vehicle shall operate as a warning vehicle to other motorists of the oversize vehicle.

C. An escort vehicle driver shall comply with all escort requirements, restrictions and instructions noted on the special permit issued to the escorted oversize vehicle and shall assist the driver of the oversize vehicle to comply with all applicable traffic laws and with all conditions and restrictions noted on the special permit.

D. No movement shall be made during inclement weather. Movement shall be made only on the route designated in the special permit. The escort vehicle and the escorted oversize vehicle shall obey all traffic laws, signs and signals and shall comply with the speed limit indicated on the special permit.

E. Responsibilities of a front escort vehicle driver include:

- (1) warning oncoming traffic of the presence of an oversize vehicle or load;
- (2) maintaining communication with the driver of the oversize vehicle or load by using two-way radio to warn of hazards, obstructions, pedestrians or other potential problems that may affect the safe movement of the oversize vehicle or load or the motoring public;
- (3) ensuring that the oversize vehicle or load is following the route prescribed on the special permit;
- (4) assisting the driver of the oversize vehicle or load in locating safe places to allow the oversize vehicle or load and escort vehicles to clear the roadway so traffic following the oversize vehicle or load can safely pass; and
- (5) warning motorists to stop at narrow structures and other roadway restrictions to permit safe passage of the oversize vehicle or load through the obstruction.

F. Responsibilities of a rear escort vehicle driver include:

- (1) warning traffic approaching from the rear of the presence of an oversize vehicle or load ahead;
- (2) maintaining communication with the driver of the oversize vehicle or load by using two-way radio to notify the oversize vehicle driver of flat tires, objects coming

loose from the vehicle or load or other occurrences of which the driver may not be aware;

(3) notifying the front escort driver, when applicable, and the oversize vehicle or load driver of traffic buildup and other delays to the normal flow of traffic;

(4) notifying the oversize vehicle or load driver of motorists attempting to pass the vehicle or load; and

(5) warning motorists to stop at narrow structures and other roadway restrictions to permit safe passage of the oversize vehicle or load through the obstruction.

G. A single escort shall travel to the rear of the oversize vehicle on multi-lane highways and in the front of the oversize vehicle on two-lane highways. The oversize vehicle shall travel as near the right side of the roadway as is safely possible to ensure that traffic can pass safely. The escort and oversize vehicle shall not infringe upon the opposite-bound lane unless necessary to avoid obstacles in the path of the movement.

H. Front and rear escort drivers shall maintain a distance between their vehicles and the oversize vehicle or load consistent with the safe operation of the movement. Depending on highway and traffic conditions, a distance of three hundred to one thousand feet is usually appropriate. In urban areas and at narrow bridges, shorter distances are usually desirable. In rural areas or on narrow, winding or hilly roads, a front escort vehicle should travel well ahead of the oversize vehicle or load to warn oncoming traffic of the oversize vehicle and a rear escort vehicle should travel well behind the oversize vehicle or load to warn motorists following the load well in advance of any roadway restrictions.

I. An escort vehicle driver shall use the vehicle's emergency flashers when stopped or slowing down at a traffic hazard or when traveling at a speed of less than thirty miles per hour. The emergency flashers shall not be used when driving at a speed of thirty miles per hour or more.

J. An oversize vehicle shall not park on the traveled portion of a highway unless absolutely necessary or in case of an extraordinary emergency. Any time an oversize vehicle is parked on a traveled portion of a highway, it shall be adequately protected by flares, flags, flagmen or other appropriate emergency warning devices.

[18.19.8.92 NMAC - Rp, 18.19.8.105 NMAC, 2-12-2016]

#### **18.19.8.93 PASSING AND INTERSECTIONS:**

A. A rear escort vehicle driver shall not prevent a motorist from passing the oversize vehicle but shall inform the driver of the oversize vehicle by two-way radio that a motorist is attempting to pass so appropriate precautions can be taken. Advance

warning is especially important when large trucks are attempting to pass the oversize vehicle.

B. When it is necessary for the oversize vehicle to pass other vehicles or to make a wide turn, the rear escort vehicle shall clearly signal an intention to pass or turn and move into the passing or turning lane well before the oversize vehicle initiates the maneuver. The rear escort driver shall stay in the passing or turning lane until the oversize vehicle completes the pass or turn.

C. If a front escort vehicle passes through an intersection and the oversize vehicle is required to stop for a red light, the escort driver shall stop as soon as possible on the right side of the road and not resume travel until the oversize vehicle approaches the required distance. When an escort driver following an oversize vehicle is required to stop at a traffic light after the oversize vehicle has passed through the intersection, the oversize vehicle driver shall continue its movement and the rear escort driver shall resume a normal following distance after the driver has proceeded through the intersection.

[18.19.8.93 NMAC - Rp, 18.19.8.105 NMAC, 2-12-2016]

#### **18.19.8.94 ACCUMULATED TRAFFIC, UNFORESEEN HAZARDS OR OBSTRUCTIONS:**

A. An escort vehicle driver shall assist the oversize vehicle in locating a suitable area where the oversize vehicle and escort vehicle or vehicles can be completely and safely removed from the roadway and safely reenter the roadway. The oversize and escort vehicles shall be removed from the travelled portion of the roadway to a safe and suitable area in the following circumstances:

- (1) to allow accumulated traffic to pass, when the accumulated traffic is due to the oversize vehicle;
- (2) during periods of inclement weather; or
- (3) when mechanical or other problems occur.

B. An escorted oversize vehicle approaching an unforeseen obstruction or hazard shall park off the roadway, where possible, and the escort vehicle shall proceed past the obstruction or hazard if it is safe to do so. The oversize vehicle shall traverse the obstruction or hazard only after the escort vehicle driver has either verified that it is safe to proceed or has safely stopped oncoming traffic and provided clearance to proceed.

C. The following procedure shall be used to stop oncoming traffic when necessary and safe to do so:

- (1) the escort vehicle shall advance to a point where two-way traffic can be maintained;
- (2) the escort vehicle driver shall dismount and serve as a flagman, using a paddle sign to stop traffic at that location;
- (3) once there is clearance for the oversize vehicle, the oversize vehicle driver shall be notified to proceed; and
- (4) when the oversize vehicle reaches the location where traffic has stopped and two-way traffic can be maintained, it shall halt and allow accumulated traffic to clear from both directions with assistance by the dismounted escort vehicle driver or flagman.

D. Traffic shall not be detained longer than ten minutes except under extraordinary circumstances.

E. The flagging requirements, equipment and methods provided in 18.19.8.99 NMAC shall be followed when slowing down, stopping or otherwise directing traffic.

[18.19.8.94 NMAC - Rp, 18.19.8.105 NMAC, 2-12-2016]

#### **18.19.8.95 COLLISIONS:**

A. In case of a collision involving an oversize or escort vehicle, or involving other vehicles when the collision impedes or prohibits the continued movement of the oversize vehicle, the escort vehicle driver shall:

- (1) pull completely off the roadway, if possible;
- (2) turn on the amber lights and vehicle emergency flashers;
- (3) warn approaching traffic of the accident;
- (4) obtain assistance as soon as possible by contacting police or other emergency services and by requesting the next person who stops to contact emergency services;
- (5) turn off the ignition of wrecked vehicles to reduce fire hazard and keep smokers away from area;
- (6) not move injured persons unless they are in immediate danger such as in a burning vehicle;
- (7) search the area for victims thrown from vehicles; and

(8) when emergency or other trained personnel arrive, provide a brief summary of the incident and provide assistance as requested.

B. A driver of an escort vehicle shall not leave the scene of a collision until authorized to do so by law enforcement personnel.

[18.19.8.95 NMAC - Rp, 18.19.8.106 NMAC, 2-12-2016]

#### **18.19.8.96 CESSATION OF ESCORT SERVICES:**

A. When an escort operation is completed, the escort driver shall turn off all exterior escort equipment lights, remove or cover the oversize load sign and remove the amber lights and flags. Failure to comply with this requirement shall render the escort vehicle certification void, and the escort vehicle driver shall immediately surrender the escort vehicle certification to a police officer or authorized DPS or DOT personnel upon request.

B. If an escort driver determines that the escorted oversize vehicle driver is not, or will not, comply with a provision of the special permit or is otherwise operating in a manner that creates a hazardous or dangerous situation, the escort driver shall notify the oversize vehicle or load driver of the escort driver's intent to cease providing escort services.

C. If, for any reason, an escort vehicle driver ceases to provide escort services before the move is completed:

- (1) movement of the escorted vehicle shall stop;
- (2) the escort driver shall immediately notify the DPS or DOT; and
- (3) the special permit is rendered void.

[18.19.8.96 NMAC - Rp, 18.19.8.105 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.97 POLICE MAY RESTRICT MOVEMENT:**

Law enforcement officers may direct or escort an oversize vehicle or load off the roadway to a place of safety to allow accumulated traffic to pass or for other safety considerations.

[18.19.8.97 NMAC - Rp, 18.19.8.111 NMAC, 2-12-2016]

#### **18.19.8.98 ESCORT VEHICLE REQUIRED FOR EACH ESCORTED LOAD:**

An oversize vehicle, combination or load that requires an escort shall have one or more dedicated escort vehicles as required in the special permit. An escort vehicle shall not escort more than one oversize vehicle or load at any one time.

[18.19.8.98 NMAC - Rp, 18.19.8.112 NMAC, 2-12-2016]

**18.19.8.99 FLAGMEN:**

**A.** Flagmen are required on all loads 20 feet wide or wider or whenever otherwise required by the special permit. Flagmen shall not be used in lieu of an escort vehicle. A dismounted driver of an escort vehicle shall serve as a flagman as necessary during the movement of an escorted oversize vehicle or load.

**B.** A flagman shall be at least eighteen years of age and an employee or agent of the permittee or an escort vehicle service.

**C.** A flagman shall wear an orange or red safety jacket and an orange or red hard hat or bump cap. A flagman shall be equipped with a paddle sign.

**D.** A paddle sign shall be constructed of rigid durable material and consist of a handle at least eight inches long attached to an octagon sign the shape of a standard street stop sign. Each of the eight sides of the octagon sign shall be at least 14 inches, point to point. One side of the sign shall have a red background with white letters, one and one-half inches thick, reading "STOP". The other side shall have a yellow or orange background with black letters, one and one half inches thick, reading "CAUTION". The handle shall be affixed to the sign in such a manner that the word on the sign is displayed to motorists when the sign is held up to view.

**E.** A flagman shall use a paddle sign to direct traffic at all locations where traffic may be obstructed, or when necessary to infringe on the oppositely-bound traffic lane because of breakdown, pulling onto or off the pavement, or avoiding obstacles in the path of movement.

**F.** A flagman shall use a paddle sign to warn traffic of an approaching oversize vehicle at danger points, such as narrow bridges or sharp corners, where the oversize vehicle will travel.

**G.** Flagmen shall position themselves far enough in advance of a problem area so that approaching traffic is allowed sufficient distance to reduce speed and come to a stop. Depending upon approach speed and physical conditions at the site, a distance of 200 to 300 feet is usually adequate. In urban areas, a shorter distance may be appropriate.

**H.** Flagmen shall face traffic on the edge of the shoulder of the road just outside of the traffic lane and shall always stand where they are visible by approaching motorists.

**I.** When warning or stopping traffic, the paddle sign shall be kept in a horizontal position in the path of the vehicle. The free arm shall be raised with the palm of the hand toward approaching traffic.

**J.** To slow traffic, but not stop it, the flagman shall extend the paddle sign into the traffic lane. The paddle sign shall be lowered before traffic is completely stopped.

**K.** The paddle sign shall not be used to signal traffic to move ahead. When signaling traffic to move ahead, a flagman shall lower the paddle sign behind his body and signal with the free hand, using a sweeping motion in the direction traffic is to move.

**L.** The paddle sign shall not be waved. Signals from a flagman shall be clear and distinct.

**M.** If time permits and when possible, a flagman shall inform motorists of the reason for the delay.

[18.19.8.99 NMAC - Rp, 18.19.8.113 NMAC, 2/12/2016; A, 6/1/2022]

## **PART 9: IMPLIED CONSENT ACT REVOCATIONS**

### **18.19.9.1 ISSUING AGENCY:**

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

[12/31/96; 18.19.9.1 NMAC - Rn, 18 NMAC 19.9.1, 9/14/00]

### **18.19.9.2 SCOPE:**

This Part applies to all persons holding a New Mexico driver's license and to those charged with or convicted of driving while intoxicated.

[12/31/96; 18.19.9.2 NMAC - Rn, 18 NMAC 19.9.2, 9/14/00]

### **18.19.9.3 STATUTORY AUTHORITY:**

Section 9-11-6.2 NMSA 1978.

[12/31/96; 18.19.9.3 NMAC - Rn, 18 NMAC 19.9.3, 9/14/00]

### **18.19.9.4 DURATION:**

Permanent.

[12/31/96; 18.19.9.4 NMAC - Rn, 18 NMAC 19.9.4, 9/14/00]

#### **18.19.9.5 EFFECTIVE DATE:**

12/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[12/31/96; 18.19.9.5 NMAC - Rn & A, 18 NMAC 19.9.5, 9/14/00]

#### **18.19.9.6 OBJECTIVE:**

The objective of this Part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code.

[12/31/96; 18.19.9.6 NMAC - Rn, 18 NMAC 19.9.6, 9/14/00]

#### **18.19.9.7 DEFINITIONS:**

As used in 18.19.9 NMAC:

A. "Division" means the motor vehicle division of the New Mexico taxation and revenue department.

B. "Revocation" means the termination of a person's driver's license, permit or privilege to drive a motor vehicle upon a highway in New Mexico.

[7/2/90, 1/10/94, 12/31/96; 18.19.9.7 NMAC - Rn & A, 18 NMAC 19.9.7, 9/14/00]

#### **18.19.9.8 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.8 NMAC - Rn & A, 18 NMAC 19.9.8, 9/14/2000; A, 10/13/00; Repealed, 5/24/2022]

#### **18.19.9.9 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.9 NMAC - Rn & A, 18 NMAC 19.9.9, 9/14/2000; Repealed, 5/24/2022]

#### **18.19.9.10 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.10 NMAC - Rn, 18 NMAC 19.9.10, 9/14/2000; Repealed, 5/24/2022]

#### **18.19.9.11 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.11 NMAC - Rn, 18 NMAC 19.9.11, 9/14/2000; Repealed, 5/24/2022]



**18.19.9.12 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.12 NMAC - Rn, 18 NMAC 19.9.12, 9/14/2000; Repealed, 5/24/2022]

**18.19.9.13 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.13 NMAC - Rn & A, 18 NMAC 19.9.13, 9/14/2000; Repealed, 5/24/2022]

**18.19.9.14 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.14 NMAC - Rn, 18 NMAC 19.9.14, 9/14/2000; Repealed, 5/24/2022]

**18.19.9.15 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.15 NMAC - Rn & A, 18 NMAC 19.9.15, 9/14/2000; Repealed, 5/24/2022]

**18.19.9.16 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.16 NMAC - Rn, 18 NMAC 19.9.16, 9/14/2000; Repealed, 5/24/2022]

**18.19.9.17 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.17 NMAC - Rn & A, 18 NMAC 19.9.17, 9/14/2000; Repealed, 5/24/2022]

**18.19.9.18 [RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.18 NMAC - Rn, 18 NMAC 19.9.18, 9/14/2000; Repealed, 5/24/2022]

**18.19.9.19 [RESERVED]**

[1/10/1994, 12/31/1996; 18.19.9.19 NMAC - Rn, 18 NMAC 19.9.19, 9/14/2000; Repealed, 5/24/2022]

**18.19.9.20 IMPLIED CONSENT HEARING - STANDARD OF INDIGENCY:**

A. The following standard applies to determining whether a driver applying for a hearing pursuant to this section is indigent.

B. A driver is presumed indigent if the driver is represented by a public defender on account of indigency or if the driver is a current recipient of state or federally administered public assistance programs for the indigent, including Aid to Families with Dependent Children (AFDC), food stamps, Medicaid, Supplemental Security Income (SSI), public assisted housing or department of health case management services (DHMS). A statement of indigency specifying receipt of such assistance must be attached to the application for hearing. No further inquiry regarding indigency is necessary. The amount of the driver's assets, such as home equity, is not to be taken into account if the driver is represented by a public defender on account of indigency or if the driver is a current recipient of any of the programs described above.

C. If the driver is not presumptively indigent, the driver shall submit a statement of the driver's financial resources, with consideration given to net income, assets and exceptional expenses. The driver shall list on or with the statement the names and ages of all the driver's family members living in the driver's household. The Department may use its records to verify information submitted by the driver.

(1) Income. The driver shall report the driver's adjusted gross income as reported on the driver's federal income tax return for the driver's most recent taxable year or, if the driver was not required to file a federal income tax return but did file a New Mexico income tax return for that taxable year, the driver's adjusted gross income as reported on the New Mexico income tax return.

(2) Assets. The driver shall list all assets of the driver which are readily convertible into cash within a reasonable period of time. Assets include but are not limited to cash on hand, checking and saving account balances, certificates of deposit, uncashed warrants and checks, claimed but not received tax refunds, stocks and bonds. Real estate shall be included to the extent of the potential proceeds of a loan secured by the property.

(3) Exceptional expenses. Unusual expenses of the driver may so diminish the driver's income as to prevent the driver from paying the required fee for a hearing. Exceptional expenses do not include ordinary living expenses such as food, rent, utilities, transportation costs and repayment of consumer or student loans. Exceptional expenses include but are not limited to medical care costs, family support obligations, child care payments and funeral costs, provided:

(a) medical care and funeral costs exclude all costs covered by insurance;

(b) family support expenses must be court ordered and actually paid on a regular basis;

(c) child care payments must be paid on a regular basis; and

(d) the driver must submit proof of current payments on all exceptional expenses.

D. The driver shall calculate the amount of available funds by adding the amounts determined as the driver's net income and assets and subtracting the amount of the driver's exceptional expenses. If the available funds exceed the maximum amount for the number of family members in the driver's household, the driver is not indigent and must pay the fee required for the hearing.

E. Indigency amounts. For the calendar year beginning January 1, 1994, the maximum amount of available funds for an indigent is \$8,512 plus \$2,975 for each family member in the driver's household. For the 1995 and subsequent calendar years, the two specified dollar amounts will be increased proportionately to the percentage rise in the consumer price index for the 12-month period ending the preceding September 30 over the prior 12-month period.

F. Appeal. If a driver is found to be not indigent under the provisions of this regulation, the driver may appeal that finding to the secretary or to the division director delegated by the secretary to consider appeals. All appeals of a determination that the driver is not indigent must be taken within ten working days from the date of the decision. The secretary or director may hold a hearing on the matter or may decide the issue upon the information submitted by the driver and the department. The decision of the secretary or director is final.

G. The fact that the driver has appealed the finding of non-indigency shall in no way prevent or delay any proceeding by the department against the driver's license under the Implied Consent Act. If the appeal under this regulation is not resolved prior to any hearing on whether the driver's license should be revoked pursuant to the Implied Consent Act, the driver must pay the required fee. If the driver is subsequently found to be indigent upon appeal, the amount of the required fee will be refunded to the driver.

[1/10/94, 12/31/96; 18.19.9.20 NMAC - Rn, 18 NMAC 19.9.20, 9/14/00]

## **CHAPTER 20: TRAFFIC SAFETY**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: NEW MEXICO TRAFFIC SAFETY EDUCATION AND ENFORCEMENT PROGRAM**

#### **18.20.2.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-0427.

[Recompiled 11/16/01]

#### **18.20.2.2 SCOPE:**

This Rule affects local governments, state agencies, law enforcement agencies, schools/universities, and not-for-profit agencies.

[Recompiled 11/16/01]

**18.20.2.3     STATUTORY AUTHORITY:**

This regulation is adopted pursuant to the authority provided by NMSA 1978, Section 66-7-512 (Cum. Supp. 1997).

[Recompiled 11/16/01]

**18.20.2.4     DURATION:**

Permanent.

[Recompiled 11/16/01]

**18.20.2.5     EFFECTIVE DATE:**

March 14, 1998, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

**18.20.2.6     OBJECTIVE:**

The objective of this rule is to establish procedures for implementing NMSA 1978, Section 66-7-512. This includes providing guidance on an agency's eligibility, the application process, and the distribution of revenue from the Traffic Safety Education and Enforcement Fund for both the statewide program and the local law enforcement programs. The Traffic Safety Education and Enforcement Fund shall be used to institute and promote a statewide and local law enforcement program of traffic safety through education and enforcement to reduce fatal and serious injury traffic crashes and to provide for the purchase of equipment and support services as are necessary to establish and maintain the program.

[Recompiled 11/16/01]

**18.20.2.7     DEFINITIONS:**

**[RESERVED]**

[Recompiled 11/16/01]

**18.20.2.8     ELIGIBILITY FOR FUNDING PURSUANT TO NMSA 1978, SECTION 66-7-512:**

A. Only those law enforcement agencies that regularly issue citations for violations of the New Mexico Motor Vehicle Code and whose citations are adjudicated through metro or magistrate court or are processed pursuant to NMSA 1978, Section 66-8-116.3.

B. Any application for funding submitted by an eligible agency must contain the information required in the application instructions as provided by the Traffic Safety Bureau. All information must be submitted on forms provided by the Traffic Safety Bureau.

C. The amount of funding available to eligible individual law enforcement agencies pursuant to NMSA 1978, Section 66-7-512 (C), will be estimated based on the number of convictions for traffic violations in prior years. In no case will funds from this program replace, supplant, or otherwise result in the decrease of funding from other sources available to an agency. If such displacement is found, the application will be considered nullified and funds will be redistributed to other qualifying agencies.

D. All applications for these funds must be submitted to the Traffic Safety Bureau before September 30, or a later deadline established by the Bureau. Failure by an agency to submit a timely application in the format required by this regulation will nullify the application and the disqualified applicant's funds will be redistributed to other qualifying agencies.

E. Funding will be on a reimbursable basis. The expenses for the approved program will be paid initially by the agency. These expenditures will be reimbursed to the agency from the Traffic Safety Education and Enforcement Fund upon submission of required documentation per the Traffic Safety Project Management and Accounting Manual to be provided by the Bureau.

F. Funds remaining, after all applications submitted by the due date have been processed, will be redistributed to other qualifying agencies based on eligibility and funding priority as determined by the Traffic Safety Bureau.

[Recompiled 11/16/01]

#### **18.20.2.9 APPLICATIONS FOR FUNDING FROM AGENCIES NOT ELIGIBLE UNDER SECTION 8 OF THIS RULE:**

A. Eligibility: local governments, state agencies, schools/universities, for profit, and not-for-profit agencies may apply for funding pursuant to NMSA 1978, Section 66-7-512 (D and E).

B. Applications for these funds will be awarded by the Traffic Safety Bureau based on statewide traffic safety needs. The State Procurement Code will be utilized to award applications/proposals.

C. Funding will be on a reimbursable basis. The expenses for the approved program will be paid initially by the agency. These expenditures will be reimbursed to the agency from the Traffic Safety Education and Enforcement Fund upon submission of required documentation per the Traffic Safety Project Management and Accounting Manual to be provided by the Bureau.

D. Funds remaining, after all applications submitted by due date have been processed, will be redistributed to other qualifying agencies based on eligibility and funding priority as determined by the Traffic Safety Bureau.

[Recompiled 11/16/01]

18.20.2.10 EVALUATION: Applications and proposals will be reviewed for approval by the Chief, Traffic Safety Bureau, on the basis of the expected effectiveness of the proposed activity, the extent that the proposed project is coordinated with other traffic safety activities, and the likelihood that the program will have an effect on the reduction of fatal and serious injury traffic crashes in New Mexico.

[Recompiled 11/16/01]

## **PART 3: DRIVER EDUCATION SCHOOLS**

### **18.20.3.1 ISSUING AGENCY:**

New Mexico Department of Transportation.

[18.20.3.1 NMAC - Rp, 18 NMAC 20.3.1, 1-1-03; A, 2-13-09]

### **18.20.3.2 SCOPE:**

This rule applies to all persons seeking to operate driver education schools, or serve as instructors for driver education courses offered, in New Mexico.

[18.20.3.2 NMAC - Rp, 18 NMAC 20.3.2, 1-1-03]

### **18.20.3.3 STATUTORY AUTHORITY:**

Sections 66-10-1 through 66-10-12 NMSA 1978.

[18.20.3.3 NMAC - Rp, 18 NMAC 20.3.3, 1-1-03]

### **18.20.3.4 DURATION:**

Permanent.

[18.20.3.4 NMAC - Rp, 18 NMAC 20.3.4, 1-1-03]

### **18.20.3.5 EFFECTIVE DATE:**

January 1, 2003, unless a later date is cited at the end of a section.

[18.20.3.5 NMAC - Rp, 18 NMAC 20.3.5, 1-1-03]

### **18.20.3.6 OBJECTIVE:**

The purpose of this rule is to provide minimum and uniform standards for the issuance, renewal, and revocation of driver education school licenses and driver education instructor certificates and to establish requirements for the operation of driver education schools.

[18.20.3.6 NMAC - Rp, 18 NMAC 20.3.6, 1-1-03]

### **18.20.3.7 DEFINITIONS:**

For use in this part, the following definitions apply:

**A. ADA** means the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.;

**B. bureau** means the traffic safety bureau (TSB) of the New Mexico department of transportation;

**C. behind-the-wheel** means instruction in which the student, under the direct guidance of a certified driver education instructor, is in control of a motor vehicle, and includes on-street training, on-range training or use of a driving simulator, only as provided by these rules;

**D. certificate** means a document issued by the bureau authorizing a person to serve as a driver education school instructor;

**E. certificate of attendance** means a document evidencing that a person has completed a driver education instructor training course or recertification driver education instructor training course conducted by the bureau;

**F. certificate of completion** means an official document purchased from the bureau and issued to the student upon successful completion of a driver education course;

**G. clean driving record** means a person has no more than six (6) points on that person's driver's license, and that person has not within the last ten (10) years had a driver's license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been

convicted in any jurisdiction of an alcohol or drug-related driving offense, or has received three (3) or more failure to appear summonses or citations in the past year;

**H. convicted or conviction** has the meaning given in Section 66-8-102 NMSA 1978.

**I. correspondence course** means a driver education course approved by the bureau in which a student, overseen by a parent, legal guardian or supervising adult, independently studies written materials and submits written assignments for review by a driver education instructor, and shall not include on-line courses;

**J. credit hour** means fifty (50) minutes of instruction and ten (10) minutes of break time;

**K. crime involving moral turpitude** means a crime that is contrary to honesty, justice or good morals, such as a crime involving dishonesty, fraud, perjury, forgery, murder or serious sexual offenses;

**L. curriculum** means a course of instruction approved by the bureau pursuant to Section 66-10-1 et seq. NMSA 1978;

**M. designee** means a person authorized to perform certain specified duties on behalf of the bureau;

**N. disabled** means a person who is disabled under the provisions of the ADA, and whose disability substantially limits the person's ability to learn and implement the driver education curriculum;

**O. driver education course or course** means a driver education curriculum taught by a driver education instructor and includes correspondence courses, classroom instruction and behind-the-wheel training;

**P. driver education school or school or licensee** means a person licensed by the bureau to operate a school offering driver education courses;

**Q. driver education instructor or instructor** means a person certified by the bureau as qualified and trained to conduct driver education courses, who gives instruction for hire in the driving of motor vehicles or prepares applicants for examination for a Class D, E or M driver's license;

**R. driving simulator** means a computer-based simulator unit and program, approved by the bureau, that reproduces driving situations likely to occur in actual driving performance on the street which require the student to evaluate risk, make decisions, and respond appropriately to the driving situation presented;



**S. educational institution** means any public, private or parochial school that provides basic education at the mid school, junior high school or high school level;

**T. enrolled** means that a student has registered for a driver education course, attended the first day of a scheduled course and will continue until the course is completed;

**U. extension site** means a location other than the main school site where a licensed driver education school offers driver education courses;

**V. Implied Consent Act** means Sections 66-8-105 through 66-8-112 NMSA 1978;

**W. limited driving history** means a driving record from the New Mexico motor vehicle division of the taxation and revenue department or its equivalent that includes actions and citations, and driver's license revocations pursuant to the Implied Consent Act;

**X. license** means the document issued by the bureau authorizing a person to operate a driver education school;

**Y. MVD** means the New Mexico motor vehicle division of the taxation and revenue department;

**Z. on-range training** means a student is in control of a motor vehicle on an off-street facility where one or more students may be operating a motor vehicle simultaneously under the direction of one or more instructors who are outside the vehicle;

**AA. on-street training** means a student is in control of a motor vehicle on a public highway in real and varied traffic situations and an instructor is in the front passenger seat next to the student;

**BB. person** means an individual, firm, partnership, association, corporation, or other legal entity;

**CC. private driver education school** means a person to whom the Driving School Licensing Act, Section 66-10-8 NMSA 1978, applies;

**DD. proctored exam** means an exam monitored by a driver education instructor;

**EE. revocation or revoked** means the involuntary permanent termination of a license or certificate by the bureau for cause;

**FF.student** means a person who has enrolled in a driver education course; and

**GG. suspension or suspended** means the involuntary termination of a license or certificate by the bureau for cause for a specified period of time.

[18.20.3.7 NMAC - Rp, 18 NMAC 20.3.7, 1-1-03; A, 2-13-09]

#### **18.20.3.8 STUDENT ELIGIBILITY:**

**A. Driver education schools.** A driver education school shall not enroll a person as a student unless the person will be fifteen (15) years of age on or before the date the classroom portion of the driver education course will be completed.

**B. Correspondence courses.** A correspondence course shall not enroll a person as a student unless:

(1) the person will be fifteen (15) years of age on or before the date the correspondence course will be completed; or

(2) the person has obtained prior written approval from the bureau; in order to obtain prior written approval from the bureau, the person shall:

(a) submit an application for permission to enroll in a driver education correspondence school, completed and signed by the person's parents or legal guardian; a person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us>;

(b) document in the completed application that the person meets at least one (1) of the following criteria, subject to the bureau's approval:

(i) availability: the parent or legal guardian shall provide documentation that there is not a driver education program at the person's mid school, junior high school or high school, or that there are no private driver education programs available within a reasonable distance;

(ii) distance: the parent or legal guardian shall provide documentation that there is not a private driver education school within twenty-five (25) miles of the person's home and that the person's mid school, junior high school or high school does not provide a driver education course;

(iii) schedule: the parent or legal guardian shall provide documentation that the person's scholastic, activity or work schedule prevents the person from attending either a mid school, junior high school or high school driver education school or a local private driver education school;

(iv) home schooling: the parent or legal guardian shall provide verification of notification to the New Mexico public education department of the intent to home school the person in all subjects; or

(v) extenuating circumstances: the parent or legal guardian shall provide documentation of any other extenuating circumstance that prevents the person from attending either a mid school, junior high school or high school driver education school or a local private driver education school.

[18.20.3.8 NMAC - N, 1-1-03; A, 2-13-09]

#### **18.20.3.9 APPLICATION FOR PRIVATE DRIVER EDUCATION SCHOOL LICENSE:**

**A. License required.** No person may operate a driver education school without first having obtained a license from the bureau.

**B. Application form.** A person wishing to obtain a license to operate a private driver education school shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

**C. Contents of application.** An application for a private driver education school license shall contain:

(1) the applicant's name, mailing address, telephone number, physical address of the main school site, and, if the applicant has one, the applicant's e-mail address;

(2) a photocopy of the certificate of maximum occupant load issued by the state or local fire marshal stating the maximum occupancy allowed by the fire code for each room at the main school site and each extension site, if applicable, that will be used as a classroom;

(3) a list of all extension sites to be used for conducting driver education courses;

(4) a list of all instructors who will conduct driver education courses;

(5) a schedule of fees applicable to students who enroll in a driver education course, including primary and incidental costs charged for the course, school policies for passing and failing, refund and reschedule policies, attendance requirements and MVD permit fees;

(6) the proposed curriculum, handouts, videos, and final examination questions for the driver education course;

(7) the name, address, and telephone number of three (3) character and employment references who are not family members;

(8) the applicant's resume or related work history;

(9) a copy of the applicant's limited driving history from the motor vehicle division, driver services bureau or its equivalent from any jurisdiction in which the applicant has held a driver's license in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau; and

(10) a state police background check from any state in which the applicant has resided in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety or its equivalent at least sixty (60) days before the date the application is filed with the bureau.

**D. Completeness.** When the bureau receives an application for a driver education school license, the bureau shall check the application for completeness.

(1) If the application is not complete, the bureau shall contact the applicant for additional information within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(2) If the application is complete, the bureau shall review the application.

[18.20.3.9 NMAC - Rp, 18 NMAC 20.3.8, 1-1-03; A, 2-13-09]

#### **18.20.3.10 ISSUANCE OF INITIAL PRIVATE DRIVER EDUCATION SCHOOL LICENSE:**

**A. Standards for issuance.** In reviewing applications for driver education schools, the bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to operate a driver education school;

(3) the proposed driver education school can certify that its facilities meet the accessibility requirements of the ADA;

(4) the applicant has not been convicted of a crime involving moral turpitude;

(5) the applicant has a clean driving record;

(6) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act; and

(7) the persons who will serve as driver education instructors meet the requirements of this rule.

**B. Issuance of initial license.** If the bureau determines that an applicant meets the standards prescribed in Subsection A of this section, the bureau shall issue a license upon:

(1) payment of the \$400.00 license fee (or \$200.00 for applications filed on or after January 1 of the current license year);

(2) payment of the \$35.00 extension site fee for each extension site, if applicable;

(3) submittal of a certificate of insurance that meets the requirements of Subsection D of 18.20.3.13 NMAC for each vehicle used for driver training; and

(4) posting of a surety bond with the bureau in the amount of \$5,000 issued by a company authorized to transact surety business in New Mexico. The surety bond shall be continuous, shall name the New Mexico department of transportation, traffic safety bureau as obligee, and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records.

**C. Denial of license.** If the bureau determines that an applicant does not meet the standards prescribed in Subsection A of this section, the bureau shall issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time.

[18.20.3.10 NMAC - Rp, 18 NMAC 20.3.9 and 20.3.16, 1-1-03; A, 2-13-09]

#### **18.20.3.11 TERM OF PRIVATE DRIVER EDUCATION SCHOOL LICENSE:**

**A. Term.** A license shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial licenses shall be valid from the date of issuance to the next June 30. Renewal licenses shall be valid from July 1 of the year of renewal to June 30 of the following year.

#### **B. License renewal.**

(1) A licensee shall file an application for renewal of its license with the bureau on or before June 1 of each year to ensure license renewal by July 1. A licensee who files an application for renewal after June 1 shall pay a late fee of \$25.00.

(2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

(3) The application for renewal shall be accompanied by the documents specified in Subsection C of 18.20.3.9 NMAC, except for the documents specified in Paragraphs (7) and (8) of Subsection C of 18.20.3.9 NMAC.

(4) The bureau shall review applications for renewal in the order in which they are received.

### **C. Approval/disapproval of application for license renewal.**

(1) The bureau shall renew a license for a period of one (1) year if:

(a) the bureau or its designee finds that the driver education school is in compliance with the requirements of this rule;

(b) the licensee has submitted all required reports to the bureau;

(c) the licensee has submitted a certificate of insurance that meets the requirements of Subsection D of 18.20.3.13 NMAC for each vehicle used for driver training;

(d) the licensee has submitted a continuation certificate or proof of payment for the surety bond required by Paragraph (4) of Subsection B of 18.20.3.10 NMAC; and

(e) the licensee pays the \$400.00 annual license fee and, if applicable, the \$35.00 extension site fee for each extension site and the \$25.00 late fee if the application was filed after June 1.

(2) The bureau shall not renew the license of any driver education school not in compliance with the requirements of this rule.

**D. Notice of rule violation.** The bureau may send any licensee a notice of rule violation if it finds that the driver education school is not in compliance with one or more requirements of this rule. The notice of rule violation shall specify the provisions of this rule with which the licensee is not in compliance. Failure to correct the rule violation in the time requested by the bureau may result in suspension or revocation of the license.

### **E. Early termination.**

(1) A license shall automatically terminate if a driver education school ceases operation.

(2) The bureau may suspend or revoke a license for cause as provided in this rule.

(3) If a driver education school ceases operation for any reason, the school shall comply with the requirements of Subsection M of 18.20.3.15 NMAC.

**F. Restriction on sale of license.** A driver education school license shall not be sold or transferred.

[18.20.3.11 NMAC - Rp, 18 NMAC 20.3.10 and 20.3.16, 1-1-03; A, 2-13-09]

### **18.20.3.12 CLASSROOM COURSE REQUIREMENTS FOR PRIVATE DRIVER EDUCATION SCHOOLS:**

A licensee providing classroom instruction shall:

**A.** engage as driver education instructors only those persons who have been certified by the bureau; a licensee may not serve as an instructor unless the licensee has been certified by the bureau as an instructor pursuant to these rules.

**B.** enroll no more than forty (40) students or the maximum occupancy allowed by the fire code, whichever is less, in a driver education course;

**C.** not charge a student more than \$800.00, including tax, for enrolling in a driver education course, except that a school may charge a student up to \$100.00 for each credit hour of behind-the-wheel instruction that is not part of the seven (7) hour behind-the-wheel portion of a curriculum;

**D.** display the license issued by the bureau in an appropriate and visible location;

**E.** display the placard issued by the fire marshal stating the maximum occupancy of each classroom in an appropriate and visible location in the classroom;

**F.** use classroom facilities that:

- (1) have adequate space, lighting, heating, and ventilation;
- (2) have seats and tables or seats with attached tables for each student in the class;
- (3) have a whiteboard, blackboard, or flipchart;

**(4)** have a monitor of sufficient size for all students to see, if videos are used;  
and

**(5)** comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities;

**G.** ensure that the learning environment is conducive to learning and free from discrimination, intimidation, and harassment; no person shall engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others;

**H.** use only the curriculum, handouts, videos, and final examination questions approved by the bureau;

**I.** if a licensee becomes aware that a student is disabled, inquire as to the need for accommodations, and provide reasonable accommodations for the student, including but not limited to auxiliary aids or services such as assisted listening devices or a sign language interpreter, unless the accommodation presents an undue burden on the licensee; the bureau shall pay for sign language interpretation if the student is under the age of eighteen (18), provided that the licensee shall contact the bureau at least fourteen (14) days before the scheduled date of the driver education course to arrange for interpretation;

**J.** provide a minimum of thirty (30) credit hours of classroom instruction for each driver education course if the course also includes a minimum of seven (7) hours of behind-the-wheel training, or fifty-six (56) credit hours of classroom instruction for each driver education course if the course does not include the minimum hours of behind-the-wheel training; in addition to the foregoing, either course must include a minimum of six (6) hours of classroom instruction devoted to DWI prevention and education and other impairments and distractions and shall include information on organ donation and the Jonathan Spradling Revised Uniform Anatomical Gifts Act, Sections 24-6B-1 et seq. NMSA 1978;

**(1)** when an educational institution is in session, a licensee shall conduct the course over a minimum four week period, with no more than three (3) hours of classroom instruction on days when educational institution classes are held, and no more than four (4) hours of classroom instruction on days when educational institution classes are not held;

**(2)** during any educational institution vacation or break period of two (2) weeks or more, a licensee may conduct the course over a minimum two (2) week period, with no more than four (4) hours per day of classroom instruction;

**K.** have a proctored final exam with a minimum of fifty (50) questions; a student must correctly answer at least seventy percent (70%) of the questions to pass the final



exam; the exam shall require students to list, define, describe, identify, demonstrate, explain, compare, predict, estimate, or solve driving-related terms, signs, and situations;

**L.** use completion certificates purchased from the bureau at a cost of \$1.00 per certificate, issued sequentially by the licensee;

**M.** not permit a student to attend any driver education classes until the student has received written information stating all fees, including primary and incidental costs charged for the course, school policies for passing and failing, refund and reschedule policies and attendance requirements.

[18.20.3.12 NMAC - Rp, 18 NMAC 20.3.11 and 20.3.16, 1-1-03; A, 2-13-09]

### **18.20.3.13 BEHIND-THE-WHEEL TRAINING:**

#### **A. Hours requirement.**

**(1)** A private driver education school which provides behind-the-wheel training as part of the course shall provide a minimum of seven (7) hours of behind-the-wheel training to each student, with no more than thirty (30) days between the end of the classroom course and the beginning of the behind-the-wheel training. At least four (4) of the seven (7) hours shall be on-street training.

**(2)** A private driver education school may meet up to three (3) hours of the behind-the-wheel training requirement:

**(a)** with on-range training; or

**(b)** with prior written approval from the bureau, by using a driving simulator approved by the bureau, provided that two (2) hours of instruction using a driving simulator shall be equivalent to one (1) hour of on-street training.

**(3)** On days when educational institution classes are held, a licensee shall provide no more than one (1) hour per day of behind-the-wheel training per student. On days when educational institution classes are not held, a licensee shall provide no more than two (2) hours per day of behind-the-wheel training per student.

**(4)** Driving time shall not include time spent driving to pick up or drop off students unless the route meets the objective of the driving lesson.

**B. Pre-driving classroom instruction.** Before a licensee schedules students for on-street training, the licensee shall provide a minimum of nine (9) hours of classroom instruction on:

**(1)** approaching the vehicle with awareness;

- (2) orientation to controls;
- (3) basic rules of the road;
- (4) use of vision to control the vehicle;
- (5) proper use of the steering wheel, accelerator, and brake;
- (6) turning left and right; and
- (7) signs, signals, and road markings.

**C. Hourly behind-the-wheel course.** A school may offer hourly behind-the-wheel training to any student requesting such training up to the maximum rate provided in Subsection C of 18.20.3.12 NMAC, provided that the requirements of Subsections C , D, E, F and G of this section shall apply.

**D. Vehicle insurance required.** A licensee shall provide to the bureau a certificate of insurance showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to transact insurance business in New Mexico evidencing bodily injury and public liability insurance on all vehicles used for behind-the-wheel driving instruction, pursuant to Section 66-10-3 NMSA 1978, including hired vehicles and non-owned vehicles. The certificate shall list the make, model, and year of each vehicle and shall include a statement from the insurance company that it will notify the bureau thirty (30) days before canceling the insurance. The licensee shall provide a copy of the policy to the bureau upon the bureau's request. The insurance shall have the following minimum limits of coverage:

- (1) \$500,000 per occurrence for bodily injury to or death of all persons injured or killed;
- (2) \$250,000 per person for bodily injury to or death of a person injured or killed;
- (3) \$10,000 per person for medical payments;
- (4) \$100,000 per occurrence for property damage; and
- (5) \$50,000 per person for uninsured motorist coverage.

**E. Other requirements.**

(1) The number of occupants in a motor vehicle being used for behind-the-wheel instruction shall not exceed the number of operational seatbelts in the vehicle. Only the instructor, bureau monitor and driver education student may occupy the front seat. Only a student, parent or guardian of a student, instructor, translator, licensee,

bureau monitor or person training to become a driver education instructor may occupy a rear seat.

**(2)** A private driver education school shall maintain a driving log for each student. The driving log shall be maintained in the vehicle during the training and shall be completed at the end of each training. The driving log shall include the student's name, permit number, home telephone number, the name and telephone number of an emergency contact person, the instructor's name, the date and start and end time of each drive, the skills taught that day, the instructor remarks, the student's final behind-the-wheel grade, total driving time for the student, and the student's initials indicating that the student has reviewed the information in the log.

**(3)** No instructor or student shall use a cell phone during behind-the-wheel training except in an emergency, unless otherwise restricted by law or local ordinance.

**(4)** The instructor shall ensure that each student participating in behind-the-wheel training has in his or her immediate possession an instructional permit or provisional license issued by the New Mexico motor vehicle division or driver's license from any state before the student may participate in behind-the-wheel training.

**F. Disabled and other students in need of specialized instruction or equipment.**

**(1)** When providing behind-the-wheel driving instruction to disabled students and other students in need of specialized instruction or equipment, a private driver education school shall provide individualized instruction for each student based on the nature and severity of the student's disability or special needs.

**(2)** When providing behind-the-wheel driving instruction to disabled students and other students in need of specialized instruction or equipment, a private driver education school shall:

**(a)** determine whether the driver education school can provide a reasonable accommodation for the disabled student or the specialized instruction or equipment required by a non-disabled student; and

**(b)** if the driver education school cannot provide a reasonable accommodation or specialized instruction or equipment, refer the student to an instructor certified by the bureau who also holds the certified driver rehabilitation specialist (CDRS) credential from the association of driver rehabilitation specialists, or an equivalent credential from an organization recognized by the bureau, unless the driver education school currently has a CDRS instructor in its employ.

**G. Car and equipment specifications.** A private driver education school shall maintain all motor vehicles it uses for behind-the-wheel training in safe operating condition and shall equip them with the following:

- (1) a passenger side brake (on-street training only) ;
- (2) right and left side mirrors;
- (3) an inside rear view mirror for the instructor;
- (4) operational seatbelts for all occupants;
- (5) adjustable front seats;
- (6) a first aid kit;
- (7) safe tires; and
- (8) signs on both sides and on the rear of the vehicle indicating the name of the driver education school, "student driver" or "driver education vehicle;" the background and letters of the sign shall be in contrasting colors, the letters shall be at least three inches (3") high, and the sign shall be safely secured to the vehicle, but shall not be placed on any window of the vehicle.

**H. Reports of moving violations and crashes.** A private driver education school shall report to the bureau:

- (1) within twenty-four (24) hours of the occurrence, all crashes that result in injury or death that involve students driving driver education school vehicles;
- (2) within ten (10) working days of their occurrence, all other crashes and all moving violations that involve students driving driver education school vehicles; and
- (3) the date, time, location, names of all persons involved, name of law enforcement agency and officer handling the investigation for each crash or moving violation.

[18.20.3.13 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03; A, 2-13-09]

#### **18.20.3.14 CORRESPONDENCE COURSE REQUIREMENTS:**

A licensee offering correspondence courses shall:

**A.** enroll only those New Mexico students who are eligible pursuant to Subsection B of 18.20.3.8 NMAC and ensure that distributors of the school's correspondence course adhere to the same enrollment requirements;

**B.** use only the curriculum, handouts, videos, and final exam questions approved by the bureau; such materials must include a notification that any student using the materials must be home-schooled or have bureau approval pursuant to Subsection B of

18.20.3.8 NMAC before starting the course, and that such course cannot be taken on-line;

**C.** provide a minimum of fifty-six (56) hours of coursework, based on an average person completion time, including a minimum of six (6) hours of coursework devoted to DWI prevention and education and information on organ donation and the Jonathan Spradling Revised Uniform Anatomical Gifts Act, Sections 24-6B-1 et seq. NMSA 1978;

**D.** have a final exam with a minimum of fifty (50) questions; a student must correctly answer at least seventy percent (70%) of the questions to pass the final exam;

**E.** use completion certificates purchased from the bureau at a cost of \$1.00 per certificate, issued sequentially by the licensee;

**F.** specify at least one (1) representative to act as liaison with the bureau;

**G.** specify at least one (1) certified driver education instructor to review each student's work and progress;

**H.** engage as driver education instructors only those persons who have been certified by the bureau; a licensee shall not serve as an instructor unless the licensee has been certified by the bureau as an instructor pursuant to these rules;

**I.** inform each student in writing that the student shall have one (1) year from the date of enrollment to complete the course and ensure that this requirement is met;

**J.** not charge a student more than \$400, including tax, for enrolling in a correspondence course.

[18.20.3.14 NMAC - N, 1-1-03; A, 2-13-09]

#### **18.20.3.15 OPERATING REQUIREMENTS FOR PRIVATE DRIVER EDUCATION SCHOOLS:**

A licensee:

**A.** shall adhere strictly to the requirements of this rule;

**B.** shall notify the bureau at least thirty (30) days in advance if the driver education school intends to cease operations;

**C.** shall make all driver education school records available for inspection and copying by the bureau or its designee at any time; a licensee shall maintain all hard copies and electronic versions of its records for a minimum of three (3) years for each student receiving instruction, including students who passed, failed, withdrew,

cancelled, or transferred to another school; the records shall be updated for each course;

**D.** shall, at the time of enrollment and on a quarterly basis thereafter, provide the bureau with a student report for each driver education course conducted and completed during the quarter on a form prepared or approved by the bureau;

**E.** shall have a written refund policy and a written reschedule policy which must be issued to each student upon enrollment;

**F.** shall, upon request, provide each student with a form prepared by the bureau that allows the student or the student's parent to notify the bureau regarding a comment or concern about the school or an instructor;

**G.** shall provide each student upon enrollment with a copy of the graduated driver's license act, Sections 66-5-5 and 66-5-8 NMSA 1978 regarding the practice driving component requirement;

**H.** shall notify the bureau of:

**(1)** any changes in address ten (10) days before opening for business at the new location;

**(2)** the addition or closing of extension sites within ten (10) days of their opening or closing; and

**(3)** the addition or deletion of instructors within ten (10) days of their hiring or leaving;

**I.** shall conduct all school operations in a professional and courteous manner;

**J.** shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations;

**K.** shall not publish, advertise, or insinuate in any way that a student is assured of obtaining a driver's license if the student takes the course offered by the licensee;

**L.** may use the phrases "licensed by the traffic safety bureau" or "curriculum approved by the traffic safety bureau" but may not otherwise use the word "approved" or any of its synonyms in its advertising or promotional materials;

**M.** upon ceasing operations for any reason, shall make all driver education school records available for inspection or copying by the bureau or its designee at any time, and shall return all unused completion certificates to the bureau within ten (10) days of the school ceasing operation; the school shall be entitled to a refund of \$1.00 for each unused certificate if requested in writing by the school when it returns the unused

certificates; for any certificates not returned within ten (10) days of the school ceasing operation, the bureau shall notify MVD that the certificates are no longer valid.

[18.20.3.15 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03; A, 2-13-09]

#### **18.20.3.16 EVALUATION OF PRIVATE DRIVER EDUCATION SCHOOLS:**

##### **A. Responsibility.** The bureau or its designee:

(1) shall conduct periodic evaluations of driver education schools using criteria developed by the bureau; the bureau shall prepare a written evaluation and shall provide a copy of the evaluation to the licensee upon request; the bureau may in its discretion conduct evaluations of a driver education school on its own initiative at any time and for any reason or in response to complaints from any person; the bureau shall document, investigate, and discuss all complaints with the driver education school;

(2) may conduct on-site quality assurance visits; on-site visits may address the adequacy of classroom facilities, instructor's traffic safety knowledge and teaching techniques, learning environment, quality of the curriculum, class materials, examination questions and customer service.

##### **B. Relevant factors.** In conducting its evaluations, the bureau shall consider:

(1) the number and nature of any comments or complaints received from students, instructors, judges, law enforcement officers, and others;

(2) whether the driver education school consistently meets the requirements of this rule; and

(3) the results from on-site quality assurance visits.

[18.20.3.16 NMAC - Rp, 18 NMAC 20.3.12, 1-1-03; A, 2-13-09]

#### **18.20.3.17 CERTIFICATION OF MID SCHOOL, JUNIOR HIGH SCHOOL AND HIGH SCHOOL DRIVER EDUCATION INSTRUCTORS:**

**A. Certification required.** No teacher may serve as a driver education instructor in [a school] an educational institution without first having obtained a certificate from the bureau. The bureau may in its discretion temporarily waive this requirement upon request of the educational institution principal or superintendent, contingent on the teacher attending a driver education instructor training course offered by the bureau within twelve (12) months of the date of the waiver. A teacher certified pursuant to this section shall not be certified to teach driver education in a private driver education school unless the teacher obtains instructor certification pursuant to 18.20.3.18 NMAC.

**B. Application requirements.** A mid school, junior high school or high school teacher wishing to obtain approval from the bureau to teach driver education at an educational institution shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

**C. Contents of application.** The application shall be accompanied by:

- (1) the name of the teacher;
- (2) a copy of the teacher's state board of education teaching license or waiver to teach pending licensure or if a private educational institution, a statement from the institution's principal stating that the teacher is qualified to teach;
- (3) a copy of the teacher's limited history driving record from the motor vehicle division, driver services bureau dated no earlier than sixty (60) days before the date the letter is filed with the bureau;
- (4) the date the teacher will attend the bureau's driver education instructor training course; and
- (5) the name of the school at which the teacher will be providing driver education instruction.

**D. Completeness.** When the bureau receives an application for certification as a driver education instructor, the bureau will check the application for completeness.

(1) If the application is incomplete, the bureau shall contact the applicant for additional information within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(2) If the application is complete, the bureau shall review the application.

**E. Standards for issuance of driver education instructor certificate.** Prior to approving the teacher to attend training, the bureau shall consider whether:

- (1) the information provided is accurate and valid;
- (2) the teacher is at least twenty-one (21) years of age;
- (3) the teacher holds a valid driver's license; and
- (4) the teacher has a clean driving record which is free of any DWI conviction for the past five (5) years.



**F. Approval for training.** If the bureau determines that the teacher meets the standards in Subsection E of this section, the bureau shall grant approval for the teacher to attend the bureau's forty (40) hour driver education instructor training course.

**G. Term of certification.** A certificate of attendance from the classroom portion of the bureau's driver education instructor training course shall certify the teacher to teach in a mid school, junior high school or high school for three (3) years from the date of completion of training. If the mid school, junior high school or high school at which the teacher is teaching changes during the term of the certificate, the teacher shall notify the bureau within ten (10) days of such change.

**H. Renewal of certification.** A teacher may renew the teacher's certification to teach driver education in a school by taking the refresher driver education instructor training course before the teacher's diploma expires. A certificate of attendance from the bureau's refresher driver education instructor training course shall certify the teacher to teach in a mid school, junior high or high school for three (3) years from the date of completion of refresher training. If the teacher does not complete the refresher driver education instructor training course within the three (3) year period, the teacher's certification will lapse. A teacher teaching in a public educational institution shall provide the bureau with a copy of the teacher's current New Mexico public education department teaching license prior to the end of the three (3) year period.

[18.20.3.17 NMAC - N, 1-1-03; A, 2-13-09]

#### **18.20.3.18 CERTIFICATION OF PRIVATE DRIVER EDUCATION INSTRUCTORS:**

**A. Certification required.** No person or licensee may serve as a driver education instructor without first having obtained a certificate from the bureau.

**B. Application requirements.** A person wishing to obtain a certificate as a driver education instructor shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

**C. Contents of application.** The application shall be accompanied by:

(1) a copy of the applicant's limited history driving record from the motor vehicle division, driver services bureau or its equivalent from any state in which the applicant has resided in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau;

(2) a state police background check from any state in which the applicant has held a driver's license in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau, or verification that the applicant submitted a request for a state police background check to the department of public

safety or its equivalent at least sixty (60) days before the date the application is filed with the bureau;

(3) a copy of the applicant's health certificate signed by a physician and dated no earlier than sixty (60) days before the date the application is filed with the bureau stating that the applicant is free from all communicable diseases; if the applicant will provide behind-the-wheel training, the health certificate must also state that the applicant is free of any ailment, disease, or physical defect that causes momentary or prolonged lapses of consciousness or control, which is or may become chronic, and that the applicant is not suffering from a physical or mental disability or disease that prevents reasonable and ordinary control over a motor vehicle or that could impair the applicant's ability to drive safely or instruct student drivers; correspondence school instructor applicants do not need to submit a health certificate;

(4) a copy of a teaching certificate from the New Mexico public education department, a copy of a diploma or official transcript evidencing a bachelor's degree from an accredited college or university, or a resume with verifiable employment history showing a minimum of three (3) years of full-time experience in driver training or a related field;

(5) the name, address, and telephone number of three (3) character and employment references who are not family members;

(6) the applicant's resume or related work history; and

(7) the name of the school at which the instructor will be providing driver education instruction.

**D. Completeness.** When the bureau receives an application for certification as a driver education instructor, the bureau shall check the application for completeness.

(1) If the application is incomplete, the bureau shall contact the applicant for additional information within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(2) If the application is complete, the bureau shall review the application.

**E. Standards for issuance of driver education instructor certificate.** In reviewing applications for driver education instructors, the bureau shall consider whether:

(1) the information provided is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to be a driver education instructor;

(3) the applicant is at least twenty-one (21) years of age;

(4) the applicant has a bachelor's degree from an accredited college or university, has a license as a teacher from the New Mexico public education department, or has a minimum of three (3) years of full-time experience in driver training or a related field;

(5) the applicant holds a valid driver's license;

(6) the applicant has not been convicted of a crime involving moral turpitude;

(7) the applicant has a clean driving record; and

(8) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act.

#### **F. Approval for training.**

(1) If the bureau determines that the applicant meets the standards in Subsection E of this section, the bureau shall grant approval to proceed with instructor training.

(a) Each applicant shall complete a forty (40) hour bureau-sponsored driver education instructor training course.

(b) If the applicant is not a licensed teacher, does not hold an advanced degree in education, or does not have proof of having taken an equivalent training course in the past three (3) years, the applicant must complete a bureau sponsored or approved instructor training course designed to teach instructional strategies, classroom management, or acquisition of teaching competencies.

(c) The bureau shall issue a certificate of attendance upon satisfactory completion of the driver education instructor training course, which shall be valid for five (5) years from the date of completion.

(2) If the bureau determines that the applicant does not meet the standards in Subsection E of this section, the bureau shall issue a letter stating the reasons it is not granting approval to proceed with instructor training.

#### **G. Final review.**

(1) If the bureau determines that an applicant has successfully completed the driver education instructor training course and is otherwise fit, the bureau shall issue a certificate upon payment of the \$50.00 instructor certification fee. The bureau may in its discretion issue a temporary certificate to an applicant with either a minimum of a bachelor's degree or three (3) years of related experience, contingent on the applicant attending the next driver education instructor training course offered by the bureau.

(2) If the bureau determines that an applicant has not successfully completed the driver education instructor training course or is otherwise not fit, the bureau shall issue a letter stating its reasons for denial of certification.

**H. Term.** A driver education instructor certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year. If the driver education school at which the instructor is teaching changes during the term of the certificate, the instructor shall notify the bureau within ten (10) days of such change.

[18.20.3.18 NMAC - Rp, 18 NMAC 20.3.13, 20.3.14, 20.3.15 and 20.3.16, 1-1-03; A, 2-13-09]

### **18.20.3.19 RECERTIFICATION OF PRIVATE DRIVER EDUCATION INSTRUCTORS:**

#### **A. Certificate renewal.**

(1) A driver education instructor shall file an application for renewal of his or her certificate with the bureau on or before June 1 each year to ensure certificate renewal by July 1. A driver education instructor who files an application for renewal after June 1 shall pay a late fee of \$25.00.

(2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

(3) The application for renewal shall be accompanied by the documents specified in Subsection C of 18.20.3.18 NMAC, except for the documents specified in Paragraphs (5) and (6) of Subsection C of 18.20.3.18 NMAC.

(4) The bureau shall review applications for renewal in the order in which they are received.

#### **B. Continuing education requirements.**

(1) Driver education instructors shall complete a minimum of eight (8) credit hours of continuing education each year to qualify for recertification.

**(2)** A driver education instructor may satisfy this requirement in whole or in part by attending bureau sponsored:

**(a)** traffic safety issues forums and workshops; and

**(b)** education courses and workshops.

**(3)** The bureau may, in its discretion, approve continuing education credit on the basis of one (1) continuing education credit hour for every hour of attendance at the following types of programs if a copy of the workshop agenda or course curriculum is submitted to the bureau:

**(a)** drug or alcohol workshops; or

**(b)** education courses or workshops.

**(4)** Every five (5) years after completing the bureau's driver education instructor training course, the driver education instructor shall satisfactorily complete the bureau's eight (8) hour driver education refresher course, which shall renew the driver education instructor's diploma for another five (5) years and meet the driver education instructor's continuing education requirement for that year.

### **C. Approval/disapproval of application for certificate renewal.**

**(1)** The bureau shall renew the certificate of a driver education instructor for a period of one (1) year if the driver education instructor:

**(a)** pays the \$50.00 annual certification fee;

**(b)** meets the standards specified in Subsection E of 18.20.3.18 NMAC;

**(c)** has received an overall rating of satisfactory or better in the periodic evaluations conducted by the bureau or its designee in the preceding license year; and

**(d)** has completed eight (8) hours of continuing education in the license year preceding the application for renewal.

**(2)** The bureau shall not renew the license of any driver education instructor who:

**(a)** fails to complete eight (8) hours of continuing education in the license year preceding the application for renewal; or

**(b)** fails to meet the standards specified in Subsection E of 18.20.3.18 NMAC.

[18.20.3.19 NMAC - Rp, 18 NMAC 20.3.15 and 20.3.16, 1-1-03; A, 2-13-09]

### **18.20.3.20 SUSPENSION OR REVOCATION OF A LICENSE OR CERTIFICATE:**

**A. Grounds.** The bureau may suspend or revoke the license or certificate of a licensee or driver education instructor:

- (1) who makes a false statement on an application;
- (2) who fails to follow the approved curriculum;
- (3) who poses an immediate danger to the physical or mental safety or health of a student;
- (4) who is convicted of any alcohol or drug-related driving offense;
- (5) who has refused to submit to or failed chemical tests pursuant to the Implied Consent Act;
- (6) whose New Mexico driver's license is suspended or revoked;
- (7) who fails to notify the bureau in writing within ten (10) days that the licensee or instructor's driver's license has been suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or that the licensee or instructor has been convicted in any jurisdiction of an alcohol or drug-related driving offense or an offense involving moral turpitude;
- (8) whose conduct in the performance of official duties is unethical, including but not limited to, verbal abuse, intimidation, or sexual harassment of students;
- (9) who fails to comply with any requirement of this rule or any lawful order of the bureau;
- (10) who becomes employed or remains employed by a driver education school whose license has been revoked pursuant to this rule;
- (11) who employs or continues to employ a driver education instructor whose certificate has been revoked pursuant to this rule; or
- (12) whose name appears on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act.

**B. Procedure.** The bureau shall use the procedures prescribed in the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, in all suspension and revocations proceedings held pursuant to this rule.

### **C. Consequences of suspension or revocation.**

(1) A driver education school shall not offer or conduct any driver education courses if its license is suspended or revoked.

(2) A driver education instructor shall not conduct any driver education courses if the instructor's certificate is suspended or revoked.

**D. Notice of suspension or revocation.** Upon completion of any proceedings held pursuant to the Uniform Licensing Act:

(1) The bureau shall immediately notify by certified mail, return receipt requested, each driver education instructor employed by a driver education school whose license has been suspended or revoked that the driver education school's license has been suspended or revoked and that the driver education instructor may not conduct any driver education courses for that driver education school unless and until the license is reinstated by the bureau.

(2) The bureau shall immediately notify by certified mail, return receipt requested, each driver education school that employs a driver education instructor whose certificate is suspended or revoked that the driver education instructor's certificate has been suspended or revoked and that the driver education school may not employ that driver education instructor unless and until the certificate is reinstated by the bureau.

(3) The bureau shall notify all motor vehicle division field offices that the driver education school's license or the driver education instructor's certificate has been revoked or suspended.

(4) The bureau shall notify all state, metropolitan, magistrate, and municipal courts that the driver education school's license has been revoked or suspended and that the driver education school is no longer an approved school.

[18.20.3.20 NMAC - Rp, 18 NMAC 20.3.17, 20.3.18, and 20.3.22, 1-1-03; A, 2-13-09]

### **18.20.3.21 EXEMPTION OR VARIANCE:**

**A.** Any school may petition in writing for an exemption or variance from any of the requirements of this rule. Such petition shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the school and its customers, and on its competitors and their customers, if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the Driving School Licensing Act; and

(5) state why the proposed alternative is in the public interest or is better than the requirement in the rule.

**B.** Such petition may include a motion that the bureau stay the affected portion of this rule for the transaction specified in the motion.

**C.** Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the licensee or other person with authority to bind the licensee.

**D.** The bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

**E.** Each exemption or variance shall be valid for no longer than the end of the current license year.

[18.20.3.21 NMAC - Rp, 18 NMAC 20.3.19 and 20.3.20, 1-1-03; Repealed, 2-13-09; 18.20.3.21 NMAC - Rn, 18.20.3.22 NMAC & A, 2-13-09]

## **PART 4: SNOW-REMOVAL VEHICLE LIGHTING**

### **18.20.4.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-0427.

[Recompiled 11/16/01]

### **18.20.4.2 SCOPE:**

State, municipal and county road maintenance agencies.

[Recompiled 11/16/01]

### **18.20.4.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 66-3-836.

[Recompiled 11/16/01]



#### **18.20.4.4 DURATION:**

Permanent.

[Recompiled 11/16/01]

#### **18.20.4.5 EFFECTIVE DATE:**

July 1, 1998, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

#### **18.20.4.6 OBJECTIVE:**

To provide adequate lighting for snow-removal equipment engaged in hazardous operations on or alongside the roadway in order to protect workers and equipment and to warn the driving public of the presence of the snow-removal equipment.

[Recompiled 11/16/01]

#### **18.20.4.7 DEFINITIONS:**

A. DOT System 101A Emergency Lighting means a lighting system comprised of two controllers, two rear-mounted strobe lights and two front-mounted strobe lights, all with a minimum of 1,000,000 candle power.

B. DOT System 104A Emergency Lighting means a lighting system comprised of one controller and two rear-mounted strobe lights, with a minimum of 1,000,000 candlepower.

C. Strobe Light means a 1,000,000 candle power (28 joules) strobe beacon, with a self contained power supply, AAMVA certified as SAE class 1, to include HI/OFF/Lo switch. Where practical, the light shall be mounted on the highest point of the vehicle.

D. A High-Hazard, High-Volume Roadway means any roadway which accident data has shown to be particularly dangerous due to volume of traffic, weather conditions or road configuration. Each authority having jurisdiction shall determine which roadways warrant this special designation.

[Recompiled 11/16/01]

#### **18.20.4.8 REQUIREMENTS:**

A. Nothing in this rule prohibits use of state-of-the-art lighting systems, as they are developed, which provide equivalent or better protection to that specified herein.

B. Any vehicle or equipment which is used to remove snow from a roadway, including those used as backups, shall be equipped with a minimum of the DOT System 104A and 1 Strobe light. If the equipment is used to remove snow from high-hazard, high-volume roadways, a DOT System 101A is required in lieu of the DOT System 104A.

C. Dump trucks used for snow removal have the following additional requirements:

(1) A deflector shield shall be placed on the front of each truck to deflect snow away from the cab and strobe lights in order to keep the lights visible from the front and reduce the reflection effect on the operator.

(2) Salt spreaders mounted on dump trucks shall have a:

(a) strobe light mounted on the top rear.

(b) minimum 4-inch auxiliary spotlight on the lower left rear with the beam directed towards the road surface.

D. Loaders and motor graders used for snow removal shall be equipped with:

(1) the DOT System 104A.

(2) one strobe light mounted on the roof of the cab or the highest practical point.

[Recompiled 11/16/01]

## **PART 5: REMOVAL OF ENCROACHMENTS, OBSTRUCTIONS, ABANDONED MOTOR VEHICLES, AND FOR RESTRICTION OF VENDING**

### **18.20.5.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149,  
Santa Fe, New Mexico 87504-1149 (505) 827-5526.

[12/31/98; Recompiled 11/16/01]

### **18.20.5.2 SCOPE:**

All state agencies and general public.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.3     STATUTORY AUTHORITY:**

This rule is adopted pursuant to NMSA 1978 Sections 66-1-1, 67-3-1, 67-7-1, 67-8-1, 67-12-1, 67-13-1.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.4     DURATION:**

Permanent.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.5     EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section or paragraph.

[12/31/98; Recompiled 11/16/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

#### **18.20.5.6     OBJECTIVE:**

A. The main purpose of a highway system is to provide a safe and efficient means of movement for people and goods. In order to provide for such safe and efficient operation, it is necessary that certain regulations be established to control the use of the highway right-of-way consistent with the needs and rights of both the traveling public and property owners adjacent to the highway right-of-way.

B. The highway right-of-way is to be preserved for highway purposes except that certain temporary or permanent occupancies. Use of highway right-of-way for non-highway purposes may be permitted on the basis that such use and occupancy is in the public interest and does not result in impairment of the highway or operational interference with the health, safety and public welfare of road users. All other occupancies and uses of state highways for non-highway purposes are prohibited.

C. The Department recognizes that any rule which is adopted may create some unforeseen burdens, hardships or problems and for that reason reserves the right to vary the provisions of the following rule, in harmony, however, with the general purposes and intent of the rule where, in the exercise of sound and reasonable judgment, literal application of such rule would defeat the objectives hereinafter set forth.

[12/31/98; Recompiled 11/16/01]

#### 18.20.5.7 DEFINITIONS:

A. **"Department"** means New Mexico State Highway and Transportation Department.

B. **"Encroachment"** means an intrusion into, under, upon, or over highway right of way by a permanent structure or fixture. This term shall include, but not be limited to, fences, billboards, permanent signs, buildings, awnings, marquees, storage tanks, pipes, ditches, utilities, concession booths, roadside stands, mailboxes, Christmas displays and banners.

C. **"Hazardous Obstruction"** means any structure or object (other than a motor vehicle, whether or not an encroachment, situated into, under upon and over highway right-of-way which jeopardized public safety by either creating an unsafe condition or significantly hindering the efficient movement of traffic.

D. **"Highway Right-of-way"** means all roads, patrol yards, and rest areas owned, controlled, or maintained by the Department. The term "road" means the entire width of the right of way and shall include but not be limited to: travel lanes, roadside, shoulder, median, ditches, culverts, ramps turnouts and construction and maintenance easements.

E. **"Non-Hazard Motor Vehicle"** means an unattended motor vehicle within highway right-of-way not falling within the definition of Wrecked Vehicle or Traffic Hazard Motor Vehicle, and parked in violation of the Motor Vehicle Code.

F. **"Non-Hazardous Obstructions"** means an object unlawfully remaining within the boundaries of highway right-of-way which is neither an encroachment, a motor vehicle, a hazardous object, a temporary sign, a political poster or refuse.

G. **"Overhanging Sign"** means any sign intruding upon highway right-of-way which is affixed to a building or structure lying outside highway right-of-way.

H. **"Refuse"** means any article, object or substance which is commonly discarded as waste, or which, if discarded on the ground, may create or contribute to an unsanitary, offensive or unsightly condition. Refuse includes, but is not limited to, the following items or classes of items; waste food; waste paper and paper products; cans; bottles or other containers; junked household furnishings and equipment; junked parts or bodies of automobiles and other metallic junk or scrap; portions or carcasses of dead animals; and collections of ashes, dirt, yard trimmings or other rubbish.

I. **"Rural Area"** means areas outside urban boundaries of all cities, towns, or municipalities of over 5000 population. These boundary lines may or may not coincide with corporate limits but are established by and are on file with the Planning Division of the Department.

J. **"Sign"** means any readily moveable object (except a motor vehicle), or permanent structure which is placed upon the highway right-of-way and which has as its purpose or effect the conveyance of information to travelers on the highway or property used in conjunction with such purpose.

K. **"Traffic Hazard Motor Vehicle"** means a motor vehicle left unattended either wholly or partly within a travel lane of the highway right-of-way, or a motor vehicle left unattended within thirty-five (35) feet of the nearest travel lane on all interstate highways (urban and rural) and on all rural primary and rural secondary highways (outside city limits).

L. **"Travel Lane"** means that portion of the highway right-of-way, which is intended, for the free passage of motor vehicles.

M. **"Vending"** means the selling, dealing, trafficking, hawking or peddling of goods or services, including, but not limited to, the operation of concession booths and roadside stands.

N. **"Wrecked Vehicle"** means any vehicle located within the highway right-of-way which shows visible signs of damage from collision, vandalism or other causes, and appears incapable of self-propulsion.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.8 PERMITTED ENCROACHMENTS:**

All encroachment under this Section are subject to review by the Department:

A. **Overhanging Signs.** In urban established business districts where the front of the building is the highway right-of-way line.

(1) Sign overhang must be a minimum of one foot behind the back of the curb.

(2) Sign must have a minimum vertical clearance of twelve (12) feet from the top of the curb.

(3) Sign must be wholly supported from the building or wholly supported by a suitable structure positioned entirely outside of the highway right-of-way.

(4) The minimum vertical clearance of twelve (12) feet will be adhered to unless there is a city ordinance in which the encroachment exists which would require more vertical clearance in which case the city ordinance will prevail.

B. In commercial areas where the Department utilizes existing city right-of-way and there is no additional right-of-way acquired.

(1) Sign must be wholly supported from outside the highway right-of-way being utilized by the Department.

(2) No portion of the sign and its supporting structure may be lower than twelve (12) feet from the top of the curb or theoretical curb line elevation.

(3) No portion of the sign may intrude into the highway right-of-way closer than one (1) foot behind the back of the curb or the theoretical curb line.

(4) The minimum vertical clearance of twelve (12) feet will be adhered to unless there is a city ordinance in which city the encroachment exists which would require more vertical clearance in which case the city ordinance will prevail.

**C. Buildings.** A building may be allowed to encroach upon highway right-of-way provided the following conditions coexist:

(1) The building was in existence prior to the commencement or construction of the highway;

(2) The encroachment will not interfere with the safe and free flow of traffic as determined by the Secretary or his designee; and

(3) The owner enters into an agreement with the Department whereby the building exterior will not be remodeled or rebuilt on the right-of-way without express permission of the Secretary and, if necessary, the Federal Highway Administration.

(4) Where additional highway right-of-way is being acquired, no building will be allowed to encroach on the highway right-of-way.

**D. Awnings and Marquees.**

(1) Awnings in urban business districts or closely spaced buildings may be allowed to encroach provided the entire awning is supported from the building and will not lower less than eight (8) feet from the sidewalk, nor closer than six (6) feet from the back of the curb. Permanently constructed covers or canopies over the sidewalk shall conform with the same requirements as awnings. The only advertising to be allowed on awnings or canopies will be the name of the business.

(2) The marquees in urban business districts may be allowed to encroach provided they are supported wholly from outside the highway right-of-way, area minimum height of twelve (12) feet from the top of the curb, and encroach no closer than four (4) feet from the back of the curb.

**E. Irrigation Ditches.**

(1) On primary and secondary highways where it is impractical to construct irrigation ditches outside the highway right-of-way and wherever deemed necessary by the Secretary of the Department, or his designee, those ditches which are necessary may be constructed by the Department inside the right-of-way. Maintenance of such ditches shall remain the responsibility of those parties deriving benefits therefrom.

(2) There shall be no irrigation ditches constructed, which are parallel to the highway inside the access control line. Where it is impractical to construct irrigation ditches outside the highway right-of-way and wherever deemed necessary by the Secretary of the Department, or his designee, those ditches that are necessary may be constructed by the Department inside the highway right-of-way but outside the access control line. This applies only to situations where the highway right-of-way line and access control line is not the same line. Where they are the same line, no ditches shall be permitted inside the highway right-of-way.

(3) A permit must be obtained from the Department and, if necessary, the approval of the Federal Highway Administration, before locating irrigation ditches on highway right-of-way.

**F. Utilities.** Utilities on highway right-of-way which are outside construction zones or primary and secondary systems will not be considered as encroachments. The crossing of interstate highways by utilities will be made in such a manner that routine maintenance of the utility can be performed from outside the controlled access line. A permit must be obtained from the Department and, if necessary, the approval of the Federal Highway Administration, before the installation of utilities on highway right-of-way.

#### **G. Special Encroachments.**

(1) Special encroachments such as Christmas decorations or banners advertising special events, erected by governmental authorities, may be allowed to encroach for a limited time on primary or secondary right-of-way provided they do not interfere in any way with traffic control devices or traffic signs. Banners so low or Christmas lights of such a color that would make the traffic control devices not immediately and easily noticeable will not be allowed.

(2) Signs informing the public that a particular area, within the median or adjacent to the roadway, is planted, landscaped, or maintained by an organization or individual, may be placed within that particular area, on all state highway systems except the interstate. These signs must be located a minimum of two (2) feet from the back of the curb or the edge of the shoulder, must be a maximum of thirty-three (33) inches high from the top of the curb or existing grade, must have a sign surface no larger than eighteen (18) inches by twenty-four (24) inches, and must conform to any other standards approved by the State Highway Commission. The orientation of the signs must be parallel to the centerline of the roadway. The only information permitted on the signs is the name of the organization or individuals responsible for the planting,

landscaping, or maintenance of the area in which they are located, together with a statement that that area is so planted, landscaped, or maintained. Each such sign erected must be approved by the Secretary of the Department or his designee.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.9 PROHIBITED ENCROACHMENTS:**

A. There shall be no encroachment allowed which may interfere with traffic control devices or traffic signs. This includes not only protruding signs but neon lights of such a color that they would make the traffic control device not immediately and easily noticeable.

B. No encroachments shall be permitted to remain on highway right-of-way, which poses a danger to the health, safety, or welfare of the motoring public, or which interfere with the operations of the Department.

C. No encroachments shall be permitted to remain on highway right-of-way, which are not in substantial compliance with the requirements of Section 8 [now 18.20.5.8 NMAC].

D. Vending: See Section 10 [now 18.20.5.10 NMAC below].

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.10 VENDING:**

A. No vending from or on highway right-of-way shall be permitted.

B. There shall be no vending-type business so close to the highway right-of-way that automobiles or persons would be serviced while on the highway right-of-way.

C. Concession booths or roadside stands, whether or not in operation, shall not be permitted to remain on highway right-of-way. These structures shall be treated as encroachments, hazardous obstructions or non-hazardous obstructions, as the circumstances warrant.

D. Excepted from these prohibitions are any vending-type businesses established with prior Department approval on highway right-of-way by an federal, state or public agency, organization or entity for the purpose of providing a service to the public.

E. A representative of the Department shall advise the owner, operator or other person in charge of the vending operation that the vending is not permitted in the highway right-of-way and must cease immediately. If the vending does not cease immediately, the Department representative may file a complaint of criminal trespass (NMSA 1978, Section 30-14-1) with the law enforcement authority having jurisdiction.



F. If the vending consists of the advertisement for sale of a motor vehicle, a representative of the Department will contact the nearest law enforcement officer and request enforcement of (NMSA 1978 as amended) Sections 66-3-126 and 66-3-127 as provided therein.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.11 PROCEDURE FOR REMOVAL OF PROHIBITED ENCROACHMENTS AND NON-HAZARDOUS OBSTRUCTIONS:**

A. An unlawful encroachment or non-hazardous obstruction shall be identified by the Department with reasonable particularity, and ownership shall be determined, if possible.

B. A written notice shall be sent by certified/return receipt mail to the apparent owner at his last known address. If ownership cannot be ascertained, or no address for the owner can be found after diligent search, a copy of such notice shall instead be posted in a conspicuous place on the encroachment or non-hazardous obstruction. This notice shall contain the following information:

(1) A description of the encroachment or non-hazardous obstruction sufficient to identify it;

(2) Notification that the encroachment or non-hazardous obstruction is in violation of 18 NMAC 20.5 [now 18.20.5 NMAC];

(3) That the encroachment or non-hazardous obstruction must be removed within ten (10) days by the owner at his expense;

(4) That if the encroachment or non-hazardous obstruction remains after ten (10) days, the Department will remove it and bill the owner for the actual costs incurred in its removal;

(5) That the owner has a right to a hearing before the District Engineer or his designee(s) on whether or not the encroachment or non-hazardous obstruction must be removed;

(6) That the owner himself has the responsibility to request this hearing by mailing a written Request for Hearing to the District Engineer within ten (10) days of service of the first written notification or he will be deemed to have waived his right to a hearing.

C. If the owner has failed to remove the encroachment or non-hazardous obstruction and has failed to request a hearing before the District Engineer within ten (10) days of service of the notice, the Department may remove the encroachment or non-hazardous obstruction at the owners expense.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.12 OBSTRUCTION AND ENCROACHMENTS REVIEW BOARD:**

A. There shall be an Obstruction and Encroachment Review Board established in each Highway District in New Mexico. Said Board shall be composed of three (3) persons: the District Engineer or his designee; the District Traffic Engineer or his designee; the District Construction Engineer or his designee; when issues regarding construction or operations of roadway segments.

B. There shall be an Obstruction and Encroachment Review Board established in each Highway District in New Mexico. Said Board shall be composed of three (3) persons: the District Engineer or his designee; the Right of Way Division Director or his designee; the Project Development Engineer; when issues regarding encroachments during the design/project development stages occur.

C. Upon receipt of a timely Request for Hearing from an owner who has received a notice to remove his encroachment or non-hazardous obstruction, the District Engineer or his designee shall assign a hearing date no later than thirty (30) days for the date of the request and send notification, in writing, to the owner, the members of the Board and the Department's General Counsel of the time, place an date of the hearing, the nature of the matter to be heard, and the authority of the Board.

D. The proceedings before the Board shall be in conformance with the Administrative Procedures Act, Section 12-8-1, et seq., N.M.S.A. 1978. The findings of the Board shall be by a preponderance of the evidence.

E. The determination to be made by the Board shall be as follows: Encroachments: A determination as to whether or not an encroachment upon highway right-of-way in fact exists;

(1) If an encroachment exists, whether or not it falls within one of the permitted encroachments identified in Section 8 of this rule [now 18.20.5.8 NMAC];

(2) If the encroachment is not a permitted type, whether or not it poses a danger to the health, safety or welfare of the motoring public, interferes with the operations of the Department, or is otherwise not in conformance with 18 NMAC 20.5 [now 18.20.5 NMAC];

(3) If the encroachment is to be permitted to remain, whether it shall be dealt with by means of an encroachment agreement or by means of a sale to the owner of the parcel upon which the encroachment rests; and

(4) If the encroachment must be removed, a reasonable time for the accomplishment of this removal by the owner before the Department may proceed to remove the offending encroachment at the owners expense.

F. Non-Hazardous Obstructions: A determination as to whether or not the object constitutes a non-hazardous obstruction;

(1) If it does, whether or not the owner has shown sufficient mitigating circumstances to permit the object to remain; and

(2) If the object is required to be removed, a reasonable time for the accomplishment of this removal by the owner before the Department may proceed to remove the offending non-hazardous obstruction at the owners expense.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.13 HAZARDOUS OBSTRUCTIONS:**

A. A hazardous obstruction may summarily be removed from the highway right-of-way without notice to the owner, if any, thereof.

B. The determination of whether or not an obstruction is hazardous shall be made by the District Engineer or his designee in the District in which the obstruction is situated, who shall employ sound highway engineering practices in making this determination.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.14 REFUSE:**

Refuse may be summarily removed from the highway right-of-way.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.15 SIGNS AND POLITICAL POSTERS:**

Signs and political posters are not allowed on highway right-of-way and may be summarily removed from the highway right-of-way without notice to the owner, if any, thereof.

[12/31/98; Recompiled 11/16/01]

#### **18.20.5.16 MOTOR VEHICLES:**

A. **Traffic Hazard Motor Vehicles.** Such vehicles may be summarily removed from the highway right-of-way by the New Mexico State Police upon verbal notification by the District Engineer or his designee(s), followed thereafter by written notification as soon as possible.

B. **Non-Hazard Motor Vehicles.**

(1) Without Plates: Such vehicles may be summarily removed from the highway right-of-way by the New Mexico State Police, as provided by law, upon written notification by the District Engineer or his designee(s).

(2) With Plates: Such motor vehicles may be removed by the New Mexico State Police after the following procedure have been utilized. The Department will cause to be posted upon any such vehicle a written notice containing the following information:

(a) A description of the non-hazard motor vehicle sufficient to identify it;

(b) Notification that the non-hazard motor vehicle is parked in violation of 18 NMAC 20.5 [now 18.20.5 NMAC];

(c) Advising the owner within four (4) days of the notice that the non-hazard vehicle must either be removed at his expense; and

(d) Any vehicle, which remains in the right-of-way after the dates provided in this subsection will be summarily, removed by the New Mexico State Police, as provided by law, upon written notification by the District Engineer or his designee(s).

(e) Wrecked Vehicles. Such vehicles may be summarily removed from the highway right-of-way by the New Mexico State Police, as provided by law, upon written notification by the District Engineer.

[12/31/98; Recompiled 11/16/01]

**18.20.5.17 IF ANY COUNTY, CITY OR OTHER LOCAL GOVERNMENTAL AUTHORITY HAS CONCURRENT JURISDICTION OVER ANY MATTER COVERED IN THIS RULE AND SUCH AUTHORITY HAS ADOPTED MORE RESTRICTIVE REQUIREMENTS, CONDITIONS, OR PROCEDURES, THOSE REQUIREMENTS, CONDITIONS OR PROCEDURES SHALL APPLY. NOTHING IN THIS RULE SHALL BE CONSTRUED TO LIMIT THE RIGHT OF LOCAL GOVERNMENTAL AUTHORITIES TO REGULATE THESE MATTERS AS AUTHORIZED BY LAW:**

[12/31/98; Recompiled 11/16/01]

## **PART 6: COMMUNITY DWI PREVENTION PROGRAM**

### **18.20.6.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-0427.

[Recompiled 11/16/01]

### **18.20.6.2 SCOPE:**

All local governments and general public.

[Recompiled 11/16/01]

**18.20.6.3 STATUTORY AUTHORITY:**

This rule is adopted pursuant to NMSA 1978, Sections 31-12-7 and 31-12-9.

[Recompiled 11/16/01]

**18.20.6.4 DURATION:**

Permanent.

[Recompiled 11/16/01]

**18.20.6.5 EFFECTIVE DATE:**

July 1, 1998, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

**18.20.6.6 OBJECTIVE:**

The purpose of this rule is to establish procedures for implementation of NMSA 1978, Section 31-12-9. This includes providing procedures for local governments to submit applications to the Traffic Safety Bureau for funding of Driving While Impaired (DWI) Prevention projects, minimum requirements for those applications and the basis by which funds will be distributed.

[Recompiled 11/16/01]

**18.20.6.7 DEFINITIONS:**

A. Community -- any municipality or county government or any combination thereof whose governing bodies mutually agree to jointly submit an application.

B. Comprehensive Community DWI Prevention Program -- a program that reflects an integrated approach to the community's alcohol related traffic safety problems, incorporates multiple approaches to these problems over a sustained period of time and ensures that public and private entities work in concert to address these problems.

C. DWI Prevention Project -- an activity that has a clear and measurable effect on the Driving While Impaired (DWI) problems in the community.

[Recompiled 11/16/01]

#### **18.20.6.8 COMPREHENSIVE COMMUNITY DWI PREVENTION PROGRAM:**

Any community may apply for funding of a DWI Prevention Project provided that:

A. The community establish a task force of community representatives that will prepare a comprehensive community DWI prevention plan that addresses the issues outlined in paragraph 3 of this section. This task force must adequately represent the following disciplines

- (1) law enforcement;
- (2) community traffic safety groups;
- (3) local health department office;
- (4) courts;
- (5) prosecution;
- (6) schools;
- (7) media;
- (8) emergency medical services; and
- (9) other interested parties.

B. The task force identify the DWI prevention activity that is on-going locally in the following areas:

- (1) education programs in the schools and at the workplace;
- (2) public information activities aimed at the driving public;
- (3) DWI enforcement activities including; number of DWI arrests, number of police officers involved in DWI enforcement, status of use of sobriety check-points at peak hours, number of citations for open-container violations, average blood alcohol concentration of offenders, amount of enforcement of under age drinking laws and serving intoxicated person laws;
- (4) court activities including case reporting, service of bench warrants, sentence compliance by offenders, probation follow-up and alternative sentencing options, and prosecution activities of the applicable legal office; and
- (5) other activities aimed at reducing DWI such as designated driver programs, subsidized taxi service, alcohol server training, Project Graduation, etc.

C. The task force identify the activities it intends to implement in each of the above mentioned areas in an application to be submitted to the Traffic Safety Bureau. The activities to be implemented must be determined by using a process established by the Traffic Safety Bureau. The process will be made available to the communities by Traffic Safety Bureau prior to submission deadlines established by this rule. A community may choose not to address one or more of the above issues only if it can document that the issue (s) is already being adequately addressed by other resources or activities.

[Recompiled 11/16/01]

#### **18.20.6.9 APPLICATION PROCESS:**

A. All applications must be received by the Traffic Safety Bureau by June 1st of each year. However multi-year applications may be submitted but funding will only be authorized for the projects scheduled to be implemented during the first year. The out year projects will be authorized on a year to year basis.

B. Project periods shall fun from July 1 or the date of Traffic Safety Bureau approval whichever is later to the following June 30.

C. All funding shall be on a reimbursable basis. The expenses for the approved program shall be paid by the applicant. These expenditures shall be reimbursed to the applicant from the DWI Prevention Fund upon submission form the applicant of an invoice, plus proof of payment from the applicant to the person/company supplying the service or equipment.

D. Indirect costs or overhead shall not be eligible for reimbursement.

E. All applicants shall be submitted on forms or in a format provided by the Traffic Safety Bureau. Other information may be requested by the Bureau and must be submitted upon request.

F. All records and receipts shall be made available to the Traffic Safety Bureau for audit purposes and shall be kept for a period of three years following the end of the grant period.

G. Failure to submit a timely application in the format required by this regulation shall nullify the application. Funds not applied for by the deadlines specified shall be redistributed to other eligible applicants. Any exceptions shall be made only by prior written approval from the Traffic Safety Bureau Chief.

H. All applicants must include a line item budget and an implementation schedule of when the project tasks will commence and end.

I. All applicants must be approved by the governing body of the community or communities for which the plan is submitted.

J. All procedures required by the Traffic Safety Bureau in its Community DWI Prevention Program Accounting Manual must be followed.

[Recompiled 11/16/01]

#### **18.20.6.10 REPORTING REQUIREMENTS:**

A. Communities shall submit quarterly reports no later than October 31, January 31, April 31, and a final report no later than August 31 of each year which describes, in detail, progress on activities funded through this program.

B. Communities shall submit reimbursement requests at least quarterly, or monthly if they so choose, including appropriate expenditure documentation.

C. The final report shall describe, in detail, activities supported and outcome of efforts.

[Recompiled 11/16/01]

#### **18.20.6.11 FUNDING FORMULA:**

A. Distribution of funds shall be made in proportion to the amount of fees collected by the courts and the law enforcement agencies initiating the arrest in the communities as provided by NMSA 1978, Sections 31-12-7 and 31-12-9.

B. Communities shall be notified by the Traffic Safety Bureau of the amount of funding they are eligible to receive each year.

C. Any unexpended balance remaining at the expiration of a community's approved project shall revert to the Traffic Safety Bureau for redistribution.

[Recompiled 11/16/01]

### **PART 7: MEMORIAL SIGN PROGRAM**

#### **18.20.7.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-0410.

[Recompiled 11/16/01]

#### **18.20.7.2 SCOPE:**

This rule applies to any person or entity who desires to place a Memorial Sign.



[Recompiled 11/16/01]

**18.20.7.3     STATUTORY AUTHORITY:**

This rule is adopted pursuant to NMSA 1978, Section 66-7-102 and 66-7-506.

[Recompiled 11/16/01]

**18.20.7.4     DURATION:**

Permanent.

[Recompiled 11/16/01]

**18.20.7.5     EFFECTIVE DATE:**

July 1, 1998, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

**18.20.7.6     OBJECTIVE:**

The objective of this rule is to provide minimum and uniform standards and procedures for the application and installation of D.W.I. Memorial Signs and to promote traffic safety concerning impaired drivers.

[Recompiled 11/16/01]

**18.20.7.7     DEFINITIONS:**

A. "Authorized sign manufacturer" means a sign manufacturer that meets the Department's specifications for sign fabrication and is on the Department's purchasing list.

B. "Department" means the New Mexico State Highway & Transportation Department.

C. "District Memorial Sign Coordinator" (also known as "District Coordinator") means a person who is not a Department employee and who serves as a facilitator of the program (one per district).

D. "District Patrol" ( also known as "Patrol") means an area within a State Highway District comprising a crew of State Highway and Transportation Department employees whose responsibility is to provide routine maintenance to State Highways and State Highway Facilities within the patrol area boundary.

E. "District Traffic Engineer" means an Engineer employed by the Department working at one of the six Highway District Offices, responsible for traffic operations.

F. "Division" means, the Transportation Programs Division of the New Mexico State Highway and Transportation Department.

G. "D.W.I" means driving while impaired by drugs or alcohol.

H. "Highway district office" means the District Office having jurisdiction over the proposed or actual location of a memorial sign.

I. "Sponsor" means an individual(s) making application for a Memorial sign, who is responsible for completing the application and paying for the sign from an authorized sign manufacturer.

J. "State Highway System" means, for the purpose of this program, all roads the Department has total maintenance responsibility for (US and NM routes), excluding the Interstate Highway System.

K. "Victim" means someone killed in an alcohol involved crash, excluding any driver who was under the influence of any alcohol or drugs.

[Recompiled 11/16/01]

#### **18.20.7.8 MEMORIAL SIGN PROGRAM:**

A. Families and friends of victims of alcohol-related crashes have indicated a strong interest in some type of signing which would publicly memorialize these victim(s). The Department does not presently have a program to meet this need, but has embraced the idea of a "Memorial Sign Program for Victims of Alcohol-Related Crashes" both as a means of lending emotional support to the victim's family, and furthering the Department's efforts to combat drinking and driving.

B. The Department has established an alcohol-related crash victim Memorial Sign Program. Upon request by the family or friends of a victim of a fatal alcohol-related crash within the state's jurisdiction or New Mexicans who died in an alcohol related crash anywhere, and when certain other requirements are met, a sign can be installed on the State Highway System (exclusive of the Interstate System).

C. The Department will make the determination for the location of all Memorial Signs based on safety considerations and regulations. Each Patrol within a District has agreed to install two signs. All state highways, except the Interstate System, are eligible for signing under this program. The Department has no jurisdiction on county roads or city streets, and thus cannot install signs along those roadway systems.

D. The sign blank material shall be 0.125" thick aluminum 30" x 48", white SEG background with black vinyl lettering of specified size, spacing, and separation. A sign 30" x 48" can accommodate up to a maximum of three names. The standard sign features the words "Please Don't Drink and Drive" "In memory of (victim's name(s)).

[Recompiled 11/16/01]

#### **18.20.7.9 PROCEDURES:**

A. If necessary the Sponsor may request a "Memorial Sign Program" application from the Division, the District Coordinator, or other Department designee. This application will enable the District Coordinator to: contact the Sponsor, explain essential aspects of the program, verify eligibility, and secure written agreement from the Sponsor to abide by Department provisions and procedures.

B. The application must contain the following information:

(1) Name, address and day-time telephone number of the Sponsor.

(2) Eligibility criteria: a. verification of alcohol involvement through a copy of the police crash report. Indication of alcohol involvement as the cause or contributing cause to the crash by the investigating officer as recorded on the police crash report shall be considered sufficient evidence for the purpose of this program. b. verification that the person for whom the Memorial Sign is intended was a victim, as defined herein.

(3) The application will contain a signature line for the Sponsor to verify his/her willingness to abide by the conditions set forth therein and to hold the Department harmless of any liability.

C. The signed application is then returned by the Sponsor to the District Coordinator. The Coordinator will verify eligibility and forward a copy of all qualified applications to the District Traffic Engineer.

D. Once a location is selected by the District Traffic Engineer, the District Coordinator will forward an authorization for sign purchase to the Sponsor and the Division.

E. It is the Sponsor's responsibility to submit a copy of the approved authorization and payment in full, to an approved sign manufacturer. The cost for a sign shall be the Sponsor's responsibility.

F. The sign manufacturer will ship the completed sign directly to the appropriate Highway District Office.

G. The Highway District Offices will install the Memorial Signs without cost to the Sponsor according to each District's work schedule. Specific requirements are as follows

(1) All sign fabrication and installation requirements shall be in accordance with Department specifications for road and bridge construction, and the Manual on Uniform Traffic Control Devices.

(2) Placement of the sign will be under the direction of the respective District Traffic Engineer. Installation depends on the District's work schedule and related circumstances. Cost for replacing damaged signs will be the Sponsor's responsibility.

(3) A sign will remain in place for at least one (1) year from date of installation. Once a sign is removed, the Sponsor will be notified and the sign will be available for return to the Sponsor at the Highway District Offices.

H. The District Traffic Engineer will notify the Coordinator who will contact the Sponsor as to the location and date the sign was installed. Once this information is provided the Department, the process from initial request to installation is complete.

I. The Highway District Office will be responsible for removal of all Memorial Signs. Damaged signs will be removed if not repaired promptly after notification to the Sponsor.

[Recompiled 11/16/01]

#### **18.20.7.10 PROCEDURES FOR VERIFICATION:**

A. The Division will keep an appropriate data base of all applications, installation dates and locations.

B. The Division will provide information and materials on the Memorial Sign Program to all District Coordinators and District Traffic Engineers.

C. The Division will be a liaison between the District Coordinators, District Traffic Engineers, and Sign manufacturers. Semi-annual reports verifying and updating information will be generated and made available by the Division.

[Recompiled 11/16/01]

## **PART 8: DRIVING SAFETY SCHOOLS**

### **18.20.8.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department.

[18.20.8.1 NMAC - Rp, 18 NMAC 20.8.1, 1-1-03]

**18.20.8.2 SCOPE:**

This rule applies to all persons seeking to operate driving safety schools, or serve as instructors for driving safety courses offered, in New Mexico.

[18.20.8.2 NMAC - Rp, 18 NMAC 20.8.2, 1-1-03]

**18.20.8.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 66-10-1 through 66-10-12.

[18.20.8.3 NMAC - Rp, 18 NMAC 20.8.3, 1-1-03]

**18.20.8.4 DURATION:**

Permanent.

[18.20.8.4 NMAC - Rp, 18 NMAC 20.8.4, 1-1-03]

**18.20.8.5 EFFECTIVE DATE:**

January 1, 2003, unless a later date is cited at the end of a section.

[18.20.8.5 NMAC - Rp, 18 NMAC 20.8.5, 1-1-03]

**18.20.8.6 OBJECTIVE:**

The purpose of this rule is to provide minimum and uniform standards for the issuance, renewal, and revocation of driving safety school licenses and driving safety instructor certificates and to establish requirements for the operation of driving safety schools.

[18.20.8.6 NMAC - Rp, 18 NMAC 20.8.6, 1-1-03]

**18.20.8.7 DEFINITIONS:**

**A. ADA** means the Americans with Disabilities Act, 42 U.S.C.S Section 12101 et seq.

**B. Bureau** means the Traffic Safety Bureau (TSB) of the New Mexico State Highway and Transportation Department.

**C. certificate** means a document issued by the Bureau authorizing a person to serve as a driving safety school instructor.

**D. clean driving record** means a person has no more than six (6) points on his/her driver's license, and has not within the last ten (10) years had his/her driver's license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been convicted in any jurisdiction of an alcohol or drug-related driving offense.

**E. convicted or conviction** has the meaning given in NMSA 1978, Section 66-8-102.

**F. course or credit hour** means fifty (50) minutes of instruction and ten (10) minutes of break time.

**G. designee** means a person authorized to perform certain specified duties on behalf of the Bureau.

**H. distance learning course** means a web-based driving safety course.

**I. driving safety course or course** means a course of instruction approved by the Bureau pursuant to NMSA 1978, Section 66-10-11 and includes distance learning courses.

**J. driving safety school or school or licensee** means a person licensed by the Bureau to offer driving safety courses.

**K. driving safety instructor or instructor** means a person certified by the Bureau as qualified and trained to conduct driving safety courses.

**L. extension site** means a location other than the main school site where a licensed driving safety school offers driving safety courses.

**M. Implied Consent Act** means NMSA 1978 Sections 66-8-105 through 66-8-112.

**N. limited history driving record** means a driving record from the Motor Vehicle Division of the Taxation and Revenue Department that includes driver's license revocations pursuant to the Implied Consent Act.

**O. license** means the document issued by the Bureau authorizing a person to operate a driving safety school.

**P. moral turpitude** means behavior that gravely violates the accepted moral standards of the community.

**Q. person** means an individual, firm, partnership, association, corporation, or other legal entity.

**R. proctored exam** means an exam monitored by a person or by electronic or other means to ensure that the person taking the exam is the person who will get credit for passing the exam.

**S. revocation or revoked** means the involuntary permanent termination of a license or certificate by the Bureau for cause.

**T. student** means a person who has enrolled in a driving safety course.

**U. suspended or suspension** means the involuntary termination of a license or certificate by the Bureau for cause for a specified period of time.

[18.20.8.7 NMAC - Rp, 18 NMAC 20.8.7, 1-1-03]

#### **18.20.8.8 APPLICATION FOR DRIVING SAFETY SCHOOL LICENSE:**

**A. License required.** No person may operate a driving safety school without first having obtained a license from the Bureau.

**B. Application form.** A person wishing to obtain a license to operate a driving safety school must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

**C. Contents of application.** An application for a driving safety school license shall contain:

(1) the applicant's name, mailing address, telephone number, and, if the applicant has one, the applicant's e-mail address;

(2) a photocopy of the Certificate of Maximum Occupant Load issued by the state or local Fire Marshal stating the maximum occupancy allowed by the fire code for each room at the main school site and each extension site, if applicable, that will be used as a classroom;

(3) a list of all extension sites to be used for conducting driving safety courses;

(4) a list of all instructors who will conduct driving safety courses;

(5) a schedule of fees applicable to students who enroll in a driving safety course;

(6) the proposed curriculum, handouts, videos, and final examination questions for the driving safety course;

(7) the name, address, and telephone number of three (3) character and employment references who are not family members; and

(8) the applicant's resume or curriculum vitae.

**D. Completeness.** When the Bureau receives an application for a driving safety school license, the Bureau shall check the application for completeness.

(1) If the application is not complete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

[18.20.8.8 NMAC - Rp, 18 NMAC 20.8.8, 1-1-03]

#### **18.20.8.9 REVIEW BY THE BUREAU:**

**A. Standards for issuance of initial driving safety school license.** In reviewing applications for driving safety schools, the Bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to operate a driving safety school;

(3) the proposed driving safety school can certify that its facilities meet the accessibility requirements of the ADA; and

(4) the persons who will serve as driving safety instructors meet the requirements of this rule.

**B. Issuance of initial license.** If the Bureau determines that an applicant meets the standards prescribed in subsection A, the Bureau shall issue a license upon:

(1) payment of the \$400.00 license fee;

(2) payment of the \$35.00 extension site fee for each extension site, if applicable; and

(3) posting of a surety bond with the Bureau in the amount of \$5,000 issued by a company authorized to transact surety business in New Mexico. The surety bond shall be continuous and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records.



**C. Denial of license.** If the Bureau determines that an applicant does not meet the standards prescribed in subsection A of this section, the Bureau will issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time.

[18.20.8.9 NMAC - Rp, 18 NMAC 20.8.9, 1-1-03]

#### **18.20.8.10 TERM OF DRIVING SAFETY SCHOOL LICENSE:**

**A. Term.** A license shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial licenses shall be valid from the date of issuance to the next June 30. Renewal licenses shall be valid from July 1 of the year of renewal to June 30 of the following year.

**B. License renewal.** A licensee must file an application for renewal of its license with the Bureau on or before June 1 of each year to ensure license renewal by July 1. A licensee who files an application for renewal after June 1 shall pay a late fee of \$25.00. The Bureau will review applications for renewal in the order in which they are received.

(1) The Bureau will renew a license for a period of one (1) year if:

(a) the Bureau or its designee finds that the driving safety school is in compliance with the requirements of this rule;

(b) the licensee has submitted all required reports to the Bureau; and

(c) the licensee pays the \$400.00 annual license fee and, if applicable, the \$35.00 extension site fee for each extension site and the \$25.00 late fee if the application was filed after June 1.

(2) The Bureau shall not renew the license of any driving safety school not in compliance with the requirements of this rule.

**C. Probation.** The Bureau may place a licensee on probation if the Bureau finds that the driving safety school is not in compliance with one or more of the requirements of this rule. The Bureau shall send a notice of probation to the licensee specifying the provisions of this rule with which the licensee is not in compliance. The Bureau shall determine the period of probation depending on the number and severity of the violations. The Bureau will review the licensee's operations periodically during the probation period.

**D. Early termination.** A license shall automatically terminate if a driving safety school ceases operation. The Bureau may suspend or revoke a license for cause as provided in this rule.

**E. Restriction on sale of license.** A driving safety school license may not be sold or transferred.

[18.20.8.10 NMAC - Rp, 18 NMAC 20.8.10, 1-1-03]

**18.20.8.11 CLASSROOM COURSE REQUIREMENTS:**

A licensee shall:

**A.** engage as driving safety instructors only those persons who have been certified by the Bureau. A licensee may not serve as an instructor unless the licensee has been certified by the Bureau as an instructor.

**B.** enroll no more than forty (40) students or the maximum occupancy allowed by the fire code, whichever is less, in a driving safety course.

**C.** not charge a student more than \$150.00, including tax, for enrolling in a driving safety course.

**D.** display the license issued by the Bureau in an appropriate and visible location.

**E.** display the placard issued by the Fire Marshal stating the maximum occupancy of each classroom in an appropriate and visible location in the classroom.

**F.** use classroom facilities that:

(1) have adequate space, lighting, heating, and ventilation;

(2) have seats and stable writing surfaces for each student in the class;

(3) have a whiteboard, blackboard, or flipchart;

(4) have a monitor of sufficient size for all students to see, if videos are used;  
and

(5) comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities.

**G.** ensure that the learning environment is conducive to learning and free from discrimination, intimidation, harassment, or any other disturbing influence. No person shall engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others.

**H.** use only the curriculum, handouts, videos, and final examination questions approved by the Bureau.

**I.** accommodate the special needs of hearing impaired students. Whenever a driving safety school becomes aware that an enrollee is hearing impaired, the school shall inform the hearing impaired student in writing that if a friend or family member of the enrollee cannot perform sign language interpretation for the student, the school will contact the Bureau to arrange for sign language interpretation. The driving safety school shall contact the Bureau at least twenty (20) days before the scheduled date of the driving safety course.

**J.** accommodate the special needs of non-English speaking students. Whenever a driving safety school becomes aware that an enrollee does not speak English, the school will make reasonable efforts to provide interpreter services. The driving safety school shall first inquire if a friend or family member of the enrollee can interpret for the student. If that is not possible, the driving safety school will make reasonable efforts to find a driving safety instructor or other person to interpret for the student during the driving safety course.

**K.** provide at least six (6) course hours of instruction for each driving safety course.

**L.** have a proctored final exam with a minimum of twenty (20) questions. A student must correctly answer at least seventy percent (70%) of the questions to pass the final exam.

**M.** use completion certificates purchased from the Bureau at a cost of \$1.00 per certificate.

**N.** not permit a student to attend any driving safety classes until the student has received written information stating all fees, including incidental costs, charged for the course, school policies for passing and failing, refund and reschedule policies, and attendance requirements.

[18.20.8.11 NMAC - Rp, 18 NMAC 20.8.11 and 20.8.16, 1-1-03]

#### **18.20.8.12 SUSPENDED LICENSE COURSE:**

This course is required only for students whose driver's license has been suspended by the Motor Vehicle Division of the Taxation and Revenue Department based on the point system. A licensee must obtain the prior approval of the Bureau to conduct a suspended license driving safety course. Such a course must meet all the requirements of 18.20.8.11 NMAC, except that a licensee shall provide at least eight (8) course hours of instruction for each suspended license driving safety course.

[18.20.8.12 NMAC - N, 1-1-03]

#### **18.20.8.13 DISTANCE LEARNING COURSE REQUIREMENTS:**

A licensee offering distance-learning courses shall:

**A.** use only the curriculum, handouts, videos, and final exam questions approved by the Bureau.

**B.** provide six (6) or more hours of coursework, based on an average person completion time.

**C.** ask at least ten content questions randomly throughout each chapter or give a quiz with at least ten content questions at the end of each chapter. A student shall not be permitted to move on to the next chapter until the student successfully answers at least eight (8) out of ten (10) of the chapter content questions.

**D.** have a proctored final exam with a minimum of fifty (50) questions. A student must correctly answer at least thirty-five (35) questions to pass the final exam.

**E.** have a toll-free telephone number or e-mail help line available to students at all times and respond to students' questions within twenty-four (24) hours.

**F.** use completion certificates purchased from the Bureau at a cost of \$1.00 per certificate.

**G.** specify at least one certified instructor to act as liaison with the Bureau.

[18.20.8.13 NMAC - N, 1-1-03]

#### **18.20.8.14 OPERATING REQUIREMENTS:**

A licensee:

**A.** shall adhere strictly to the requirements of this rule;

**B.** shall notify the Bureau at least thirty (30) days in advance if the driving safety school intends to cease operations;

**C.** shall make all driving safety school records available for inspection by the Bureau or its designee at any time; A licensee shall maintain its records in ink for a minimum of three (3) years for each student receiving instruction, including students who passed, failed, withdrew, cancelled, or transferred to another school.

**D.** shall, on a quarterly basis, provide the Bureau with a copy of the class roster for each driving safety course conducted which shall contain, at a minimum, the name of the instructor, and each student's name, date of birth, date of course completion, final exam test score, and completion certificate number.

**E.** shall have a written refund policy which must be issued to each student upon enrollment.

**F.** shall notify the Bureau of:

- (1)** any changes in address ten (10) days before opening for business at the new location;
- (2)** the addition or closing of extension sites within ten (10) days of their opening or closing; and
- (3)** the addition or deletion of instructors within ten (10) days of their hiring or leaving.

**G.** shall conduct all school operations in a professional and courteous manner.

**H.** shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations.

**I.** may use the phrases "licensed by the Traffic Safety Bureau" or "curriculum approved by the Traffic Safety Bureau" but may not otherwise use the word "approved" or any of its synonyms in its advertising or promotional materials.

[18.20.8.14 NMAC - Rp, 18 NMAC 20.8.11, 1-1-03]

#### **18.20.8.15 EVALUATION OF DRIVING SAFETY SCHOOLS:**

**A. Responsibility.** The Bureau or its designee shall conduct periodic evaluations of driving safety schools using criteria developed by the Bureau. The Bureau shall prepare a written evaluation and shall provide a copy of the evaluation to the licensee upon request. The Bureau may in its discretion conduct evaluations of a driving safety school on its own initiative at any time and for any reason or in response to complaints from any person. The Bureau shall document, investigate, and discuss all complaints with the driving safety school.

**B. Relevant factors.** In conducting its evaluations, the Bureau shall consider:

- (1)** the number and nature of any comments or complaints received from students, instructors, judges, law enforcement officers, and others;
- (2)** whether the driving safety school consistently meets the requirements of this rule; and
- (3)** on-site quality assurance visits by the Bureau or its designee. On-site visits may address the adequacy of classroom facilities, instructors' traffic safety knowledge and teaching techniques, learning environment, quality of the curriculum, course materials, and examination questions, and customer service.

[18.20.8.15 NMAC - Rp, 18 NMAC 20.8.12, 1-1-03]

#### **18.20.8.16 INITIAL CERTIFICATION OF DRIVING SAFETY INSTRUCTORS:**

**A. Certification required.** No person or licensee may serve as a driving safety instructor without first having obtained a certificate from the Bureau.

**B. Application requirements.** A person wishing to obtain a certificate as a driving safety instructor must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

**C. Contents of application.** The application must be accompanied by:

(1) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau;

(2) a state police background check dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety at least sixty (60) days before the date the application is filed with the Bureau;

(3) a copy of the applicant's health certificate signed by a physician and dated no earlier than sixty (60) days before the date the application is filed with the Bureau stating that the applicant is free from all communicable diseases. Distance learning driving safety instructor applicants do not need to submit a health certificate.

(4) the name, address, and telephone number of three (3) character and employment references who are not family members; and

(5) the applicant's resume or curriculum vitae.

(6) transcripts from any post secondary educational or training institutions the applicant has attended.

**D. Completeness check.** When the Bureau receives an application for certification as a driving safety instructor, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

**E. Standards for issuance of driving safety instructor certificate.** In reviewing applications for driving safety instructors, the Bureau shall consider whether:

(1) the information provided is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to be a driving safety instructor;

(3) the applicant is at least twenty-one (21) years of age;

(4) the applicant has a high school diploma or equivalent;

(5) the applicant holds a valid driver's license;

(6) the applicant has not been convicted of a crime involving moral turpitude;  
and

(7) the applicant has a clean driving record.

#### **F. Approval for training.**

(1) If the Bureau determines that the applicant meets the standards in subsection E of this section, the Bureau shall grant approval to proceed with instructor training. An applicant must complete a Bureau sponsored or approved Instructor Training Course designed to teach instructional strategies, classroom management, or acquisition of teaching competencies.

(2) If the Bureau determines that the applicant does not meet the standards in subsection E of this section, the Bureau shall issue a letter stating the reasons it is not granting approval to proceed with instructor training.

#### **G. Final review.**

(1) If the Bureau determines that an applicant has successfully completed the instructor training course and is otherwise fit, the Bureau will issue a certificate upon payment of the \$50.00 instructor certification fee.

(2) If the Bureau determines that an applicant has not successfully completed the instructor training course or is otherwise not fit, the Bureau shall issue a letter stating its reasons for denial of certification.

**H. Term.** A driving safety instructor certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year.

[18.20.8.16 NMAC - Rp, 18 NMAC 20.8.13, 20.8.14, and 20.8.15, 1-1-03]

### **18.20.8.17 RECERTIFICATION OF DRIVING SAFETY INSTRUCTORS:**

#### **A. Certificate renewal.**

(1) A driving safety instructor must file an application for renewal of his or her certificate with the Bureau on or before June 1 each year to ensure certificate renewal by July 1. A driving safety instructor who files an application for renewal after June 1 shall pay a late fee of \$25.00.

A person may obtain an application for renewal by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

(2) The application for renewal shall be accompanied by the documents specified in paragraphs (1), (2), and (3) of subsection C of 18.20.8.16 NMAC.

(3) The Bureau will review applications for renewal in the order in which they are received.

#### **B. Continuing education requirements.**

(1) Driving safety instructors must complete a minimum of eight (8) credit hours of continuing education each year to qualify for recertification.

(2) A driving safety instructor can satisfy this requirement in whole or in part by attending Bureau sponsored:

(a) traffic safety issues forums and workshops; and

(b) education courses and workshops.

(3) The Bureau may, in its discretion, approve continuing education credit on the basis of one continuing education credit hour for every hour of attendance at the following types of programs if a copy of the workshop agenda or course curriculum is submitted to the Bureau:

(a) drug or alcohol workshops;

(b) counseling or treatment workshops; or

(c) education courses or workshops.

#### **C. Approval/disapproval of application for certificate renewal.**

(1) The Bureau will renew the certificate of a driving safety instructor for a period of one year if the driving safety instructor:

(a) pays the \$50.00 annual certification fee;

(b) meets the standards specified in subsection E of 18.20.8.16 NMAC;



(c) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the Bureau or its designee in the preceding year; and

(d) has completed eight (8) credit hours of continuing education in the year preceding the application for renewal.

(2) The Bureau shall not renew the license of any driving safety instructor who:

(a) fails to complete eight (8) hours of continuing education in the year preceding the application for renewal; or

(b) fails to meet the standards specified in subsection E of 18.20.8.16 NMAC.

[18.20.8.17 NMAC - N, 1-1-03]

#### **18.20.8.18 SUSPENSION OR REVOCATION OF A LICENSE OR CERTIFICATE:**

**A. Grounds.** The Bureau may suspend or revoke the license or certificate of a licensee or driving safety instructor:

- (1) who makes a false statement on an application;
- (2) who fails to follow the approved curriculum;
- (3) who poses an immediate danger to the physical or mental safety or health of a student;
- (4) who is convicted of any alcohol or drug-related driving offense;
- (5) who has refused to submit to or failed chemical tests pursuant to the Implied Consent Act;
- (6) whose New Mexico driver's license is suspended or revoked;
- (7) who fails to notify the Bureau in writing within ten days that his/her driver's license has been suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or that he/she been convicted in any jurisdiction of an alcohol or drug-related driving offense or an offense involving moral turpitude;
- (8) whose conduct in the performance of official duties is unethical, including but not limited to, verbal abuse, intimidation, or sexual harassment of students;

(9) who fails to comply with any requirement of this rule or any lawful order of the Bureau;

(10) who becomes employed or remains employed by a driving safety school whose license has been revoked pursuant to this rule;

(11) who employs or continues to employ a driving safety instructor whose certificate has been revoked pursuant to this rule; or

(12) who fails to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 et seq. or any rule implementing that Act.

**B. Procedure.** The Bureau shall use the procedures prescribed in the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 et seq., in all suspension and revocations proceedings held pursuant to this rule.

**C. Consequences of suspension or revocation.**

A driving safety school shall not offer or conduct any driving safety courses if its license is suspended or revoked.

A driving safety instructor shall not conduct any driving safety courses if his or her certificate is suspended or revoked.

**D. Notice of suspension or revocation.**

(1) The Bureau shall immediately notify by certified mail, return receipt requested, each driving safety instructor employed by a driving safety school whose license has been suspended or revoked that the driving safety school's license has been suspended or revoked and that the driving safety instructor may not conduct any driving safety courses for that driving safety school unless and until the license is reinstated by the Bureau.

(2) The Bureau shall immediately notify by certified mail, return receipt requested, each driving safety school that employs a driving safety instructor whose certificate is suspended or revoked that the driving safety instructor's certificate has been suspended or revoked and that the driving safety school may not employ that driving safety instructor unless and until the certificate is reinstated by the Bureau.

(3) The Bureau will notify all Motor Vehicle Division field offices that the driving safety school's license or the driving safety instructor's certificate has been revoked or suspended.

(4) The Bureau will notify all state, metropolitan, magistrate, and municipal courts that the driving safety school's license has been revoked or suspended and that the driving safety school is no longer an approved school.

[18.20.8.18 NMAC - Rp, 18 NMAC 20.8.17, 20.8.18, and 20.8.22, 1-1-03]

#### **18.20.8.19 IMMEDIATE SUSPENSION OF A LICENSE OR CERTIFICATE:**

**A. Grounds.** The Bureau may immediately suspend the license of a driving safety school or the certificate of a driving safety instructor if the Bureau finds that the licensee or driving safety instructor poses an immediate danger to the physical or mental safety or health of a student.

**B. Notice of immediate suspension.** The Bureau shall commence proceedings to immediately suspend a license or certificate by issuing a written notice of immediate suspension to the licensee or driving safety instructor, which shall contain at least the following:

(1) the name and last known address of the licensee or driving safety instructor whose license or certificate the bureau is immediately suspending.

(2) a statement that the Bureau is immediately suspending the driving safety school's license or driving safety instructor's certificate for a period of thirty (30) days and the effective date of the immediate suspension.

(3) a general description of the facts alleging that the licensee or driving safety instructor poses an immediate danger to the physical or mental safety or health of a student that warrants immediate suspension. The description shall be in sufficient detail to apprise a person of ordinary intelligence of the nature of the violation.

(4) statement that the licensee or driving safety instructor has ten (10) days from the date of receipt of the notice of immediate suspension to request a hearing. The licensee or driving safety instructor may request a hearing by mailing, certified and return receipt requested, or hand-delivering a letter to the Bureau.

(5) the street and post office addresses of the Bureau where requests for a hearing may be made.

**C. Hearing.** The Bureau shall grant a timely request for a hearing.

(1) The State Highway and Transportation Department shall appoint a hearing examiner.

(2) The hearing shall be held as soon as possible, but not later than thirty (30) days from the effective date of the immediate suspension.

(3) The immediate suspension will remain in effect until the conclusion of the hearing.

(4) The hearing may be held telephonically if both parties agree.

**D. Hearing purpose.** The hearing is for the sole purpose of determining if the Bureau has reasonable grounds to believe that the licensee or driving safety instructor poses an immediate danger to the physical or mental safety or health of a student.

(1) If the hearing examiner finds that no immediate danger exists, the Bureau will withdraw the immediate suspension but may initiate revocation proceedings pursuant to 18.20.8.18 NMAC.

(2) If the hearing examiner finds that an immediate danger exists, the Bureau shall initiate revocation proceedings pursuant to 18.20.8.18 NMAC within ten (10) days of the end of the hearing. The immediate suspension will remain in effect until the conclusion of the revocation procedure.

**E. Grounds for withdrawal of immediate suspension.**

(1) The Bureau shall withdraw an immediate suspension if:

(a) a hearing is timely requested and the Bureau has not held the hearing within thirty (30) days of the effective date of the immediate suspension, unless the licensee or instructor requests a later hearing date and agrees in writing that the immediate suspension will remain in effect until the conclusion of the later hearing;

(b) the hearing examiner finds that an immediate danger does exist but the Bureau does not initiate revocation proceedings pursuant to 18.20.8.18 NMAC within ten (10) days of the ruling; or

(c) the licensee or driving safety instructor does not request a hearing and the Bureau does not initiate revocation proceedings pursuant to 18.20.8.18 NMAC within thirty (30) days of the effective date of the immediate suspension.

(2) The Bureau may, in its discretion, withdraw an immediate suspension for any reason but shall document its decision in writing.

[18.20.8.19 NMAC - Rp, 18 NMAC 20.8.19, 20.8.20, and 20.8.21, 1-1-03]

**18.20.8.20 EXEMPTION OR VARIANCE:**

**A.** Any school may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

- (1)** identify the section of this rule for which the exemption or variance is requested;
- (2)** describe the situation which necessitates the exemption or variance;
- (3)** describe the effect of complying with this rule on the school and its customers, and on its competitors and their customers, if the exemption or variance is not granted;
- (4)** state how the exemption or variance will achieve the purposes of this rule and the Driving School Licensing Act; and
- (5)** state why the proposed alternative is in the public interest and is better than the requirement in the rule.

**B.** Such petition may include a motion that the Bureau stay the affected portion of this rule for the transaction specified in the motion.

**C.** Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the licensee or other person with authority to bind the licensee.

**D.** The Bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[18.20.8.20 NMAC - N, 1-1-03]

## **PART 9: DESIGNATION OF HIGHWAY ROUTES FOR TRANSPORT OF RADIOACTIVE MATERIALS**

### **18.20.9.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-0427.

[Recompiled 11/16/01]

### **18.20.9.2 SCOPE:**

The rule covers specific designated Highway routes as designated by the New Mexico State Highway Commission for the protection of the general public in the transport of highway route controlled quantities of radioactive materials" within the state of New Mexico to the Waste Isolation Pilot Plant (WIPP) site near Carlsbad, New Mexico.

[Recompiled 11/16/01]

**18.20.9.3     STATUTORY AUTHORITY:**

NMSA 1978, Section 74-4A-1.

[Recompiled 11/16/01]

**18.20.9.4     DURATION:**

Permanent.

[Recompiled 11/16/01]

**18.20.9.5     EFFECTIVE DATE:**

April 30, 1999, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

**18.20.9.6     OBJECTIVE:**

The objective of this rule is to comply with Federal Government requirements that highway route controlled quantities of radioactive materials," as defined in 49 C.F.R., Section 177.403, shall be transported over designated routes within the state, primarily over Interstate System Highways to the extent possible or over state designated preferred routes as an alternative to, or in addition to, Interstate System.

**18.20.9.7     DEFINITIONS:**

As used in this rule unless the context clearly indicates otherwise:

A. "Interstate System Highways" means every state highway that is a part of a national system of interstate and defense highways established pursuant to Section 103(b), Title 23, United States Code.

B. Waste Isolation Pilot Plant (WIPP)" means the underground repository located near Carlsbad, [Recompiled 11/16/01]

**18.20.9.8     DESIGNATIONS:**

Pursuant to United States Department of Transportation regulations, 49 C.F.R. Section 177.825, the state designated preferred routes are as follows:

A. Northern Route -- From the Colorado New Mexico border south on I-25 through Raton, Springer, and Las Vegas to the junction of I-25 and US 285 near Santa Fe;

south on US 285 through Clines Corners, Encino, Vaughn, Roswell (along the Roswell Relief Route) and Artesia to the junction of US 285 and US 62/180 in Carlsbad; east on US 62/180 to the WIPPnorth access road. If and when Artesia and Carlsbad Relief Routes are available, they shall be used instead of the route through each respective city. Currently posted truck routes" shall not be used.

B. Western Route -- From the Arizona New Mexico border east on I-40 through Gallup, Thoreau, Grants, Albuquerque and Moriarty to the junction of I-40 and US 285 at Clines Corners; south on US 285 through Encino, Vaughn, Roswell (along the Roswell Relief Route) and Artesia to the junction of US 285 and US 62/180 in Carlsbad; east on US 62/180 to the WIPPnorth access road. If and when Artesia and Carlsbad Relief Routes are available, they shall be used instead of the route through each respective city. Currently posted truck routes" shall not be used.

C. Eastern Route -- From the Texas New Mexico border west on I-40 through Tucumcari to the junction of I-40 and US 54 at Santa Rosa; west on US 54 through Pastura to the junction of US 54 and US 285 at Vaughn; south on US 285 through Roswell (along the Roswell Relief Route) and Artesia to the junction of US 285 and US 62/180 in Carlsbad; east on US 62/180 to the WIPPnorth access road. If and when Artesia and Carlsbad Relief Routes are available, they shall be used instead of the route through each respective city. Currently posted truck routes" shall not be used.

D. Southern Route -- From the Texas New Mexico border north on US 285 through Loving to the Junction on US 285 and US 62/180 in Carlsbad; east on US 62/180 to the WIPPnorth access road. If and when a south Carlsbad Relief Route is available, it shall be used instead of the route through the city. Currently posted truck routes" shall not be used.

E. Los Alamos National Laboratory -- From the Los Alamos National Laboratory in Los Alamos County east on the Los Alamos Truck Route to the junction of the Los Alamos Truck Route and NM 4; east on NM 4 to the junction of NM 4 and NM 502; east on NM 502 to the junction of NM 502 and US 84/285 at Pojoaque; south on US 84/285 to the junction of US 84/285 and NM 599; south on NM 599 to the junction of NM 599 and I-25; north on I-25 to the junction of I-25 and US 285; south on US 285 through Clines Corners, Encino, Vaughn, Roswell (along the Roswell Relief Route) and Artesia to the junction of US 285 and US 62/180 in Carlsbad; east on US 62/180 to the WIPPnorth access. If and when the Artesia and Carlsbad Relief Routes are available, they shall be used instead of the route through each respective city. Currently posted truck routes" shall not be used, except for the Los Alamos Truck Route as stated above.

[Recompiled 11/16/01]

## **PART 10: NEW MEXICO'S MOTORCYCLE TRAINING PROGRAM**

### **18.20.10.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149,  
Santa Fe, New Mexico 87504-1149 (505) 827-0427.

[Recompiled 11/16/01]

**18.20.10.2 SCOPE:**

All state agencies and general public

[Recompiled 11/16/01]

**18.20.10.3 STATUTORY AUTHORITY:**

This rule is adopted pursuant to NMSA 1978, Sections 66-10-9 and 66-10-10.

[Recompiled 11/16/01]

**18.20.10.4 DURATION:**

Permanent.

[Recompiled 11/16/01]

**18.20.10.5 EFFECTIVE DATE:**

January 1, 1999, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

**18.20.10.6 OBJECTIVE:**

The objective of this Rule is to:

A. Provide minimum and uniform standards and procedures for the operation of the New Mexico Motorcycle Training Program.

B. Provide minimum and uniform standards and procedures for the requirements to instruct for a New Mexico Motorcycle Training Program Course.

The objective of this rule is to comply with Federal Government requirements that highway route controlled quantities of radioactive materials," as defined in 49 C.F.R., Section 177.403, shall be transported over designated routes within the state, primarily over Interstate System Highways to the extent possible or over state designated preferred routes as an alternative to, or in addition to, Interstate System Highways.

[Recompiled 11/16/01]



#### **18.20.10.7 DEFINITIONS:**

A. "Bureau" means the Traffic Safety Bureau of the New Mexico State Highway and Transportation Department.

B. "Clean Driving Record" means a person does not have more than six points against his/her drivers license, has not had his/her license suspended or revoked, has never been convicted in any jurisdiction of an offense involving moral turpitude, has never been convicted in any jurisdiction of any alcohol or drug-related driving offense, and has not had a violation of the Implied Consent Act, as shown by a limited history driving record.

C. "Department" means the State Highway and Transportation Department.

D. "Designee" means a person or legal entity authorized by contract to perform certain duties on behalf of the Bureau.

E. "Person" means every natural person, firm, copartnership, association, corporation, or other legal entity.

[Recompiled 11/16/01]

#### **18.20.10.8 MOTORCYCLE TRAINING PROGRAM REQUIREMENTS:**

A. Motorcycle training courses shall be provided by the Department or its designee.

B. Motorcycle training courses shall be offered in areas of the State as designated by the Bureau.

C. Motorcycle training courses shall include:

- (1) Information on helmet use and effectiveness;
- (2) Motorcycle accident and fatality statistics;
- (3) Drug and Alcohol abuse information, laws, and statistics;
- (4) Street and highway safe driving habits;
- (5) Defensive driving; and
- (6) Curriculum and standards approved by the Motorcycle Safety Foundation.

[Recompiled 11/16/01]

#### **18.20.10.9 MOTORCYCLE TRAINING COURSE INSTRUCTOR REQUIREMENTS:**

- A. A minimum of twenty-one (21) years of age.
- B. Have a clean driving record.
- C. Have a valid motorcycle license/ endorsement.
- D. Be certified by the Motorcycle Safety Foundation.

[Recompiled 11/16/01]

#### **18.20.10.10 COURSE FEES:**

All fees charged to the individuals who attend the Motorcycle Training Courses shall be approved by the Bureau.

[Recompiled 11/16/01]

#### **18.20.10.11 SEVERABILITY:**

If any part of the application of this Rule is held invalid, the remainder of its application to other situations or persons shall not be affected.

[Recompiled 11/16/01]

### **PART 11: IGNITION INTERLOCK DEVICES**

#### **18.20.11.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department.

[18.20.11.1 NMAC - Rp, 18 NMAC 20.11.1, 1-1-03]

#### **18.20.11.2 SCOPE:**

This rule applies to the usage of ignition interlock devices in New Mexico pursuant to NMSA 1978 Sections 66-5-35 and 66-8-102 and to all manufacturers, service center operators, and installers of such ignition interlock devices.

[18.20.11.2 NMAC - Rp, 18 NMAC 20.11.2, 1-1-03]

#### **18.20.11.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 66-5-35 and 66-8-102.

[18.20.11.3 NMAC - Rp, 18 NMAC 20.11.3, 1-1-03]

**18.20.11.4 DURATION:**

Permanent.

[18.20.11.4 NMAC - Rp, 18 NMAC 20.11.4, 1-1-03]

**18.20.11.5 EFFECTIVE DATE:**

January 1, 2003, unless a later date is cited at the end of a section.

[18.20.11.5 NMAC - Rp, 18 NMAC 20.11.5, 1-1-03]

**18.20.11.6 OBJECTIVE:**

The purpose of this rule is to implement the ignition interlock program mandated by NMSA 1978 Sections 66-5-35 and 66-8-102.

[18.20.11.6 NMAC - Rp, 18 NMAC 20.11.6, 1-1-03]

**18.20.11.7 DEFINITIONS:**

As used in this rule:

**A. alveolar breath** means an air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of the alcohol concentration in the breath from which the breath alcohol concentration can be determined. A minimum volume of 1200 milliliters is required to represent alveolar breath. ("Alveolar" refers to the alveoli, the smallest air passages in the lungs, which are surrounded by capillary blood vessels through which an interchange of gases occurs during respiration.)

**B. appropriate authorities** means the sentencing court, an assigned probation officer, the Bureau or its designee, the Motor Vehicle Division of the Taxation and Revenue Department, and/or the New Mexico Department of Finance and Administration.

**C. bogus breath sample** means any gas sample other than an unaltered, undiluted, and unfiltered alveolar breath sample from a driver.

**D. breath alcohol concentration (BAC)** means the amount of alcohol in a person's breath, determined by chemical analysis and measured in grams of alcohol per 210 liters of breath.

**E. Bureau** means the Traffic Safety Bureau of the New Mexico State Highway and Transportation Department.

**F. calibrate** means to test and adjust an ignition interlock device so that it accurately measures breath alcohol concentration.

**G. circumventing** means an overt, conscious attempt to use a bogus or filtered breath sample or an electronic bypass mechanism to start a vehicle, or to push start or hot wire a vehicle, without taking and passing an initial breath test.

**H. certificate** means a document issued by the Bureau authorizing a person to install and remove ignition interlock devices and, where applicable, to train installers.

**I. clean driving record** means a person has no more than six (6) points on his/her driver's license, and has not within the last three (3) years had his/her driver's license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been convicted in any jurisdiction of an alcohol or drug-related driving offense.

**J. driver** means a person who operates a vehicle in which an ignition interlock device has been installed pursuant to NMSA 1978 Section 66-5-35 or 66-8-102.

**K. filtered breath sample** means a breath sample which has been filtered through a substance such as, but not limited to, silica gel, drierite, cat litter, cigarette filters, water filters, or cotton, in an attempt to remove alcohol from the sample

**L. ignition interlock device or device** means an electronic breath alcohol analyzer with microcomputer logic and an internal memory connected to the ignition and other control systems of a vehicle that measures breath alcohol concentration and prevents a driver from starting the vehicle if the driver's BAC exceeds a specified limit.

**M. independent laboratory** means a testing laboratory or analytical chemist not affiliated with a manufacturer of ignition interlock devices that is qualified to test ignition interlock devices or reference samples and is approved by the Bureau.

**N. initial breath test** means a breath test required to start a vehicle to ensure that the driver's BAC is below the maximum allowable level before a driver can start a vehicle.

**O. installer** means a person certified by the Bureau to install and remove ignition interlock devices in New Mexico.

**P. instructor-installer** means an installer who has successfully completed the manufacturer's installation instructor training program, as verified by the manufacturer.

**Q. license** means the document issued by the Bureau authorizing a person to operate a service center.

**R. limited history driving record** means a driving record from the Motor Vehicle Division of the Taxation and Revenue Department that includes driver's license revocations pursuant to the Implied Consent Act.

**S. manufacturer** means a person who produces or assembles ignition interlock devices.

**T. random retest** means a breath test required within randomly variable intervals while a driver is driving a vehicle to ensure that the driver's BAC remains below the maximum allowable level.

**U. reference sample** means either a dry gas sample or a wet bath solution containing a known concentration of alcohol at a known temperature that is used to calibrate an ignition interlock device.

**V. revocation** means the permanent withdrawal of the Bureau's approval of a device, license of a service center, or certificate of an installer for cause.

**W. sentenced driver** means a person required by law to have an ignition interlock device installed in all vehicles the person operates.

**X. service** means to calibrate, maintain, download data from, and inspect ignition interlock devices for evidence of tampering or circumventing, and to report information to the appropriate authorities.

**Y. service center** means the physical location in New Mexico where ignition interlock devices are installed, serviced, and removed, and includes mobile service units.

**Z. service center operator or licensee** means a person approved by a manufacturer and licensed by the Bureau to operate a service center and service ignition interlock devices in New Mexico.

**AA. service technician** means an employee of a service center operator who is trained by a manufacturer or service center operator to service ignition interlock devices.

**BB. suspension** means the withdrawal of the Bureau's approval of a device, license of a service center, or certificate of an installer for cause for a specified period of time.

**CC. tampering** means an overt, conscious attempt to physically alter or disable an ignition interlock device, or disconnect it from its power source, or remove,

alter or deface physical anti-tampering measures, so a driver can start the vehicle without taking and passing an initial breath test.

[18.20.11.7 NMAC - Rp, 18 NMAC 20.11.7, 1-1-03]

#### **18.20.11.8 APPLICATION FOR APPROVAL OF IGNITION INTERLOCK DEVICES:**

**A. Approval required.** No person shall provide ignition interlock devices for installation without first having obtained approval of the device from the Bureau in accordance with the requirements of this rule.

**B. Contents of application.** A manufacturer seeking approval of an ignition interlock device shall submit an application to the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>. The application shall include:

(1) the manufacturer's name, address, telephone number, fax number and e-mail address.

(2) the name and telephone number of a contact person.

(3) the name and number of the model or class of the device for which approval is sought.

(4) a list of other states in which the same device has been approved for use, and the name, address and telephone number of the authorizing agency in each state.

(5) a precise set of specifications describing the features of the device.

(6) detailed operating instructions for each device.

(7) a detailed description of the reference sample to be used for calibrating the device.

(8) the name and address of any independent laboratory that has tested the device or reference sample for which approval is sought.

(9) the territory in which the manufacturer proposes to operate. A manufacturer shall choose one or more of the following options:

(a) New Mexico State Highway District 1;

(b) New Mexico State Highway District 2;

(c) New Mexico State Highway District 4;

- (d) New Mexico State Highway District 6;
- (e) New Mexico State Highway Districts 3 and 4;
- (f) New Mexico State Highway Districts 5 and 6;
- (g) Statewide.

(10) the number, location, and type (fixed-site or mobile unit) of service centers the manufacturer proposes to establish in New Mexico, the nature of the relationship between the manufacturer and the service center operator (i.e., employee or independent contractor), and a plan for providing service within one hundred (100) miles or two (2) hours, whichever is less, of any sentenced driver's residence or place of business.

(11) a notarized statement or affidavit from an independent laboratory stating the name, address and phone number of the independent laboratory and the name of the person who tested:

(a) the device, certifying that each model or class of ignition interlock device for which the manufacturer seeks approval from the Bureau was tested in accordance with the Testing Specifications for Ignition Interlock Devices adopted by the Bureau and meets or exceeds the requirements of this rule. The manufacturer shall pay all costs of such testing.

(b) the reference sample, certifying that the reference sample to be used by the manufacturer's service center operators to calibrate the device is satisfactory for that purpose.

**C. Completeness check.** When the Bureau receives an application for approval of a device, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

**D. Approval and qualifying provisions.** The Bureau shall notify the manufacturer in writing of its approval or disapproval of the device for use in New Mexico. The Bureau may deny approval of a device if the device or the manufacturer fails to meet the requirements of this rule. Within thirty (30) days of receipt of a notice of approval, a manufacturer shall submit to the Bureau:

(1) proof of product liability insurance from an insurance company licensed to do business in New Mexico covering defects in product design, materials, and manufacturing of ignition interlock devices, with minimum liability limits of one million

dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. The proof of insurance shall include a statement from the insurance company that it will notify the Bureau thirty (30) days before canceling the insurance.

(2) a surety bond for the benefit of the state of New Mexico in the amount of ten thousand dollars (\$10,000) issued by a surety company licensed to do business in New Mexico to ensure replacement of the manufacturer's ignition interlock devices pursuant to paragraph 3 of subsection N of 18.20.11.9 NMAC or subsection D of 18.20.11.24 NMAC.

(3) a signed statement that the manufacturer shall indemnify and hold harmless the state of New Mexico, the Bureau and its officers, employees and agents from all claims, demands and actions resulting from damage, death, or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer relating to the installation, service, repair, use or removal of an ignition interlock device.

(4) a signed statement that the manufacturer shall comply with all requirements of this rule.

(5) a signed statement that each of the manufacturer's service center operators is a representative of the manufacturer for the purpose of accepting service of process and that service of process on one of the manufacturer's service center operators shall constitute service of process on the manufacturer.

[18.20.11.8 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03]

#### **18.20.11.9 RESPONSIBILITIES OF MANUFACTURERS:**

A manufacturer shall:

**A.** develop written instructions for the installation, servicing, and removal of ignition interlock devices approved for use in New Mexico and supply those instructions to all service centers authorized by the manufacturer and licensed by the Bureau to install ignition interlock devices in New Mexico.

**B.** develop a user reference and problem-solving guide in English and Spanish which shall:

(1) include information on the location of service centers, servicing procedures, emergency procedures and a strong warning that the device detects non-compliance, circumvention, and tampering;

(2) provide written instructions on how to clean and care for the ignition interlock device;



**(3)** describe the type of vehicle malfunctions or repairs that might affect the ignition interlock device and inform a driver what to do when such repairs are necessary; and

**(4)** advise the driver that he or she may contact the Bureau at 1-800-541-7952 if he or she has a complaint about the device or the service the driver receives from the service center operator.

**C.** train each service center operator that uses its ignition interlock devices to service the device and certify to the Bureau in writing that the service center operator has been trained.

**D.** train at least one installer at each service center to install and remove ignition interlock devices and certify to the Bureau in writing that an installer has been trained.

**E.** notify the Bureau in writing within thirty (30) days after the manufacturer receives notice that a device approved for use in New Mexico is or ever has been suspended, revoked or denied in another state, whether such action occurred before or after approval in New Mexico and whether or not such action is or has been appealed in the other state.

**F.** employ or contract with only those persons whom the Bureau has licensed as service center operators or certified as installers, except for administrative staff.

**G.** disseminate information about its ignition interlock device to the public. A manufacturer of an approved device may state that its device has been "approved by the Traffic Safety Bureau for use in New Mexico" in its advertising or promotional materials.

**H.** not make any modification in design or operational concept of a device to be used in New Mexico that materially affects the way the device measures alcohol or records data without the prior written approval of the Bureau. The Bureau may require a manufacturer to reapply for approval of a device the manufacturer intends to significantly modify. Modification does not include repair or replacement of parts to maintain the device in working order or software changes that do not modify the functionality of the device.

**I.** affix a label to each device warning against tampering, circumvention, or misuse of the device.

**J.** provide expert or other required testimony in any civil or criminal proceedings regarding the manufacture and functioning of its device, or the interpretation of recorded data.

**K.** reimburse the Bureau for any costs incurred if a manufacturer requests the Bureau to provide testimony in any civil or criminal procedures involving the approval or use of an ignition interlock device in New Mexico.

**L.** ensure that disposable mouthpieces with saliva traps are always available to service center operators.

**M.** ensure that reference samples to be used in calibrating devices are always available to service center operators.

**N.** be responsible for providing uninterrupted service of its installed devices if one of its service centers moves more than ten (10) miles from its location or goes out of business. A manufacturer shall notify the Bureau within ten (10) business days if one of its service centers is moving or going out of business and shall indicate whether or not it will replace the service center.

**(1)** If the manufacturer replaces the service center, the manufacturer shall make all reasonable efforts to obtain driver records and data from the original service center and provide them to the new service center.

**(2)** If the manufacturer does not replace the service center, the manufacturer shall make all reasonable efforts to obtain driver records and data from the original service center, maintain them at its main business office, and provide them to the appropriate authorities as required by this rule.

**(3)** A manufacturer shall be responsible for removing its devices and shall bear the cost of having them replaced with approved devices from another manufacturer if:

**(a)** the manufacturer can no longer provide service within one hundred (100) miles or two (2) hours, whichever is less, of the sentenced driver's residence or place of business; and

**(b)** the other manufacturer has a service center no more than one hundred (100) miles or two (2) hours, whichever is less, from the driver's residence or place of business than the original service center.

**(4)** A manufacturer shall notify all drivers of the change of service center or replacement of the device as soon as possible but no later than thirty (30) days before the change or replacement will occur.

**(5)** If a manufacturer cannot comply with paragraph (3) of this subsection, the manufacturer shall notify all drivers and the appropriate authorities that service will be terminated within sixty (60) days and shall remove the devices at no cost to the drivers.

#### **18.20.11.10 PERFORMANCE STANDARDS FOR IGNITION INTERLOCK DEVICES:**

All ignition interlock devices must be based on alcohol-specific electro-chemical fuel cell sensor technology and must meet the National Highway Traffic Safety Administration specifications published in Federal Register Volume 57, Number 67, pages 11772-11787, dated Tuesday, April 7, 1992 and the requirements of this rule. An ignition interlock device shall:

**A.** detect a BAC of 0.025 grams of alcohol per 210 liters of breath, with an accuracy of plus or minus 0.005 grams of alcohol per 210 liters of breath.

**B.** prevent the vehicle from starting ninety-five (95) percent of the time when it detects a BAC above 0.025 grams of alcohol per 210 liters of breath.

**C.** assure that the breath sample collected is essentially alveolar.

**D.** detect attempts to tamper with or circumvent the device.

**E.** not have any form of bypass device that would permit a driver to start a vehicle without taking an initial breath test.

**F.** be usable by a person of average intelligence with minimum inconvenience;

**G.** operate at all temperatures between -10° Fahrenheit and 110° Fahrenheit.

**H.** operate at all altitudes between 2500 feet and 13,000 feet.

**I.** not be significantly affected by humidity, dust, electromagnetic interference, or normal automobile vibration. The device shall meet the requirements of subsections A and B of this section when subjected to simple harmonic motion (vibrations) having an amplitude of:

**(1)** 0.38mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2 1/2 minutes, then decreased at a uniform rate to 10 Hz in 2 1/2 minutes; and

**(2)** 0.19mm (0.0075 inches) applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2 1/2 minutes, then decreased at a uniform rate to 30 Hz in 2 1/2 minutes.

**J.** not be affected by normal fluctuations of power source voltage resulting from operation of the vehicle and other electronic devices installed in the vehicle.

**K.** allow the vehicle to be restarted without requiring an additional breath test for three (3) minutes after the ignition has been turned off or the vehicle has stalled, except when the driver has failed to take a random retest.

**L.** display device responses or label the light-up buttons on the device, as applicable, in English or Spanish as requested by the sentenced driver.

**M.** provide audible and visual warning signals, and written, spoken, or visual instructions in English or Spanish when an initial breath test or random retest is required;

**N.** not indicate a breath test failure when testing an alcohol-free sample or a sample containing endogenously produced substances capable of being present in the breath.

**O.** automatically cleanse or remove from the device a previous breath sample or other contaminant containing alcohol before allowing a subsequent breath test to be taken.

**P.** retain data for a minimum of three thousand (3,000) driving events or a period of sixty-five (65) days before requiring servicing.

**Q.** retain its electronic tamper detection capabilities when the device is disconnected from the vehicle's power supply, or record that the device was disconnected.

**R.** provide a service visit reminder if the device's internal memory reaches ninety percent (90%) of capacity.

**S.** not report false passes of a breath test more than five (5) percent of the time

**T.** not report false failures of a breath test more than five (5) percent of the time.

**U.** issue an audible or visual warning that the vehicle needs to be serviced within five (5) days:

**(1)** whenever the driver is scheduled for a service visit;

**(2)** the driver has failed an initial breath test six (6) times within a period of three (3) hours;

**(3)** the driver has failed initial breath tests or random retests ten (10) times within a period of thirty (30) days;

**(4)** the device detects evidence of circumventing or tampering.

**V.** not permit the vehicle to be started if the sentenced driver fails to appear for a service visit within the five (5) day warning period. The vehicle shall not be operable until a service center operator or service technician has serviced the device.

**W.** be calibrated at a calibration set point of 0.05 grams of alcohol per 210 liters of breath using the known concentration of an approved reference sample, and remain stable in the field for at least sixty-five (65) days.

**X.** not impede the safe operation of the vehicle.

[18.20.11.10 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03]

#### **18.20.11.11 STANDARDS FOR DETECTING BREATH ALCOHOL CONCENTRATION:**

**A. Initial breath test.** An ignition interlock device shall:

(1) indicate by audible or visual means when a sufficient sample of breath has been collected.

(2) indicate the results of the breath test by the use of pass/fail signals and not by displaying a numerical BAC level.

(3) prevent a driver from starting a vehicle when:

(a) it detects a BAC of 0.025 or more grams of alcohol per 210 liters of breath.

(b) a driver fails to appear for a scheduled or violation service visit within the five day warning period.

(4) require a driver to wait five (5) minutes before attempting to start the vehicle a second or third time if the driver's BAC on the initial breath test exceeded 0.025 grams per 210 liters of breath.

(5) require a driver to wait thirty (30) minutes before attempting to start the vehicle a fourth or subsequent time if the driver's BAC on the second breath test exceeded 0.025 grams per 210 liters of breath.

(6) allow a driver to start the vehicle for three (3) minutes after successful completion of an initial breath test.

**B. Random retests.** An ignition interlock device shall require random retests.

(1) The device shall require the driver to take a random retest within a randomly variable interval ranging from three (3) to ten (10) minutes after a driver has passed an initial breath test and started the vehicle.

(2) The device shall use an audible or visual warning to alert the driver that a random retest is required and the driver will have five (5) minutes to take the random retest.

(3) If a driver fails to take a random retest within five (5) minutes of the warning, or the device detects a BAC of 0.025 or more grams of alcohol per 210 liters of breath, the horn shall sound repeatedly until the vehicle is turned off. The device shall not allow the driver to:

(a) restart the vehicle within three (3) minutes after the ignition has been turned off without taking an initial breath test; or

(b) take an initial breath test for five (5) minutes after the vehicle is turned off.

(4) For the duration of travel, the device shall require additional random retests at random intervals ranging from thirty (30) to sixty (60) minutes after the previous test.

(5) If the vehicle is intentionally turned off or accidentally stalls after or during the warning of an impending random retest, but before the driver takes the random retest, the driver shall not be able to start the vehicle without taking an initial breath test.

[18.20.11.11 NMAC - Rp, 18 NMAC 20.11.8 and 20.11.9, 1-1-03]

#### **18.20.11.12 DATA RECORDING REQUIREMENTS FOR IGNITION INTERLOCK DEVICES:**

**A.** An ignition interlock device shall record the following driving events:

- (1) all attempts to circumvent the device;
- (2) all attempts to tamper with the device;
- (3) all attempt to start the vehicle without first taking an initial breath test;
- (4) all attempts to continue driving the vehicle without taking a random retest;
- (5) the date, time, BAC of the driver, and success or failure of each attempt to start the vehicle;
- (6) the date, time, BAC of the driver, and success or failure of each random retest;

(7) the total number of events recorded by the data recorder since the last service visit; and

(8) the number of vehicle starts.

**B.** An ignition interlock device data recorder shall be incorporated into a module that cannot be detached and shall have a backup system to protect the security of all recorded data in the event the power supply to the device is interrupted or the sample head is disengaged or disconnected.

[18.20.11.12 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03]

### **18.20.11.13 LICENSING OF SERVICE CENTERS:**

**A. License required.** No person may operate a service center without first having obtained a license from the Bureau in accordance with the requirements of this rule.

**B. Application required.** A person wishing to obtain a license to operate a service center must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>. The application shall include:

(1) the applicant's name, address, telephone number, fax number and e-mail address.

(2) the name, address, and telephone of three (3) character and employment references who are not family members.

(3) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau.

(4) a state police background check on the applicant dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the Department of Public Safety at least sixty (60) days before the date the application is filed with the Bureau.

(5) the applicant's resume or curriculum vitae.

(6) a copy of the standard agreement between the service center and sentenced drivers regarding the device. The agreement may require the sentenced driver to notify the service center operator if:

(a) the vehicle in which the device is installed is sold, stolen, repossessed, damaged beyond repair, permanently moved out of the service center operator's territory, or impounded and not to be returned; or

(b) the sentenced driver becomes disabled or dies.

(7) a copy of the agreement between the manufacturer and the service center.

(8) a fee schedule setting forth the cost a sentenced driver will pay for:

(a) installation of the device;

(b) monthly leasing of the device;

(c) a thirty (30) or sixty (60) day scheduled service visit;

(d) a violation service visit; and

(e) removal of the device.

**C. Completeness.** When the Bureau receives an application for a service center license, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

**D. Standards for issuance of service center license.** In reviewing applications for service center licenses, the Bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report favorably on the applicant's character or employment experience;

(3) the applicant is at least eighteen (18) years of age;

(4) the applicant has not been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device.

**E. Issuance of license.** If the Bureau determines that the applicant meets the standards in subsection D of this section, the Bureau will notify the applicant in writing that the Bureau has approved the application. The Bureau shall issue a license if, within thirty (30) days of approval, the applicant submits to the Bureau:



(1) the physical location of and type (fixed site or mobile unit) of service center the applicant will operate;

(2) the name of the manufacturer and the model or class of ignition interlock device to be installed;

(3) the name and address of the manufacturer, and the type (dry gas or wet bath) of reference sample to be used to calibrate the device.

(4) proof of garagemen's public liability insurance from an insurance company licensed to do business in New Mexico covering injury, death or property damage resulting from the installation, servicing, or removal of ignition interlock devices in an aggregate amount of not less than one million dollars (\$1,000,000). The proof of insurance shall include a statement from the insurance company that it will notify the Bureau thirty (30) days before canceling the insurance.

(5) a signed statement that the applicant shall indemnify and hold harmless the state of New Mexico, the Bureau and its officers, employees and agents from all claims, demands and actions resulting from damage, death, or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the service center operator or installer relating to the installation, servicing, or removal of an ignition interlock device.

(6) a signed statement that the applicant shall comply with all requirements of this rule.

**F. Denial of license.** If the Bureau determines that the applicant does not meet the standards in subsection D of this section, the Bureau shall issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time.

**G. Term.** A service center license shall be valid until:

(1) the service center ceases operations;

(2) the manufacturer terminates its agreement with the service center;

(3) the Bureau suspends or revokes the license for cause as provided in this rule; or

(4) the Bureau requires license renewal for any reason.

**H. Restriction on sale of license.** A service center license may not be sold or transferred.

#### **18.20.11.14 RESPONSIBILITIES OF SERVICE CENTER OPERATORS:**

A service center operator shall:

**A.** provide the tools, test equipment, and manuals needed for installing, inspecting, downloading, calibrating, repairing, maintaining, servicing and removing ignition interlock devices.

**B.** ensure that all devices are installed and removed in a workmanlike manner in accordance with accepted trade practices by properly trained and certified installers.

**C.** ensure that all devices are serviced in a workmanlike manner in accordance with accepted trade practices by a properly trained and certified service center operator or service technician.

**D.** maintain sufficient staff to ensure an acceptable level of service; the service center must be staffed with at least one certified installer during all posted hours of operation.

**E.** report to the Bureau in writing within ten (10) business days any changes in location, fee schedule, or other matters that may affect the service center operator's ability to comply with the requirements of this rule .

**F.** provide expert or other required testimony in any civil or criminal proceedings regarding the installation, servicing, and removal of devices or the interpretation of recorded data.

**G.** reimburse the Bureau for any costs incurred if the service center operator requests the Bureau to provide testimony in any civil or criminal procedures involving the installation, servicing, and removal of an ignition interlock device.

**H.** not reveal any personal and medical information provided by drivers to any person other than the appropriate authorities or employees of the manufacturer of service center operator on an as-needed basis.

**I.** provide information to interested drivers concerning the device and costs of installation, leasing, servicing, and removal. An installer may state that the installer is "licensed by the Traffic Safety Bureau" and may state that the device the installer provides is "approved by the Traffic Safety Bureau for use in New Mexico" in its advertising or promotional materials.

**J.** provide to each driver at the time the device is installed a form prescribed by the Bureau on which the driver shall self-certify the number of vehicles he or she drives.

**K.** ensure that ignition interlock devices are installed on all vehicles driven by the driver within ten (10) business days of the date requested by a sentenced driver.

**L.** inquire of the sentenced driver whether the sentenced driver has a driver's license or state-issued identification card. If so, the installer shall affix the state-prescribed indicator on the card indicating that the sentenced driver is prohibited from driving any vehicle that does not have an ignition interlock device installed.

**M.** take adequate security measures to prevent drivers or other unauthorized persons from accessing secured materials in service centers such as tamper seals, installation instructions, computer disks, and any other material used to install, service, or remove the device.

**N.** provide a certificate of installation to a driver upon request.

**O.** submit a copy of the certificate of installation and the driver's self-certification to the appropriate authorities within ten (10) business days of completion of each installation.

**P.** collect all fees and costs associated with installing, leasing, servicing and removing ignition interlock devices.

**Q.** ensure that no driver or other unauthorized person witnesses the installation, servicing or removal of an ignition interlock device.

**R.** use only reference samples certified by an independent laboratory and approved by the Bureau to calibrate ignition interlock devices. If wet bath reference samples are to be used to calibrate ignition interlock devices from mobile service centers, the service center operator shall ensure that:

**(1)** the reference samples provided to the mobile service center can be maintained within the temperature limits specified by the manufacturer of the reference sample for accuracy of results; or

**(2)** that substitute devices are pre-calibrated at the fixed site service center and exchanged for the devices needing calibration at the mobile service center.

**S.** comply with all requirements of this rule.

[18.20.11.14 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

#### **18.20.11.15 INITIAL CERTIFICATION OF INSTALLERS:**

**A. Certification required.** No person or licensee may install or remove ignition interlock devices without first having obtained a certificate from the Bureau.

**B. Application required.** A person wishing to obtain a certificate as an installer must file an application with the Bureau. A person may obtain an application by

contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>. The application shall contain:

- (1) the applicant's name, address, telephone number, fax number and e-mail address.
- (2) the name, address, and telephone number of three (3) character and employment references who are not family members.
- (3) the name and location of the service center employing or contracting with the applicant;
- (4) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau; and
- (5) a state police background check on the applicant dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the Department of Public Safety at least sixty (60) days before the date the application is filed with the Bureau.
- (6) the applicant's resume or curriculum vitae.

**C. Completeness.** When the Bureau receives an application for certification as an installer, the Bureau shall check the application for completeness.

- (1) If the application is incomplete, the Bureau shall contact the applicant for additional information.
- (2) If the application is complete, the Bureau shall review the application.

**D. Standards for issuance of installer license.** In reviewing applications for certification, the Bureau shall consider whether:

- (1) the information provided by the applicant is accurate and valid;
- (2) the character and employment references provided by the applicant report favorably on the applicant's character and employment experience;
- (3) the applicant is at least eighteen (18) years of age;
- (4) the applicant has experience with vehicle electrical systems or a certificate of satisfactory completion from an automotive mechanics training program;
- (5) the applicant holds a valid driver's license;

- (6) the applicant has a clean driving record.
- (7) the applicant has not been convicted of:
  - (a) a crime involving moral turpitude;
  - (b) any alcohol or drug-related offense within the last three (3) years;
  - (c) two (2) or more alcohol or drug-related offenses in the last five (5) years;
  - (d) probation violation;
  - (e) perjury, forgery, or sworn falsification; or
  - (f) any crime substantially related to the qualifications, functions, and duties required to install or remove devices.
- (8) the applicant has not had a driver's license or professional certification suspended, revoked or denied for violation of a motor vehicle safety equipment law.
- (9) the applicant has not been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device.

#### **E. Approval for training.**

- (1) If the Bureau determines that the applicant meets the standards in subsection D of this section, the Bureau shall grant approval to proceed with training as an installer. The applicant must successfully complete an ignition interlock device installation training program conducted either by the manufacturer or an instructor-installer.
- (2) If the Bureau determines that the applicant does not meet the standards in subsection D of this section, the Bureau shall issue a letter stating the reasons it is not granting approval to proceed with training as an installer.

#### **F. Final review.**

- (1) Upon receipt of verification from a manufacturer or instructor-installer that an applicant has successfully completed training as an installer, the Bureau will notify the applicant in writing that it has approved the application. The Bureau shall issue a certificate if the applicant signs a statement that the applicant will comply with all requirements of this rule. The certificate shall specify, by manufacturer's name and class or model number, which ignition interlock devices the installer is certified to install and remove and whether the applicant is qualified as an instructor-installer.

(2) If the Bureau does not receive verification from a manufacturer or instructor-installer that an applicant has successfully completed training as an installer, the Bureau shall issue a letter stating its reasons for denial of certification. The applicant may attend further ignition interlock device training courses.

**G. Term.** An installer certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year.

[18.20.11.15 NMAC - N, 1-1-03]

#### **18.20.11.16 RECERTIFICATION OF INSTALLERS:**

##### **A. Certificate renewal.**

(1) An installer must file an application for renewal of his or her certificate with the Bureau on or before May 1 each year to ensure certificate renewal by July 1. An installer who files an application for renewal after May 1 shall pay a late fee of \$25.00.

(2) A person may obtain an application for renewal by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

(3) The application shall be accompanied by:

(a) a copy of the installer's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau; and

(b) a state police background check on the installer dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the Department of Public Safety at least sixty (60) days before the date the application is filed with the Bureau.

##### **B. Approval/disapproval of renewal.**

(1) The Bureau will renew the certificate of an installer for a period of one year if the installer:

(a) has filed the required documents;

(b) meets the standards specified in subsection D of 18.20.11.14 NMAC; and

(c) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the Bureau or its designee during the preceding year.

**(2)** The Bureau shall not renew the certificate of any installer who:

**(a)** fails to file the required documents;

**(b)** receives an overall rating of unsatisfactory in the periodic evaluations conducted by the Bureau or its designee during the preceding year; or

**(c)** fails to meet the standards specified in subsection D of 18.20.11.14 NMAC.

[18.20.11.16 NMAC - N, 1-1-03]

#### **18.20.11.17 RESPONSIBILITIES OF INSTALLERS:**

An installer shall

**A.** provide expert or other required testimony in any civil or criminal proceedings regarding the installation, servicing, and removal of devices or the interpretation of recorded data.

**B.** reimburse the Bureau for any costs incurred if the installer requests the Bureau to provide testimony in any civil or criminal procedures involving the installation, servicing, and removal of an ignition interlock device.

**C.** not reveal any personal and medical information provided by drivers to any person other than the appropriate authorities or employees of the manufacturer or service center operator on an as-needed basis.

**D.** use only reference samples certified by an independent laboratory and approved by the Bureau to calibrate ignition interlock devices. If an installer uses wet bath reference samples to calibrate ignition interlock devices from a mobile service center, the installer shall:

**(1)** maintain the reference samples within the temperature limits specified by the manufacturer of the reference sample for accuracy of results; or

**(2)** pre-calibrate substitute devices at the fixed site service center and exchange them for the devices needing calibration at the mobile service center.

**E.** comply with all requirements of this rule.

[18.20.11.17 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

#### **18.20.11.18 INSTALLATION OF IGNITION INTERLOCK DEVICES:**

**A. An installer shall:**

(1) not install an ignition interlock on a vehicle unless the sentenced driver is at the service center.

(2) ensure that no driver or other unauthorized person witnesses the installation or removal of an ignition interlock device.

(3) inspect all vehicles prior to installation to determine that mechanical and electrical parts of the vehicle affected by an ignition interlock device are in acceptable condition and not install a device unless and until the vehicle is in acceptable condition.

(4) follow a manufacturer's written instructions for the installation, servicing and removal of its ignition interlock devices.

(5) install the following physical anti-tampering measures:

(a) solder (hard wire) all connections between an ignition interlock device and a vehicle.

(b) place all connections between a device and a vehicle under the dash or in an inconspicuous area of the vehicle.

(c) cover with a unique and easily identifiable seal, epoxy, resin, wire, sheathing, or tape:

(i) any portion of an ignition interlock device that can be disconnected;

(ii) all wires used to install the device that are not inside a secured enclosure;

(iii) all exposed electrical connections.

(d) mark points likely to be accessed when attempting to tamper with the device, such as battery post terminals, wire to starter solenoid, wire to ignition, dash screws, etc.) with a special mark, seal, paint, epoxy, resin, or other material unless the device is capable of recording such attempts to tamper with it.

**B.** A service center operator or service technician shall calibrate each device at a calibration set point of 0.05 using the known concentration of an approved reference sample before the device is installed in a vehicle.

[18.20.11.18 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

**18.20.11.19 DRIVER ORIENTATION AND SUPPORT:**



A service center operator or service technician shall:

- A.** thoroughly train drivers on the proper use of the ignition interlock device.
- B.** provide a user reference and problem-solving guide in English or Spanish to drivers when a device is installed.
- C.** be available to answer all questions and handle any problems relating to the device, or repair or replace an inoperable or malfunctioning device, during all posted hours of operation.
- D.** provide a twenty-four (24) hour toll-free emergency telephone number to all drivers.
- E.** respond to all service inquiries within twenty-four (24) hours of the initial contact.
- F.** service, repair, or replace an ignition interlock device within forty-eight (48) hours of initial contact at a service center located within one hundred (100) miles or two (2) hours, whichever is less, of a sentenced driver's residence or place of business.

[18.20.11.19 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

#### **18.20.11.20 SERVICING OF IGNITION INTERLOCK DEVICES:**

- A.** A service center operator or service technician shall:
  - (1)** service a device within thirty (30) days after the initial installation and every sixty (60) days thereafter, unless otherwise specified by court order.
  - (2)** ensure that another device is substituted whenever an installer removes a device for any reason.
  - (3)** calibrate every installed device at least every sixty (60) days.
- B.** At each service visit, service center operator or service technician shall:
  - (1)** perform a calibration confirmation test to verify that the device measures an approved reference sample within plus or minus 0.005 grams per 210 liters of the known concentration of the reference sample.
    - (a)** If the result of the calibration confirmation test is not within plus or minus 0.005 grams per 210 liters of the known concentration of the approved reference sample, the service center operator shall recalibrate the device.
    - (b)** If the device fails the calibration confirmation test after being recalibrated, the service center operator shall ensure that a new device is installed.

(2) check that the device will permit a driver to restart a vehicle within three (3) minutes without taking another breath test after the vehicle has stalled or been turned off.

(3) check the device for evidence of tampering and circumvention. A service center operator or service technician shall document and photograph any perforations, cuts, or other evidence of possible tampering.

(4) download all recorded information from the device and prepare a report in the format prescribed by the Bureau. The report shall include:

(a) the date, time, BAC of the driver, and success or failure of each attempt to start the vehicle;

(b) the date, time, BAC of the driver, and success or failure of each random retest;

(c) all attempts to tamper with the ignition interlock device;

(d) all attempts to avoid taking a random retest;

(e) all attempts to circumvent the device;

(f) the total number of events recorded by the data recorder since the last service visit; and

(g) the number of vehicle starts.

(5) record the vehicle odometer reading and calculate the number of miles driven since the last service visit.

(6) check that the device continues to meet the requirements of this rule. If at any time the device fails to meet the requirements of this rule, the device shall be recalibrated, repaired, or replaced.

[18.20.11.20 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

#### **18.20.11.21 RECORDKEEPING AND REPORTING REQUIREMENTS:**

A manufacturer or service center operator:

A. shall maintain for a period of three (3) years and make available to the appropriate authorities upon request:

(1) records on every driver, including the results of every service visit;

(2) service, calibration, repair, and replacement records on each device installed; and

(3) records of all complaints received and corrective actions taken by the service center operator. The report shall be categorized by:

(a) customer error or operation.

(b) faulty automotive equipment.

(c) apparent misuse or attempt to tamper with or circumvent the device.

(d) device failure.

**B.** shall within five (5) business days of a service visit, report to the appropriate authorities, in the format prescribed by the Bureau:

(1) any evidence of circumventing, removing, or tampering with the device.

(2) any failure to appear for a service visit within the five (5) day warning period.

(3) the failure of six (6) initial breath tests within a period of three (3) hours.

(4) the failure of ten (10) initial breath tests or random retests in any thirty (30) day period.

**C.** shall submit to the Bureau upon request statistical data regarding driver and equipment performance, without identifying individual drivers.

**D.** may maintain required records electronically.

[18.20.11.21 NMAC - N, 1-1-03]

#### **18.20.11.22 REMOVAL OF IGNITION INTERLOCK DEVICES:**

**A.** An installer shall remove an ignition interlock device, permanently reconnect all severed wires and insulate them with heat shrink tubing or its equivalent, and otherwise return a vehicle to normal operating condition:

(1) for devices installed pursuant to NMSA 1978 Section 66-8-102:

(a) upon expiration of the term specified in the judgment and sentence;

(b) one year from the date of installation if the judgment and sentence does not specify a term; or

(c) upon lawful order of the court.

(2) for devices installed pursuant to NMSA 1978 Section 66-5-35:

(a) upon expiration of the limited license; or

(b) upon lawful order of the court.

**B.** A service center operator shall notify the appropriate authorities and may petition the sentencing court for authorization to remove an ignition interlock device if:

(1) the vehicle in which the device is installed is sold, stolen, damaged beyond repair, repossessed, permanently moved out of the service center operator's territory, or impounded and not to be returned to the owner;

(2) if the sentenced driver becomes disabled or dies; or

(3) the sentenced driver fails or refuses to pay fees for so long that the device will not function until it is serviced.

[18.20.11.22 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

#### **18.20.11.23 RESPONSIBILITIES OF THE BUREAU:**

**A.** The Bureau shall establish and maintain a list of ignition interlock devices approved for use in New Mexico by manufacturer and model or class.

**B.** The Bureau or its designee shall have the right to periodically evaluate:

(1) the technical competency and reliability of installers;

(2) service centers, service center operators, and service technicians;

(3) the installation, servicing, and removal of ignition interlock devices; and

(4) a manufacturer's training of installers.

[18.20.11.23 NMAC - N, 1-1-03]

#### **18.20.11.24 SUSPENSION OR REVOCATION OF APPROVAL OF AN IGNITION INTERLOCK DEVICE:**

**A.** The Bureau may suspend or revoke its approval of an ignition interlock device if:

(1) the Bureau has evidence of repeated device failure due to gross defects in design, materials, or manufacture.

(2) the manufacturer's product liability insurance or surety bond has been cancelled or terminated.

(3) the manufacturer has failed to abide by its plan to provide service within forty-eight (48) hours at a service center located within one hundred (100) miles or two (2) hours, whichever is less, of a driver's residence or place of business.

(4) the manufacturer requests the Bureau to remove a device from the list of approved devices.

(5) the Bureau finds that the device does not meet the requirements of this rule.

(6) the Bureau has reasonable cause to believe the device was inaccurately represented to meet the requirements of this rule.

(7) the manufacturer has failed to reimburse the Bureau for costs incurred in providing testimony requested by the manufacturer in a civil or criminal proceeding involving the approval or use of an ignition interlock device.

(8) the Bureau determines that changes in ignition interlock device technology are such that continued approval of the device would not be in the best interests of New Mexico.

(9) the manufacturer fails to pay all required fees for the interlock device ("indigency") fund to the New Mexico Department of Finance and Administration.

**B.** The suspension or revocation shall be effective thirty (30) days after notice is sent to the manufacturer via certified mail, return receipt requested, except in cases where the Bureau determines immediate suspension or revocation is necessary for the safety and welfare of the citizens of New Mexico.

**C.** A manufacturer may request a review of a suspension or revocation. This request shall be submitted to the Bureau in writing within thirty (30) days of the suspension or revocation. The Bureau shall conduct such review in accordance with the procedures prescribed in the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 et seq.

**D.** Upon suspension, revocation, or voluntary surrender of an approval, a manufacturer shall notify each of its service center operators in New Mexico that the service center operator shall:

(1) not install that model or class of device in any driver's vehicle after the effective date of the suspension, revocation, or voluntary surrender; and

(2) shall remove all such devices from drivers' vehicles. A manufacturer shall be responsible for all costs connected with removing such devices and installing new devices from the Bureau's list of approved devices.

[18.20.11.24 NMAC - N, 1-1-03]

#### **18.20.11.25 SUSPENSION OR REVOCATION OF A SERVICE CENTER LICENSE OR AN INSTALLER CERTIFICATE:**

**A. Service center license.** The Bureau may suspend or revoke the license of a service center operator if:

(1) the service center operator's garagemen's liability insurance or surety bond has been cancelled or terminated.

(2) the service center operator has failed to reimburse the Bureau for costs incurred in providing testimony requested by the service center operator in a civil or criminal proceeding involving the installation, servicing, or removal of an ignition interlock device.

(3) the service center operator has failed to pay all required fees for the interlock device ("indigency") fund to the New Mexico Department of Finance and Administration.

(4) the Bureau finds that the service center operator has not complied with the requirements of this rule.

(5) the service center operator has permitted an installer to install a device that is not on the list of Bureau-approved devices.

(6) the service center operator has permitted a person who is not a Bureau-certified installer to install or remove a device.

(7) the service center operator has permitted any person other than a service technician to service a device.

**B. Installer certificate.** The Bureau may suspend or revoke the certificate of an installer if:

(1) the Bureau finds that the installer has not complied with the requirements of this rule.

(2) the installer has demonstrated unreliability or incompetence.

(3) the installer has been convicted of:

(a) any alcohol or drug-related offense within the last three (3) years;

(b) two or more alcohol or drug-related offense in the past five (5) years;

(c) perjury, forgery, or sworn falsification;

(d) circumventing or tampering with an ignition interlock device; or

(e) any other crime substantially related to the installation, servicing and removal of devices.

**C. Effective date.** The suspension or revocation shall be effective thirty (30) days after notice is sent to the service center operator or installer via certified mail, return receipt requested, except in cases where the Bureau determines immediate suspension or revocation is necessary for the safety and welfare of the citizens of New Mexico.

**D. Request for review.** A service center operator or installer may request a review of suspension or revocation. This request shall be submitted to the Bureau, in writing, within thirty (30) days of the suspension or revocation. The Bureau shall conduct such review in accordance with the procedures prescribed in the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 et seq.

**E. Notification.** Upon suspension or revocation, a service center operator shall notify:

(1) the manufacturers of the models or classes of devices the service center operator has been providing; and

(2) the drivers of vehicles for whom the service center operator has provided a device.

[18.20.11.25 NMAC - N, 1-1-03]

#### **18.20.11.26 EXEMPTION OR VARIANCE:**

**A. From the requirements of paragraph 9 of subsection B of 18.20.11.8 NMAC.** Manufacturers required to provide service in New Mexico Highway District 4 or 6 pursuant to paragraph 9 of subsection B of 18.20.11.8 NMAC may negotiate with each other to develop a plan for jointly providing service to those districts. The Bureau will consider approving a plan that does not require each manufacturer to provide service to the whole of highway district 4 or 6 if the plan provides for a fixed site in any city in the district with a population of ten thousand (10,000) or more and provides adequate

coverage to the rest of the district. The Bureau may require a new plan if one or more manufacturers who is a party to the plan ceases to do business in New Mexico and reserves the right to require coverage of highway district 4 or 6 from each manufacturer authorized to operate in highway district 3 or 5 if the Bureau determines that district 4 or 6 is not being adequately covered. Manufacturers requesting highway districts 3 and 4 or 5 and 6 shall file such a negotiated plan for highway districts 4 or 6 within thirty (30) days of Bureau approval of the manufacturers device and territory.

**B. From the requirements of any other provision of this rule.**

(1) Any manufacturer, service center operator, or installer may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

(a) identify the section of this rule for which the exemption or variance is requested;

(b) describe the situation which necessitates the exemption or variance;

(c) describe the effect of complying with this rule on the manufacturer, service center operator, or installer and its customers, and on its competitors and their customers, if the exemption or variance is not granted;

(d) state how the exemption or variance will achieve the purposes of this rule and NMSA 1978 Sections 66-5-35 and 66-8-102; and

(e) state why the proposed alternative is in the public interest and is better than the requirement in the rule.

(2) Such petition may include a motion that the Bureau stay the affected portion of this rule for the transaction specified in the motion.

(3) Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the manufacturer, service center operator, or installer or other person with authority to bind the manufacturer, service center operator, or installer.

(4) The Bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[18.20.11.26 NMAC - N, 1-1-03]

## **CHAPTER 21: TRAFFIC CONTROL SIGNAGE**

### **PART 1: GENERAL PROVISIONS [RESERVED]**



## **PART 2: TEMPORARY CLOSING OF STATE HIGHWAYS FOR SPECIAL PUBLIC EVENTS OR CIVIC FUNCTIONS**

### **18.21.2.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department

P. O. Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5525.

[10/31/98; 18.21.2.1 NMAC – Rn, 18 NMAC 21.2.1, Recompiled 11/16/01]

### **18.21.2.2 SCOPE:**

All local governments and general public.

[10/31/98; 18.21.2.2 NMAC – Rn, 18 NMAC 21.2.2, Recompiled 11/16/01]

### **18.21.2.3 STATUTORY AUTHORITY:**

This rule is adopted pursuant to NMSA 1978 Sections 66-3-702; 66-7-7; 66-7-320; 66-7-321; 66-7-339; 66-7-363; 66-8-115; 66-9-8; 67-3-14; and 67-3-40. [10/31/98; 18.21.2.3 NMAC – Rn, 18 NMAC 21.2.3, Recompiled 11/16/01]

### **18.21.2.4 DURATION:**

Permanent.

[10/31/98; 18.21.2.4 NMAC – Rn, 18 NMAC 21.2.4, Recompiled 11/16/01]

### **18.21.2.5 EFFECTIVE DATE:**

October 31, 1998, unless a later date is cited at the end of a section or paragraph.

[10/31/98; 18.21.2.5 NMAC – Rn, 18 NMAC 21.2.5, Recompiled 11/16/01]

### **18.21.2.6 OBJECTIVE:**

The purpose of this rule is to prohibit the temporary closing of state highways unless prior approval of said closing is obtained as provided herein. This rule sets forth the requirements for obtaining this approval for the temporary closing of all or a portion of a state highway in order to conduct thereon a special public event or civic function, including but not limited to, a bicycle, foot, or vehicle race, use of a highway by snowmobiles (where it is in accordance with the law), horses, motorized bicycles, etc., parade or celebration, and to minimize the inconvenience to the traveling public caused by the occurrence of such events on state highways.

[10/31/98; 18.21.2.6 NMAC – Rn, 18 NMAC 21.2.6, Recompiled 11/16/01]

**18.21.2.7 DEFINITIONS:**

A. "Temporary closing of a highway" means any shutting off blocking, re-routing, or other restrictions of the normal use of a state highway.

B. "Sponsor" means the governmental entity, association or other organization requesting the temporary closing.

[10/31/98; 18.21.2.7 NMAC – Rn, 18 NMAC 21.2.7, Recompiled 11/16/01]

**18.21.2.8 APPLICABILITY:**

This rule is applicable to allow temporary closings only for public events or civic functions.

[10/31/98; 18.21.2.8 NMAC – Rn, 18 NMAC 21.2.8, Recompiled 11/16/01]

**18.21.2.9 PROCEDURE:**

A. Application by Sponsor: The sponsor of an activity described herein, shall, at least 30 days prior to the event, make written application to the Secretary of the Department on an application form to be obtained at any District Office or at the State Maintenance Bureau at the General Office. The Department will normally require at least thirty (30) days to review the application and consult with the sponsors, where necessary, prior to any decision making.

B. Review of Application: The Secretary of the Department or his designee shall review the application and, when necessary, coordinate with the New State Police Uniformed Bureau Commander and the local authorities within whose jurisdiction the event is to take place.

C. Notice of action taken by the Department: The Secretary of the Department or his designee shall inform the sponsor in writing of the action taken on the notice, including all conditions imposed if approval is granted. Such conditions include without limitations:

(1) The requirement that the sponsor make adequate provisions for traffic control (i.e., law enforcement, traffic control devices and/or signing).

(2) The requirement that the sponsor and/or the participants in the special event or civic function execute releases of liability, indemnity and hold harmless agreements and also submit proof of insurance coverage for any liability arising out of the special event or civic function, in forms satisfactory to the Department.

(3) The requirement that the sponsor participate in preparation and execution of an agreement between the sponsor, the Department, local government authorities and state or local police for the establishment, signing and marking of appropriate detours and alternative routes jointly affecting state and local road systems.

[10/31/98; 18.21.2.9 NMAC – Rn, 18 NMAC 21.2.9, Recompiled 11/16/01]

### **PART 3: REQUIREMENTS FOR SIGNS ON GAS, FOOD, LODGING, CAMPING AND ATTRACTION, TRAVELER INFORMATION SIGNS**

#### **18.21.3.1 ISSUING AGENCY:**

New Mexico Department of Transportation Post Office Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-0714.

[9/30/98; 18.21.3.1 NMAC - Rn & A, 18 NMAC 21.3.1, 1/14/2005]

#### **18.21.3.2 SCOPE:**

This rule covers specific service signing to provide the traveler with business identification and directional information for essential motorist services for the general public.

[9/30/98; 18.21.3.2 NMAC - Rn, 18 NMAC 21.3.2, 1/14/2005]

#### **18.21.3.3 STATUTORY AUTHORITY:**

A. Regulations for signs giving specific information in the interest of the traveling public are authorized under Sections 66-7-101, Most current adopted edition of the *manual on uniform traffic control devices* or latest approved edition; 66-7-102, 67-3-16, 67-12-4, 67- 12-5 and 67-14-1 NMSA 1978 et seq.

B. All rules and regulations set forth herein are subject to revision by the New Mexico department of transportation with the approval of the New Mexico state transportation commission.

[9/30/98; 18.21.3.3 NMAC - Rn & A, 18 NMAC 21.3.3, 1/14/2005]

#### **18.21.3.4 DURATION:**

Permanent.

[9/30/98; 18.21.3.4 NMAC - Rn, 18 NMAC 21.3.4, 1/14/2005]

#### **18.21.3.5 EFFECTIVE DATE:**

September 30, 1998, unless a later date is cited at the end of a section.

[9/30/98; 18.21.3.5 NMAC - Rn & A, 18 NMAC 21.3.5, 1/14/2005]

#### **18.21.3.6 OBJECTIVE:**

The objective of these regulations is to establish standards for signs, displays and devices related to specific service signs (LOGOS signs), giving specific information in the interest of the traveling public, to be erected within the rights-of-way of the interstate highway system and other controlled access roadways.

[9/30/98; 18.21.3.6 NMAC - Rn, 18 NMAC 21.3.6, 1/14/2005]

#### **18.21.3.7 DEFINITIONS:**

As used in these rules unless the context clearly indicates otherwise.

A. **"As-built plans"** means detailed plans showing the configuration and location of specific information "panels" and trailblazer signs after the initial construction is completed on an interchange by interchange basis.

B. **"Business sign"** means a separately affixed sign attached to a motorist informational "panel," showing the name, brand or trademark of a qualified motorist service business.

C. **"Commission"** means the New Mexico state transportation commission.

D. **"Department"** means the New Mexico department of transportation.

E. **"Department secretary"** means the secretary of the New Mexico department of transportation or his designated representative.

F. **"District"** means any one of six sub-districts of the NMDOT responsible for construction and maintenance activities in a defined geographical area.

G. **"Eligible highway"** means those sections of controlled access highways determined by the NMDOT to be eligible for the specific information "panel" program.

H. **"Eligible interchange"** means those interchanges within the eligible sections of highways where the specific information "panel" program may be provided.

I. **"Exit gore"** means the earliest point at which the exit roadway becomes fully separated from the mainline roadway.

J. **"Interstate system" or "interstate highway"** means every state highway that is a part of a national system of interstate and defense highways established pursuant to

Section 103(b), Title 23, United States Code. This definition also includes fully controlled access freeways on the primary highway system.

K. **"Logo"** means a symbol or design used by a qualified traveler service business that may consist of an easily recognizable identification symbol, name brand, trademark, or combination thereof.

L. **"Main traveled way"** means the through traffic lanes of interstate systems or access controlled routes, exclusive of frontage roads, auxiliary lanes and ramps.

M. **"Specific service sign"** means a "specific informational panel" bearing separately affixed individual business signs, indicating the presence of one or more gas, food, lodging, camping or attraction, and erected in advance of exit ramps on interstate systems or access controlled roadways. In appropriate context only, it also means a supplemental direction panel.

N. **"Separate traveler informational sign"** means a traveler information panel which indicates the presence of only one type of tourist service, namely, gas, food, lodging, or camping. The phrase "traveler information sign" when not qualified means "separate traveler informational panel."

O. **"Combination traveler informational sign"** means a traveler informational panel which indicates the presence of more than one type of tourist service. No traveler informational panel may indicate the presence of more than three types of tourist services in any event.

P. **"NMDOT program administrator"** means that person assigned by the NMDOT to oversee and coordinate the LOGOS sign program and when applicable the program manager's activity.

Q. **"Owner"** means the holder of fee title, or holder of leasehold estates from the owner of the real property.

R. **"Permit"** means formal approval by the NMDOT or when applicable the program manager for work performed within the highway right-of-way and processed on forms provided by the NMDOT or when applicable the program manager for that purpose.

S. **"Program manager"** or **"contractor"** means, when applicable, that person, firm, or organization selected by the NMDOT for the purpose of administering, marketing, constructing, refurbishing, and maintaining the existing and future specific service sign program in New Mexico.

T. **"Qualified motorist business"** means a business furnishing gas, food, lodging, camping or attraction related tourist services.

U. **"Responsible operator"** means a person or entity other than an owner who operates an independent motorist service business, and who has authority to enter into agreements relevant to matters covered by these requirements.

V. **"Mainline specific information panel"** means a background sign-panel with border and copy upon which one (1) or more separate business signs may be attached and are located adjacent to the mainline and exit ramps of the eligible highway.

W. **"Ramp supplemental directional sign"** means a motorist informational panel located on, opposite or at the terminus of an exit ramp from the interstate system, bearing business signs and directional information for a qualified motorist service business.

X. **"Trailblazer sign"** means a business sign with an appropriate directional arrow sign mounted along the route leading from the interchange to the business for traffic direction purposes.

Y. **"Visible"** means the location of the business can be readily identified by traffic approaching the termini of the highway exit ramp serving the business or approaching an intersection along the route from the exit ramp to the business.

[9/30/98; 18.21.3.7 NMAC - Rn & A, 18 NMAC 21.3.7, 1/14/2005]

#### **18.21.3.8 RESPONSIBILITY:**

It shall be the responsibility of each division and section within the department to carry out their pertinent functions relating to programming, design and contracting for each project concerning the traveler informational signing program. The traffic services section shall handle all phases of the business sign portion of a project. All actions shall be in conformity with regulations promulgated by the department and with the federal-aid highway program manual, volume 6, chapter 8, section 3.

[9/30/98; 18.21.3.8 NMAC - Rn, 18 NMAC 21.3.8, 1/14/2005]

#### **18.21.3.9 LOCATION:**

A. The use of specific service signs should be limited to areas primarily rural in character or to areas where adequate sign spacing can be maintained.

B. Limitation of specific information panels and individual business signs:

(1) Where there are sufficient qualified applicants, a separate specific information panel shall be erected for each type of traveler service. The GAS, FOOD, LODGING, CAMPING and ATTRACTION specific information panels shall carry no more than six individual business signs each.

(2) Combination motorist information signs may be used at an interchange at the discretion of the department or contractor.

C. Relationship to exit gore and right-of-way line: The specific information panels shall be erected between the previous interchange and 1/2 mile in advance of the exit gore for the approaching interchange. These panels shall be located outside of the clear zone and readable from the main traveled way. The last panel shall be erected no closer than 1/2 mile to the exit gore of the approaching interchange with at least 800 foot spacing between the information panels. In the direction of traffic, the successive panels shall be those of "ATTRACTION", "CAMPING", "LODGING", "FOOD", "GAS" in that order.

D. Not to be used where re-entry to freeway is Inconvenient: The specific information panel shall not be erected at an interchange at which an exit from the freeway is provided but at which no entrance ramp exists at that interchange or at another reasonably convenient location that would permit a traveler to proceed in the desired direction of travel without undue indirection or use of poor connection roads.

E. Continuity of signing along exit ramp: The traveler services information, shown on the specific information panels, shall be repeated on the panels located along the interchange ramp where distance allows or at the ramp terminal where the service installations are not visible from the ramp terminal. In addition, appropriate trailblazer assemblies or direction information panels may also be provided along the crossroad, as required, to adequately direct travelers to the respective service facilities. These signs shall be the same in shape, color, and message as those shown on the specific information panels, together with a supplemental arrow sign (M6 series) showing the directions for the different services and, where needed, the mileage to the service installation. Normally, this signing will not be necessary at double-exit interchanges. The legends or symbols on these signs shall be smaller (minimum 4-inch letter height, except that any legend on a symbol shall be in proportion to the size of the symbol) than those shown on the specific information panels.

F. General traveler service signs: There is no need for a general traveler service sign to confirm the specific information panels erected for any of the five services. A general traveler service sign carrying any of the legends or symbols not contained on the specific information panels and also the symbols for phone and hospital, when applicable, may be erected. If so used, it shall be erected in conjunction with the ground mounted exit direction signs, or may be a separate sign with appropriate directional information erected a minimum of 800 feet following the last advance guide sign. Figures 1 through 5 are prepared from the standards and are included for informational purposes.

[9/30/98; 18.21.3.9 NMAC - Rn & A, 18 NMAC 21.3.9, 1/14/2005]

#### **18.21.3.10 CRITERIA TO DETERMINE SPECIFIC INFORMATION PERMITTED:**

A. Location of service establishments from interchange: The maximum distance that the "ATTRACTION", "GAS", "FOOD", "LODGING" or "CAMPING" services can be located from the main traveled way to qualify for a business sign shall not exceed 3 miles in either direction. If within that 3-mile limit one or more of the service types considered is not available, continue in 3-mile increments of consideration up to 15-mile maximum, if necessary, to find an available service of the type being considered. Services beyond the 15-mile limit do not qualify for signing.

B. Types of services permitted: Subsequent to the date of this rule, the types of services permitted shall be limited to "gas", "food", "lodging", "camping" and "attraction". Requirements to qualify for display on a specific information panel are as follows:

(1) "gas" and associated services to qualify for erection on a panel shall include:

(a) vehicle services such as fuel, oil and water;

(b) continuous operation at least 16 hours per day, 7 days per week for freeways and expressways, and continuous operation at least 12 hours per day, 7 days per week for conventional roads;

(c) modern sanitary facilities;

(d) public telephone;

(e) drinking water.

(2) "food" to qualify for erection on a panel shall include:

(a) where required, licensing or approval by state or political subdivision;

(b) continuous operations to serve three meals per day at least 6 days per week;

(c) modern sanitary facilities;

(d) public telephone.

(3) "lodging" to qualify for erection on a panel shall include:

(a) where required, licensing or approval by state or political subdivision;

(b) adequate sleeping accommodations;

(c) public telephone;



(d) modern sanitary facilities.

(4) "camping" to qualify for erection on a panel shall include:

(a) licensing or approval by appropriate public agency;

(b) adequate parking accommodations;

(c) modern sanitary facilities, drinking water and showers;

(d) continuous operation seven days a week;

(e) public telephone;

(f) provisions for removal or covering of the business signs during off-seasons if operated on a seasonal basis.

(5) "attraction" to qualify for erection on a panel shall include:

(a) regional significance;

(b) adequate parking accommodations.

[9/30/98; 18.21.3.10 NMAC - Rn & A, 18 NMAC 21.3.10, 1/14/2005]

#### **18.21.3.11 COMPOSITION:**

A. Single-exit interchanges: For a single-exit interchange, the business signs shall be arranged on the panel, with a maximum of two horizontal rows. When the number of business signs is one-half or less of the maximum permitted, the arrangement shall be in one horizontal row. The maximum in one horizontal row shall be limited to one-half of the maximum permitted on the panel. The signs should be mounted on the panel in the order of the travel distance measured from the point of the intersection of the main traveled way and the exit traveled way, the closest at the top left, the next closest at the bottom left, and continuing to the end.

B. Double-exit interchanges: In the case of a double exit interchange, the specific information panels shall consist of two sections where the same type of traveler services are to be signed for each exit. The arrangement of the business signs on each section of the panel shall be in accordance with the requirements for a single-exit specific information panel. For double-exit interchanges, the travel distance shall be measured from the intersection of the main traveled way and the first exit traveled way. The specific information panel shall display the appropriate business sign or signs and directional information for each exit. The top section of this panel shall display the business signs for the first exit with the appropriate service type and the exit numbering. The lower section of this panel shall display the business signs for the second exit with

the appropriate service type, same as the top section, and the exit numbering. Exit numbering shall be placed on the panels and shall consist of "Exit 44 A" or "Exit 44 B" with the appropriate number and letter. The number of business signs on this panel (total of both sections) shall be limited to six for "GAS," "FOOD," "LODGING", "CAMPING" or "ATTRACTION". If the "FOOD," "LODGING", "CAMPING" or "ATTRACTION" panel is 13-feet wide, the number of business signs on this panel shall be limited to four. The legends or symbols on the mainline signs shall be clearly legible at normal highway speeds (letter height and legend on a symbol shall be in proportion to the size of the symbol).

C. Commercial symbols or trademarks: Business signs composed of nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, motels and campgrounds shall be used when applicable. The brand or trademark identification symbol used on the business sign shall be reproduced with the colors and general shape consistent with customary use. Any messages, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or device are prohibited.

[9/30/98; 18.21.3.11 NMAC - Rn, 18 NMAC 21.3.11, 1/14/2005]

#### **18.21.3.12 SIZE:**

##### **A. Business signs:**

(1) The business signs displayed on the information panel shall be contained within a 48-inch wide and 36-inch high rectangular background area, including border.

(2) The existing business signs measuring 60-inch by 36-inch on "FOOD," "LODGING" and "CAMPING" specific information panels shall be replaced, at the logo client's expense, with 48-inch wide by 36-inch high business signs. New 48 inch wide by 36 inch high business signs must be provided by the participating business as new specific information panels are being installed or existing specific information panels are being overlaid or refurbished.

##### **B. Information panel - single-exit interchange:**

(1) The maximum size of the specific information panel should be 15-feet wide and 10-feet high, including border; the minimum size should be 15-feet wide and 6-feet high, including border.

(2) The size of existing "FOOD," "LODGING" and "CAMPING" specific information panels are 18-feet wide and 10-feet high or 13-feet wide and 6- feet high, including border. These specific information panels should be replaced with 15-feet wide and 10-feet high or 15-feet wide and 6-feet high respectively, as appropriate, during routine re-construction projects or by, when applicable, the program

manager/contractor. The department or contractor may choose to refurbish the existing sign and provide spacing between business signs as approved by the department.

C. Information panel - double-exit interchange:

(1) For double-exit interchanges where the same type of motorist services are to be signed for each exit, the specific information panels shall consist of two 15-foot wide and 6-foot high sections, one for each exit.

(a) Existing "FOOD," "LODGING" and "CAMPING", specific information panels, consist of two 13-foot wide and 6-foot high sections, one for each exit. These specific information panels shall be replaced with two 15-feet wide and 6-feet high during routine re-construction projects or as needed by the contractor.

(b) Each section shall be capable of accommodating a maximum of either three gas, FOOD, LODGING, CAMPING or ATTRACTION business signs.

(2) For double-exit interchanges where a type of motorist service is to be signed for only one exit, only one specific information panel may be used.

[9/30/98; 18.21.3.12 NMAC - Rn & A, 18 NMAC 21.3.12, 1/14/2005]

**18.21.3.13 COLOR AND RETROREFLECTORIZATION:**

A. Specific information panel: The background, border, and all legend shall consist of type III, or greater, retroreflective sign sheeting. The type of service, "GAS," "FOOD", "LODGING", "CAMPING" or "ATTRACTION" along with the exit number messages shall be white retroreflectorized 10-inch capital letters. The type of service shall be left justified and the "EXIT" and number shall be right justified. There shall be no hyphen between the type of service and the word "EXIT."

B. Business signs: The business sign color shall be a white message on a blue background, except that colors consistent with customary use should be used with nationally, regionally or locally known symbols or trademarks. The principal legend on the business sign shall be reflectorized and at least 10 inches in height, whether upper or lower case alphabet is used; however, where the symbol or trademark is used alone for the business sign, any legend on the symbol or trademark shall be in proportion to the size thereof, consistent with customary use. The business signs shall have a white border except that when symbols or trademarks are used the border may be omitted. The background, border, and all legend shall consist of type III, or greater, retroreflective sign sheeting.

[9/30/98; 18.21.3.13 NMAC - Rn, 18 NMAC 21.3.13, 1/14/2005]

**18.21.3.14 TRANSVERSE LOCATION OF SIGNS AND OF SIGN SUPPORTS:**

Specific information panels: The specific information panels shall be located outside of the clear zone, but in a location where they are readable from the traveled ways. Consideration should be given to the natural terrain in the placement of the panels.

[9/30/98; 18.21.3.14 NMAC - Rn, 18 NMAC 21.3.14, 1/14/2005]

#### **18.21.3.15 PROCEDURES TO BE FOLLOWED BY THE DEPARTMENT:**

A. Eligibility of funds: Federal funds may be eligible to participate in the cost and erection of these panels in the same manner that such funds are eligible for other highway signs to the national highway system, except that federal funds are not eligible to participate in the cost of procuring and installing the business signs.

B. Programming, project authorization and other actions: The procedures for obtaining approval for programming, project authorizations and other actions for federal projects including these panels shall follow the same procedures in use for other national highway system projects. If the department desires to erect these panels on the interstate highway system or other controlled access routes on the national highway system without federal fund participation, it shall provide a design consistent with standards in the MUTCD and standards herein. No panels shall be approved which do not conform to the requirements of these standards. Programming of a traveler informational panel project shall be at the discretion of the department and/or, when applicable, the program manager/contractor.

[9/30/98; 18.21.3.15 NMAC - Rn & A, 18 NMAC 21.3.15, 1/14/2005]

#### **18.21.3.16 ELIGIBILITY:**

A. Intended primarily for rural interchanges: Traveler information panels shall be erected and maintained at rural interchanges whether a business is or is not visible to the traveling public from the highway and at suburban or urban interchanges where spacing allows.

B. Types of services and criteria: Types of services and criteria are set forth in Subsection B of 18.21.3.10 NMAC.

C. Conformity with civil rights laws: The owner or responsible operator of a qualified traveler business must give written assurance of its conformity with all applicable laws concerning the provisions of public accommodations without regard to race, religion, sex, handicap or national origin.

D. Mileage limits - who may apply. (See Subsection A of 18.21.3.10 NMAC)

E. Rules applicable to business signs:

(1) The owner or responsible operator of the business must file an application for placement of its business sign on all traveler informational panels erected at the interchange on which it is eligible for such placement, and if it is not visible from the exit ramp, on any supplemental directional panel on the exit ramp or at its terminus, on a form specified by the department or when applicable, the program manager/contractor.

(2) The applicant must also agree to furnish the necessary number of its business signs to be affixed to the traveler informational panels.

(3) The applicant must also acknowledge that the permit is revocable for his failure to comply with those requirements of Subsection J of 18.21.3.16 NMAC of this section; that revocation under this paragraph forfeits applicant's paid rental and permit fees, there being no allowance for a pro rata refund for the remainder of the year.

(4) The applicant expressly agrees to waive all claims against the department and when applicable, its contractor, including claims for damage to its business signs by the department's or contractor installation, maintenance removal and replacement as required in Subsection B of 18.21.3.18 NMAC. Applicant further agrees to indemnify the department and when applicable, the contractor and save them harmless from all claims arising out of the erection, maintenance and existence of applicant's business and logo signs within department's right of way. Such claims to be indemnified include, but are not limited to, damages caused as a result of relying upon the representations made by the business and logo signs to the detriment of the traveling public.

F. Conformity with laws: All signs or advertising on the premises must be in full compliance with all other state and federal laws and regulations.

G. Priority of business sign application: If applications are received for any one interchange from more than the maximum allowable businesses to be placed on any one panel, only six applications for gas, food, lodging, camping and attraction shall be granted. The order of priority shall be the six businesses closest to the interchange that have applied for a permit prior to the closing date set by the department or the contractor for receipt of applications except as stated in Subsection A of 18.21.3.16 NMAC of this requirement.

H. Length of time of permit: Any grant of a new or renewal application shall entitle the applicant to placement of its business sign(s) on traveler information panel(s) for the interchange(s) for the paid rental period.

I. Permit renewed annually: Eligibility of qualified traveler service businesses for continued placement of their business sign on a traveler information panel may be reviewed annually before a grant of renewal permit, on the same basis as for an original permit, but no new application shall be deemed to have higher priority than a renewal application unless it is received at least sixty (60) days before the permit is scheduled to expire under Subsection H of 18.21.3.16 NMAC.

J. Causes for removal of business signs: Notwithstanding Subsection I of 18.21.3.16 NMAC of this section, the business sign of a traveler service business shall be removed from all traveler informational panels and may be replaced by the business sign of another qualified applicant for failure to comply with Subsection B of 18.21.3.10 NMAC, as follows:

(1) If it fails on a sufficient number of occasions or over a sufficient period of time to provide all of the services required by Subsection B of 18.21.3.10 NMAC, so as to justify a finding by the department or when applicable the program manager that the business is not in substantial compliance with that paragraph.

(2) If it fails to open for business for more than seven consecutive days or for more than ten days cumulatively during any one-year period, unless the department or when applicable the program manager finds that closure for such period was beyond the control of the owner or responsible operator, or that the closure was justified by extenuating circumstances.

(3) If it fails to comply with Subsection C of 18.21.3.16 NMAC of this section, except in isolated instances without the knowledge of the owner, responsible operator or manager of the business, or on any occasion unless steps are promptly taken to insure to the fullest extent reasonably possible that such instances will not recur.

(4) If it willfully fails to comply with Subsection F of 18.21.3.16 NMAC of this section, or if it fails to take immediate steps to comply promptly after it is notified or becomes aware that it is not in compliance.

K. Removal caused by fire or accident: If due to fire, accident or similar causes, a qualified traveler service business becomes inoperable for an extended period of time, exceeding seven days, but not more than ninety days, its business sign shall be temporarily removed from or covered on all motorist informational panels, but the business shall not lose its priority. Further extension may be granted on good cause shown. However, failure of the owner or responsible operator to proceed with necessary repairs within a reasonable time shall cause the loss of right to continued placement of the business sign and require a new application.

L. Waiver: Upon petition by an applicant showing a significant business disadvantage to it which would arise under strict enforcement of these regulations, or showing a substantial benefit to the public if a variance is granted, the department or when applicable the program manager may authorize a waiver of any requirements of Subsection J of 18.21.3.16 NMAC:

(1) that it will not derogate from the purposes of these requirements;

(2) that the applicant will suffer a significant business disadvantage if the waiver is not granted, or that a substantial benefit to the public will be realized if the waiver is granted;

(3) that the waiver will not be contrary to any provisions of state law, or federal law or regulations.

[9/30/98; 18.21.3.16 NMAC - Rn & A, 18 NMAC 21.3.16, 1/14/2005]

#### **18.21.3.17 APPLICATION AND APPEAL PROCEDURES:**

##### **A. Application procedures:**

(1) Upon selection of a particular interchange, individually or as part of a selected segment of the Interstate or access controlled national highway system, for erection of traveler informational panels for one or more types of qualified traveler service businesses, the department or when applicable the program manager may secure applications from owners or responsible operators of eligible businesses for placement of their business signs on such panels.

(2) The department or when applicable the program manager shall issue permits to each eligible applicant, up to the maximum number permissible.

B. Appeal procedure: Any order of the department or when applicable the program manager denying an application under these rules or for removal of a business sign pursuant to Subsection J of 18.21.3.16 NMAC, may be appealed by the applicant or permittee to the department secretary or when applicable the program manager within fifteen calendar days after knowledge of the facts or occurrences giving rise to the appeal. Any person who has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence. Appeals shall be in writing and contain the name and address of the party appealing, a concise statement of the grounds for the appeal, including any supporting evidence to substantiate the appeal, if available, and specify the ruling requested from the secretary or when applicable the program manager. The department or when applicable the program manager shall notify applicants or permittees promptly on any application denial or decision to remove a sign pursuant to Subsection J of 18.21.3.16 NMAC.

[9/30/98; 18.21.3.17 NMAC - Rn & A, 18 NMAC 21.3.17, 1/14/2005]

#### **18.21.3.18 ERECTION AND MAINTENANCE:**

A. Erect and maintain informational signs: The department or when applicable the program manager shall furnish, erect and maintain traveler informational panels at locations specified by the department or when applicable the program manager, or it may agree or contract with any city, county, or other governmental agency of this state, or with an independent contractor, to erect and maintain such panels at specified locations. In the event the department chooses to use an independent contractor for program management, the department may allow the contractor to fully administer the program, including marketing, issuing permits and collecting fees as well as providing, erecting informational panels, installing business signs and maintaining all logo

informational sign panels. Compensation to the contractor may consist of the fees generated by the program. All existing sign panels as well as all sign panels provided and installed by the contractor will remain the property of the department and the state of New Mexico.

B. Erect and maintain business signs: The department or when applicable the program manager shall perform all required installation, maintenance, and removal and replacement of all business signs upon specific information panels within the right-of-way or as stated in Subsection A of 18.21.3.18 NMAC.

C. Business sign damage and new signs: The department or when applicable the program manager shall not be responsible for damages to business signs caused by acts of vandalism or natural causes requiring repair or replacement of business signs. Permittees in such event shall provide a new or renovated business sign together with payment of the appropriate service charge to the department or when applicable the program manager to replace such damaged business signs. A service fee for each mainline and/or each ramp supplement and/or each trailblazer business sign shall be assessed in accordance with the current, approved LOGO fee schedule.

D. Business sign approval actions: Promptly upon the approval of applications for business signs to be affixed to traveler informational panels, the department or when applicable the program manager shall notify the party with which it has contracted, so that the panels may be erected. The department or when applicable the program manager shall furnish the party with which it has contracted with all necessary information in order to permit the department or when applicable the program manager to erect the panels.

E. Furnishing business signs: The department or when applicable the program manager shall notify businesses to which applications have been approved sufficiently in advance of the date the panels will be erected, or business signs will be affixed to them, to permit such businesses to furnish the necessary number and detail of their business signs to allow when applicable the program manager to fabricate and install the business signs. If the department or when applicable the program manager is notified that a motorist service business has failed to timely furnish detailed information of its business signs, or that the signs furnished are not in compliance with these requirements and, if the department or when applicable the program manager finds that the permittee has not shown due diligence, it may cancel the permit and forfeit the permit fee.

[9/30/98; 18.21.3.18 NMAC - Rn & A, 18 NMAC 21.3.18, 1/14/2005]

#### **18.21.3.19 FEES:**

A. Application fees: All application fees are a one-time charge and are payable on application approval. The application fee for each business sign placed on a motorist informational panel shall be in accordance with the current, approved logo fee schedule.



A separate fee in accordance with the current, approved logo fee schedule, shall be applicable for each business sign placed on a supplemental ramp directional panel. A separate fee, in accordance with the current, approved logo fee schedule, shall be applicable for each business sign installed as trailblazer at a crossroads between the ramp terminus and the location of the business. If a business is not visible from the exit ramp terminal, the motorist services information, shown on the specific information panels shall be repeated on the supplemental panels located along the interchange ramp where distance allows or at the ramp terminal.

B. Annual rental fees: In addition to the application fee, an annual rental fee, in accordance with the current, approved logo fee schedule, for each business sign affixed to a traveler informational panel, not including supplemental ramp signs and/or trailblazers shall be paid annually. The advertiser shall be notified when the traveler information panel is erected and the logo installed and the rental fee is then due. Rental fees shall be reviewed periodically to determine their relationship to the cost of operation of this program. Rental fees not received within thirty (30) days of notification to the applicant by the department shall subject applicant's application to revocation and removal of his sign without application fees being refunded.

C. Fee schedule preparation: In the event the department chooses to use an independent contractor, the contractor will prepare a logo sign fee schedule that shall be included as part of his proposal and is, therefore, subject to approval by the department. At the end of four years the logo sign fee schedule should be reviewed by the department and the contractor, at which time any necessary changes can be made. If the department does not choose to use an independent contractor, the department will prepare the logo sign fee schedule.

D. Retention and refunding fees.

(1) If an application for a permit is, for any reason not granted or renewed, all fees tendered with the application shall be refunded. If the permit is revoked under Subsection J of 18.21.3.16 NMAC, or if the rental is not timely tendered under Subsection B of 18.21.3.19 NMAC, the department or when applicable the program manager shall not refund any application fees.

(2) If an application is approved and contract has been awarded for the erection of the sign, no part of the permit fee shall be refunded. If a permit has been renewed, no part of the permit fee shall be refunded. If the business sign is subsequently removed by a taking of eminent domain of the business being advertised, a proportional refund of the permit fee may be made; however, in case of any removal, the rental fee for any months or major portion (16 days or more) of a month remaining to the anniversary date of placement of the business sign may be refunded. There shall be no refund of rental fees for any business sign temporarily removed or covered pursuant to Subsection K of 18.21.3.16 NMAC.

E. Department administered logo sign program: If the department chooses to continue the administration of the logo sign program, the department shall fully administer the program, including marketing, issuing permits and collecting fees as well as providing, erecting informational panels, installing business signs and maintaining all logo informational sign panels. A separate logo signing program account shall be established to receive any and all fees from the program. All funds in this account shall be used to furnish, erect and maintain traveler informational panels as needed as well as to pay costs associated with the administration of the logo sign program.

[9/30/98; 18.21.3.19 NMAC - Rn & A, 18 NMAC 21.3.19, 1/14/2005]

#### **18.21.3.20 MISCELLANEOUS:**

A. The department or when applicable the program manager shall adopt all necessary forms, accounting methods and other necessary procedures to carry out the full intent of these regulations.

B. These regulations shall be effective on the day they are filed with the New Mexico records and archives center, and any regulation heretofore affecting the subject matter hereof is hereby superseded.

[9/30/98; 18.21.3.20 NMAC - Rn & A, 18 NMAC 21.3.20, 1/14/2005]

### **PART 4: TOURIST ORIENTED DIRECTIONAL SIGNS (TODS)**

#### **18.21.4.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department

Post Office Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5525

[12/31/98; 18.21.4.1 NMAC – Rn, 18 NMAC 21.4.1, Recompiled 11/16/01]

#### **18.21.4.2 SCOPE:**

All state agencies and general public.

[12/31/98; 18.21.4.2 NMAC – Rn, 18 NMAC 21.4.2, Recompiled 11/16/01]

#### **18.21.4.3 STATUTORY AUTHORITY:**

Regulations for signs giving specific information in the interest of the traveling public are authorized under Sections 66-7-101, 66-7-102, 66-7-108, 67-8-9, 67-8-10, 67-12-4, 67-12-5, and 67-14-1 et seq., NMSA 1978 Comp., Section 2-I of the Manual on Uniform Traffic Control Devices; and approved by the New Mexico State Highway Commission on October 15, 1992. All rules and regulations set forth herein are subject to revision by

the New Mexico State Highway and Transportation Department with the approval of the New Mexico Highway Commission.

[12/31/98; 18.21.4.3 NMAC – Rn, 18 NMAC 21.4.3, Recompiled 11/16/01]

**18.21.4.4 DURATION:**

Permanent.

[12/31/98; 18.21.4.4 NMAC – Rn, 18 NMAC 21.4.4, Recompiled 11/16/01]

**18.21.4.5 EFFECTIVE DATE:**

December 31, 1998, unless another date is cited at the end of a section or paragraph.

[12/31/98; 18.21.4.5 NMAC – Rn, 18 NMAC 21.4.5, Recompiled 11/16/01]

**18.21.4.6 OBJECTIVE:**

Tourist Oriented Directional Signs (TODS) provide the business identification and directional information for businesses (including seasonal agricultural products), services, and activities the major portion of whose income or visitors are derived during the normal business season from motorists not residing in the immediate area of the business or activity. They are intended for use only on rural conventional roads and shall not be used at interchanges, expressways, freeways or all roadways with any form of access control. They may be used in conjunction with motorist service signs. If tourist oriented directional signs (TODS) and specific service (LOGO) signs (SHTD Rule 88-2(L) are installed at the same intersection, the LOGO signs shall be incorporated in the TODS signing scheme.

[12/31/98; 18.21.4.6 NMAC – Rn, 18 NMAC 21.4.6, Recompiled 11/16/01]

**18.21.4.7 DEFINITIONS:**

A. "Business Sign" means a sign showing the name and/or brand and/or trademark, and/or directional arrow and/or distance to a qualified TODS business. Business signs may be erected individually or as a component of a sign assembly as determined by location.

B. "Department" means the New Mexico State Highway and Transportation Department.

C. "Interstate System" means every state highway that is part of a national interstate and defense highways established pursuant to Section 103(b), Title 23, United States Code.

D. "Logo" means an officially sanctioned sign of the Logo Signing Program.

E. "Logo Sign" means an officially sanctioned sign of the Logo Signing Program.

F. "Signing Priority" means all other type of signing shall have a priority over TODS signing.

G. "Tourist Oriented Directional Signs or TODS" means officially sanctioned signing that is located within the right-of-way of routes (except Interstate) under the jurisdiction of the Department and provides business identification and directional information for businesses, services and activities, the major portion of whose income from visitors are derived during the normal business season from motorists not residing in the immediate area of the business or activity.

H. "Trailblazer" means a route marker assembly used to indicate the direction to the nearest or most convenient point of access to a qualified TODS business.

I. "TODS Intersection" means a juncture of a highway and a public roadway that provides access to a qualified TODS business.

J. "Intersection TOD Sign" means a sign assembly installed within the highway right-of-way at or near a TODS intersection and is used to indicate the name, direction and distance to a qualified TODS business.

K. "Advance Intersection TOD Sign" means a sign assembly installed within the highway right-of-way at least one-half mile in advance of a TODS intersection and is used to indicate the name, direction and distance to a qualified TODS business.

[12/31/98; 18.21.4.7 NMAC – Rn, 18 NMAC 21.4.7, Recompiled 11/16/01]

#### **18.21.4.8 SIGN, PANEL OR BUSINESS LOCATION:**

TOD signs shall be used only in rural areas where the business is not visible from the highway. Businesses visible from the road shall not qualify to receive TOD signing. Specifically, a prospective TOD business may be located:

A. in a rural area, inside the limits of an unincorporated or incorporated community with a population of 2000 or less;

B. Outside the limits of an unincorporated or incorporated community with a population between 2000 and 10,000. However, TOD signing may be located within the unincorporated /incorporated limits;

C. The location of other traffic control devices shall at all time take precedence over the location of TODS;

D. Intersection TODS panels should be at least 200 feet from the intersection;

E. Advance TODS panels should be at least 1/2 mile, but not more than 1 mile from the intersection, but will only be permitted in situations where sight distance, intersection maneuvers or other vehicle characteristics require notification;

F. Trailblazer TODS signs should be at least 100 feet from the intersection;

G. Intersection TODS panels should be spaced 200 feet from other intersection TODS panels and at least 200 feet from other traffic control devices;

H. Advance TOD panel should be spaced 800 feet from other advance TODS panels and at least 200 feet from the traffic control devices;

I. Trailblazer TOD signs should be spaced at least 200 feet from other traffic control devices;

J. TOD signs/panels shall not obstruct the drivers critical viewing of other traffic control devices;

K. At intersections where specific services (LOGO) signing is located, prior to TODS, then

(1) The LOGO signs shall be combined with TODS, if within guidelines of sign layout; or

(2) No TOD signing will be permitted at the LOGO intersection unless 8.11.1 [Paragraph (1), Subsection K., Section 8 of 18.21.4.8 NMAC] above is applicable, or

(3) No LOGO signing will be permitted at an intersection currently signed under TODS unless the LOGO(s) are combined as per above.

L. TODS shall not be permitted at interchanges if an at-grade intersection is replaced with an interchange, the intersection will no longer qualify for TODS and any previously erected TODS shall be removed by the Department.

M. A TODS trailblazer is required if the business is one or more miles from the intersection, and additional trailblazers are mandatory in advance of any turn the motorist is required to execute while enroute to the business;

N. Transverse location of signs should be at least eighteen feet offset from the outside edge of the near driving lane.

[12/31/98; 18.21.4.8 NMAC – Rn, 18 NMAC 21.4.8, Recompiled 11/16/01]

#### **18.21.4.9 GENERAL ELIGIBILITY CRITERIA:**

It is the intention of TODS to provide information of significant interest to the general traveling public using signs that point out cultural, historical, recreational, educational or entertainment activities or unique commercial activities that are tourist or motorist oriented. In order to qualify for TODS, a business, as a minimum, must:

A. Give written assurance of its conformity with all applicable laws concerning the provisions of non-discrimination with regard to race, religion, sex, color or national origin and shall not breach such assurances;

B. In addition to the aforementioned non-discrimination clause, provide reasonable access and/or accommodation for the physically impaired;

C. Not have illegal signs (billboards) as defined by the Highway Beautification Act of 1965 (23 USC 131); or the Intermodal Surface Transportation Efficiency Act 1991;

D. Be open to the general motoring public, including families (members only or Time Share Investor facilities shall not be qualified for TODS);

E. Derive the major portion of income and/or number of visitors from motorists not residing in the immediate area of the business; and

F. The business/activity shall be conducted in a building or an appropriate area designed for the purpose. However, a building principally used as a residence may be permitted if there is a convenient, separate, and well-marked entrance.

[12/31/98; 18.21.4.9 NMAC – Rn, 18 NMAC 21.4.9, Recompiled 11/16/01]

#### **18.21.4.10 SPECIFIC ELIGIBILITY CRITERIA:**

This section describes the types of businesses or activities that may qualify for TODS. These criteria are in addition to the requirements found in these regulations. By type, the specific criteria that an individual business or activity must meet to qualify for TODS are:

A. Motorist Service: A service of significant interest to motorist may qualify. The types of services, which may qualify, include, but are not limited to: gas, food, lodging, motor vehicle service or repairs. A business or activity providing motorist service must:

(1) Be open a minimum of eight (8) hours a day, six (6) days a week, and twelve (12) months a year;

(2) Have on-site restrooms facilities and drinking water available;

- (3) Have a telephone available for public use; and
- (4) Be located within five (5) miles of the TODS intersection.

B. Tourist Attraction: An attraction of significant interest to tourists as a historic, cultural, religious, scientific or education site, or as a site naturally for outdoor recreation or as a site of natural scenic beauty, may qualify for TODS if it:

- (1) Is open a minimum of six (6) hours a day, five (5) days a week, six (6) months, in continuum, a year;
- (2) Has on-site restroom facilities and drinking water available;
- (3) Is located within fifteen (15) miles of the TODS intersection; and
- (4) Has a telephone available for public use.

C. Agricultural Business Activity: An agricultural enterprise of significant interest to the traveling public may qualify if it:

- (1) Is open a minimum of six (6) hours a day, six (6) days a week, twelve (12) months a year or during the normal seasonal period of not less than three (3) months in continuum;
- (2) Is located within fifteen (15) miles of the TODS intersection;
- (3) Has on-site restroom facilities and drinking water; and
- (4) Has a telephone for public use.

D. Other Commercial Activity: A non-agricultural activity of significant interest to the traveling public may qualify, if it:

- (1) Is open a minimum of eight (8) hours a day, six (6) days a week, twelve (12) months a year or during the normal seasonal period of not less than three (3) months in continuum;
- (2) Has on-site restroom facilities and drinking water available;
- (3) Has a telephone available for public use; and
- (4) Is located within five (5) miles of the TODS intersection.

E. TODS Designs: Tourist oriented directional signs shall be rectangular in shape and:

- (1) Registered LOGOS shall be in accordance to the register color(s) of the LOGOS;
- (2) Shall have a white legend and border on a blue background;
- (3) Major routes in rural districts, intersection and advance TOD sign letters and numerals should be at least six inches (6") in height;
- (4) Non less important rural roads, the legend should be in numerals and letters at least four inches (4") in height;
- (5) Trailblazer TOD sign letters and numerals should be at least four inches (4") in height;
- (6) Lettering should be upper case letters;
- (7) Legends, arrows, borders, symbols, and logos shall be Retroreflective;
- (8) Each TOD sign should not have more than two lines of legend including not more than one symbol, a separate directional arrow, and the distance to the facility shown beneath the arrow;
- (9) Advance TOD signs shall not include the distance to the facility nor directional arrow;
- (10) Advance TODS panels should include the appropriate legend NEXT LEFT, NEXT RIGHT or AHEAD. Where thee is intervening minor roads, the legend LEFT 1/2 MILE or RIGHT 1/2 MILE should be used;
- (11) TOD signs should not exceed the size necessary for two lines of legend without crowding;
- (12) Legends shall not include promotional advertising;
- (13) LOGOS resembling official traffic control devices shall not be permitted;
- (14) Direct and/or indirect reference to the availability of alcoholic beverages shall not be permitted; and
- (15) The dates/days/hours of operation may be required.

[12/31/98, 18.21.4.10 NMAC – Rn, 18 NMAC 21.4.10, Recompiled 11/16/01]

#### **18.21.4.11 APPLICATION AND APPEAL PROCEDURES:**



A. Application Procedures: Applications for tourist oriented directional signing shall be submitted to the appropriate District Highway and Transportation Office.

B. Applications shall be accompanied with a photocopy of the business license or other document that shows the actual registered name of the business and/or DBA that is to be the legend on the TOD sign(s).

C. The application shall include a sketch map.

D. The appropriate District Traffic Engineer shall review/verify TOD applications. Conditions and recommendations regarding approval will be forwarded with the application to the State Maintenance Bureau.

E. TODS permits shall be issued to each eligible applicant, up to the maximum number allowed.

F. If the number of approved applicants for an intersection is greater than the number of spaces available, space shall be allocated as follows:

(1) Year-round operations shall take precedence over seasonal activities, except when the distance computation of the bumping procedure applies.

(2) If paragraph 5.6.1 [Paragraph (1), Subsection F., Section 5 of 18.21.4.5 NMAC] of this sub-regulation does not apply, order of priority shall be the closest, qualified applicant to the intersection that have applied for a TODS permit in order to fill vacant space(s).

(3) Once an activity or site is approved for signing, it may occupy a space as long as it continues to qualify. However, a year-round activity will be able to bump a seasonal activity except when the distance computation of the bumping procedure applies.

G. Bumping Process: Rank current and new applicants - highest score gets bump. Notify business of intent to be bumped by March 1st, using Certified/Return Receipt Mail.

(1) Financial - not paid up to date is an AUTOMATIC BUMP.

(2) Distance - 1 point for each 0.1 mile from the TODS intersection to the location of the business.

(3) Waiver - 30 points each.

H. Appeal Procedure: Any order of the Department denying an application under these rules, or for removal of a business sign pursuant to section 5.7 may be appealed by the applicant or permittees to the appropriate District Office. The District shall notify

applicants or permittees promptly on any application denial or decision to remove a sign.

[12/31/98; 18.21.4.11 NMAC – Rn, 18 NMAC 21.4.11, Recompiled 11/16/01]

#### **18.21.4.12 FURNISH, ERECTION, MAINTENANCE AND REMOVAL:**

A. The applicant shall furnish, erect, maintain and remove TOD signs at locations specified by the Department. All of the above responsibilities shall be done in accordance with the New Mexico Highway and Transportation Department Standard Specifications for Highway and Bridge Construction. Upon approval of the application, the Department will notify the applicant for coordination of the installation.

B. All TOD signs shall be manufactured and installed by a contractor approved by the Department.

C. The applicant shall assume any liabilities that may arise from the TODS installation.

D. The applicant shall remove or appropriately cover a TOD sign of a seasonal business when the business is closed during the off-season period.

E. TOD signs shall be removed if the business no longer qualifies for TODS.

F. All required trailblazing signs shall be installed prior to the installation of either intersection or advance TOD signs.

G. The Department shall determine when a TOD sign is no longer serviceable and needs to be replaced. Replacement TOD signs may be subject to fees - see FEE Section of these regulations. Payment of all fees assessed shall be remitted in full within thirty (30) days from the date of notification.

H. The applicant may request additional services in connection with the modification of TOD signs. This requested service is subject to fees and pre-payment of the fee shall be mandatory - see FEE Section of these regulations.

I. The Department will provide normal maintenance of/to TOD signs:

(1) If a TOD sign is modified or replaced at the request of the business, the business shall be required to pay for modifications and/or replacement. Department approval shall be required prior to any modifications.

(2) The Department shall not be responsible for damages to TOD signs caused by acts of vandalism or natural causes requiring repair or replacement of

business signs. Applicants in such event shall pay incurred fees for services and cost of TOD sign replacement.

[12/31/98; 18.21.4.12 NMAC – Rn, 18 NMAC 21.4.12, Recompiled 11/16/01]

#### **18.21.4.13 FEES:**

Rental fees are based on a continuous twelve (12) month year commencing on April 1 and ending on March 31. The first year's rental fee may be prorated on a monthly basis, but subsequent annual rental fees shall be for the entire twelve (12) month period even if the TODS business is seasonal. The advertiser shall be notified when the motorist information panel is erected and the TODS installed and the rental fee is then due. Rental fees shall be reviewed periodically to determine their relationship to the cost of operation of this program. Rental fees not received within thirty (30) days of notification to the applicant by the Department shall subject applicants permit to revocation and removal of its sign without any previously paid fees being refunded. The fees are:

- A. Application \$75/per sign 1 time charge
- B. Annual Rental \$120.00 per year
- C. Signs N/A Provided by applicant
- D. Service Provided by applicant
- E. TrailBlazers Provided by applicant

[12/31/98; 18.21.4.13 NMAC – Rn, 18 NMAC 21.4.13, Recompiled 11/16/01]

#### **18.21.4.14 RETENTION AND REFUNDING FEE:**

A. If an application for a permit is, for any reason not granted, all fees rendered with the application shall be refunded. If the permit is revoked due to non-conformance with any of the specified sections, or if the rental fee is not timely tendered, the Department shall not refund any fees.

B. If an application is approved and a contract has been awarded for the erection of the sign, no part of the fees shall be refunded. If the business sign is subsequently removed by a taking of eminent domain of the business being advertised, a proportional refund of the pre-paid rental fee may be made. However, in case of any removal, the rental fee for any months or major portion (16 days or more) of a month remaining to the pre-paid rental of the business sign may be refunded. There shall be no refund of rental fees for any business sign temporarily or covered.

[12/31/98; 18.21.4.14 NMAC – Rn, 18 NMAC 21.4.14, Recompiled 11/16/01]

**18.21.4.15 MISCELLANEOUS:**

The Department shall adopt all necessary forms, accounting methods and other procedures to carry out the full intent of these regulations.

[12/31/98; 18.21.4.15 NMAC – Rn, 18 NMAC 21.4.15, Recompiled 11/16/01]

**PART 5: OUTDOOR ADVERTISING REQUIREMENTS**

**18.21.5.1 ISSUING AGENCY:**

New Mexico Department of Transportation.

[18.21.5.1 NMAC - Rp, 18 NMAC 21.5.1, 02/14/14]

[P.O. Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5460]

**18.21.5.2 SCOPE:**

This part applies to all state agencies and the general public.

[18.21.5.2 NMAC - Rp, 18 NMAC 21.5.2, 02/14/14]

**18.21.5.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the New Mexico Highway Beautification Act, Sections 67-12-1 et seq., NMSA 1978; and Sections 67-3-6, 67-3-11 and 67-3-14 NMSA 1978.

[18.21.5.3 NMAC - Rp, 18 NMAC 21.5.3, 02/14/14]

**18.21.5.4 DURATION:**

Permanent.

[18.21.5.4 NMAC - Rp, 18 NMAC 21.5.4, 02/14/14]

**18.21.5.5 EFFECTIVE DATE:**

February 14, 2014, unless a later date is cited at the end of a section.

[18.21.5.5 NMAC - Rp, 18 NMAC 21.5.5, 02/14/14]

**18.21.5.6 OBJECTIVE:**

The purpose of this part is to implement and enforce the New Mexico Highway Beautification Act, Sections 67-12-1 et seq., NMSA 1978.

[18.21.5.6 NMAC - Rp, 18 NMAC 21.5.6, 02/14/14]

#### **18.21.5.7 DEFINITIONS:**

**A. "Abandoned sign" or "discontinued sign"** means any outdoor advertising device that:

- (1) is without copy for a period of six (6) months; or
- (2) where the permit holder no longer has the right to occupy or possess the site on which the outdoor advertising device is located.

**B. "Advertisement"** means copy, information or content on an outdoor advertising device designed, intended or used to advertise or inform.

**C. "Apron support"** means paneling on the exterior of an outdoor advertising device which serves as a decorative/ornamental feature; an apron support shall not include advertisements, but may include a sign owner name plate.

**D. "Beautification Act"** means the New Mexico Highway Beautification Act, Sections 67-12-1 et seq., NMSA 1978.

**E. "Bona fide commercial or industrial activity"** means a commercial or industrial activity which is carried on for profit and which operates for at least six (6) continuous months of the year and with a valid twelve (12) month business license issued by a city, county, or state whether or not a permanent structure is located where the commercial or industrial activity takes place.

**F. "Centerline of highway"** means a line equidistant from the edges of the median separating the main-traveled way of a divided interstate, NHS or primary highway or the centerline of the main-traveled way of a non-divided interstate, NHS or primary highway.

**G. "Changeable electronic variable message sign" or "CEVMS"** means an outdoor advertising device that changes the advertisement on the sign electronically or mechanically, or by remote control, by movement or rotation of panels or slats, light emitting diodes (LED), or an electronic sign that utilizes changeable electronic variable message technology through a programmable display of variable text or symbolic imagery to form multiple advertisements. Changeable electronic variable message signs include, but are not limited to, tri-vision and other rotating slat technology. The use of changeable electronic variable message sign (CEVMS) technology, shall not, in itself, constitute the use of flashing, intermittent or moving light or lights.

**H. "Commercial or industrial activity"** means those activities generally recognized as commercial or industrial by zoning authorities in New Mexico, except that none of the following shall be considered a commercial or industrial activity:

- (1) outdoor advertising devices;
- (2) agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands;
- (3) transient or temporary activities;
- (4) activities not visible from the main-traveled way;
- (5) activities conducted in a building principally used as a residence;
- (6) railroad track and minor sidings and supporting building and fixtures, except for depots open to the public at least six (6) hours per day;
- (7) activities located in their entirety more than six hundred sixty (660) feet from the nearest edge of the right-of-way line outside urban areas;
- (8) feeder pens and dairy activities;
- (9) camping or overnight parking unless such facilities are equipped with adequate parking accommodations, modern sanitary facilities and drinking water, and which are licensed or approved by an appropriate governmental agency.

**I. "Commission"** means the state transportation commission.

**J. "Copy"** means an advertisement which depicts activities or advertising which may include gas price, lottery and other add-ons where such add-ons are fully contained within the physical boundaries of the advertising face and reference the static advertisement to which they are attached. Add-ons shall display only numbers, shall remain static for no less than eight (8) seconds in duration, shall achieve a transition to another static display in less than two (2) seconds, and shall not contain or utilize transitional elements or any movement at all between copy changes. Copy may also include self-promotion or public service messages as long as the entire advertising face of the outdoor advertising device is covered.

**K. "Customary maintenance"** means the usual state of maintaining a sign in order to keep it in a good state of repair while not changing the general structure of the sign significantly. Customary maintenance of a non-conforming sign means maintaining the sign so that it remains substantially the same as it was on the effective date of the Beautification Act. Reasonable repair and maintenance of the sign, including a change in advertising content, is not a change which would terminate non-conforming rights.

**L. "Department"** means the New Mexico department of transportation.

**M. "Directional signs"** means signs containing directional information about public places owned or operated by federal, state or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, education, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

**N. "Erect"** means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way establish or bring a sign into being.

**O. "Face"** means the advertising surface on a sign. Each sign may contain more than one face; each face shall require a separate permit.

**P. "Freeway"** means a divided arterial highway for through traffic with full control of access.

**Q. "Interstate system"** means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to 23 U.S.C. Section 103.

**R. "Legible"** means capable of being read without visual aid by a person of normal visual acuity.

**S. "Maintain"** means to allow to exist.

**T. "Main-traveled way"** means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways or parking areas.

**U. "Mobile type sign"** means an outdoor advertising device that is attached or placed on mobile vehicles or trailers or other mobile devices or objects outside of the right-of-way, and is not permanently affixed to real property or a sign structure.

**V. "National highway system" or "NHS"** means the federal aid system which includes the interstate system; the National Highway System consists of the highway routes and connections to transportation facilities that serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and major travel destinations that meet national defense requirements, and that serve interstate and interregional travel and commerce.

**W. "Non-conforming sign"** means an outdoor advertising device lawfully in existence on the effective date of the Beautification Act, whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, which continues to exist and complies with customary maintenance

requirements, but which currently does not meet all requirements of 18.21.5 NMAC or the Beautification Act due to state law passed at a later date or due to changed conditions. A non-conforming sign may also include an outdoor advertising device whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, which continues to exist and complies with customary maintenance requirements, but which currently does not meet all requirements of 18.21.5 NMAC or the Beautification Act. Illegally erected or maintained outdoor advertising devices shall not be considered non-conforming outdoor advertising devices.

**X. "Official signs and notices"** means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with authorization contained in federal, state or local law for the purpose of carrying out an official duty or responsibility. Historical markers authorized by law and erected by state or local government agencies or non-profit historical societies shall be considered official signs.

**Y. "Off-premise sign"** means any outdoor advertising device which advertises an activity, service or product not conducted on the property upon which the outdoor advertising device is located.

**Z. "On-premise sign"** means an outdoor advertising device, which advertises activities, conducted on the property upon which the sign is located, and which is located within the area actually utilized for the purpose of the activity it advertises.

**AA. "Outdoor advertising device"** means any surface and supporting structure, visible from the main-traveled way of the interstate system, NHS or primary system, and designed, intended, or used to advertise or inform, and includes, but is not limited to, a sign, billboard, changeable electronic variable message sign (CEVMS), device, display, face, surface, light, figure, person, animal, painting, drawing, posting, plaque, poster, banner, graffiti, art, sculpture, statue, building structure, wall, fence, utility system, tower, bridge, motor vehicle, trailer, marine craft, holding tank, natural feature (such as a tree or rock), object, or other thing, whether permanently affixed to the real estate or mobile, portable, or temporary in nature, and regardless of size, which may support multiple faces. Each advertising surface shall be considered a separate face. Any structure used or intended to be used to support such a face shall be considered a part of the outdoor advertising device.

**BB. "Primary system"** means the federal and primary system in existence on June 1, 1991.

**CC. "Public service signs"** means signs located on school bus stop shelters, which signs:

- (1) identify the donor, sponsor, or contributor of the shelters;



- (2) contain public service messages;
- (3) contain no other content;
- (4) are located on school bus shelters which are authorized or approved by city, county, or state law, regulation or ordinance and at places approved by the city, county, or state agency controlling the highway involved; and
- (5) may not exceed thirty-two (32) square feet in area, and not more than one sign on each shelter shall face in any one direction.

**DD. "Ranch/farm notices", "service club notices" and "religious notices"** mean signs and notices which do not exceed eight (8) square feet, are erected and authorized by law, and relate to the name of ranch/farm, service club, charitable organization or religious services and directions to it.

**EE. "Roadway"** means an open, generally public way for the passage of vehicles, people and animals.

**FF. "Safety rest area"** means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right of way of the interstate system, NHS or primary system.

**GG. "Sign"** means any outdoor advertising device as defined in 18.21.5.7 NMAC.

**HH. "State law"** means a state constitutional provision or statute, or an ordinance or rule enacted or adopted by a state agency or political subdivision of a state pursuant to the state constitution or to a state statute.

**II. "Unzoned land"** means an area which has not been zoned by a properly constituted zoning authority according to legally prescribed procedure.

**JJ. "Unzoned commercial or industrial area"** means unzoned lands upon which there is located a bona fide commercial or industrial activity and the area along the highway extending outward one thousand (1,000) feet from and beyond the edge of such commercial or industrial activity and extending perpendicular from the centerline of highway to a depth of six hundred sixty (660) feet from the nearest edge of the right-of-way line on the same side of the highway as the commercial or industrial activity.

**KK. "Urban area"** means an area including and adjacent to a municipality or other urban place having a population of five thousand (5000) or more, as determined by the latest available federal census, within boundaries to be fixed by the commission, subject to any necessary approval by any federal agency, department or personnel.

**LL. "Visible"** means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity, except that within urban areas, "visible" means within six hundred sixty (660) feet of the nearest edge of the right-of-way line.

**MM. "Zoned commercial or industrial area"** means an area which is reserved for business, commerce, trade, manufacturing, or industry, pursuant to a validly promulgated state law or regulation or local ordinance whose validity for outdoor advertising purposes is determined by the department pursuant to the provisions of 18.21.5.28 NMAC.

[18.21.5.7 NMAC - Rp, 18 NMAC 21.5.7, 02/14/14]

#### **18.21.5.8 SIGNS ALLOWED:**

Only the following outdoor advertising devices may be erected or maintained:

- A.** directional signs and other official signs and notices;
- B.** signs on a piece of property giving notice that the specific land or improvements alone are offered for sale or lease;
- C.** on-premise signs that are in compliance with 18.21.5.12 NMAC;
- D.** signs located within six hundred sixty (660) feet of the nearest edge of the right-of-way, in zoned commercial or industrial areas;
- E.** signs located within six hundred sixty (660) feet of the nearest edge of the right-of-way in unzoned commercial or industrial areas;
- F.** signs located beyond six hundred sixty (660) feet of the right-of-way, located outside of urban areas, visible from the main-traveled way of the interstate system, NHS or primary system and erected with the purpose of the content being read from such main-traveled way;
- G.** signs lawfully in existence on October 22, 1965, determined by the commission, subject to any necessary federal approval, to be landmark signs of historic or artistic significance worthy of preservation including signs on farm structures or natural surfaces, and which requirements are set forth in 18.21.5.15 NMAC;
- H.** signs lawfully in existence on the effective date of the Beautification Act, whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, and which continue to exist and be maintained lawfully, but which currently do not meet all requirements of 18.21.5 NMAC or the Beautification Act due to state law passed at a later date or due to changed conditions. Illegally erected or maintained outdoor advertising devices shall not be considered non-conforming outdoor advertising devices;

I. signs whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, which continues to exist and complies with customary maintenance requirements, but which currently does not meet all requirements of 18.21.5 NMAC or the Beautification Act. Illegally erected or maintained outdoor advertising devices shall not be considered non-conforming outdoor advertising devices.

[18.21.5.8 NMAC - Rp, 18 NMAC 21.5.8, 02/14/14]

#### **18.21.5.9 RECLASSIFICATION OF HIGHWAYS:**

A. Any sign lawfully erected along a highway which is not part of the interstate system, NHS or primary system at the time of the sign's erection and which sign becomes subject to the provisions of the Beautification Act and this rule due to the reclassification of the highway as part of the NHS system, shall remain a legal non-conforming and compensable sign so long as all permits for the sign are timely obtained and all permit fees timely paid. The failure to timely obtain permits and timely pay permit fees shall render such a sign illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

B. Permits and permit fees for the class of signs described in this section are timely obtained and timely paid if obtained and paid for the next calendar year following the reclassification, notification of which shall be sent to the sign owner by the department.

[18.21.5.9 NMAC - Rp, 18 NMAC 21.5.9, 02/14/14]

#### **18.21.5.10 SIGNS PROHIBITED:**

No outdoor advertising device may be erected or maintained which:

A. physically intrudes upon the right-of-way or by being of such a distracting nature so as to dangerously divert driver's attention from the roadway;

B. attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device;

C. prevents the driver of a vehicle from having a clear and unobstructed view of pre-existing official signs and approaching or merging traffic;

D. contains, includes or is illuminated by any flashing, intermittent or moving light or lights;

E. is lighted in any way unless the lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the interstate system, NHS or primary system, or is of such low intensity or brilliance as not

to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle;

**F.** moves or has any animated or moving parts;

**G.** is erected or maintained upon trees or painted or drawn upon rocks or other natural features;

**H.** is structurally unsafe or in disrepair as determined by the department;

**I.** is an abandoned sign as defined in 18.21.5.7 NMAC;

**J.** is located in an area zoned by a local government, but which local zoning does not amount to or come within a comprehensive zoning plan, or which is created primarily to permit outdoor advertising, as determined by the department pursuant to the provisions of 18.21.5.28 NMAC;

**K.** is a mobile type sign as defined in 18.21.5.7 NMAC; or

**L.** violates any of the provisions of 18.21.5 NMAC.

[18.21.5.10 NMAC - Rp, 18 NMAC 21.5.10 & 39, 02/14/14]

#### **18.21.5.11 SIGN CONTENTS PROHIBITED:**

Signs containing the following copy are prohibited:

**A.** the imitation or simulation of official U.S. interstate, state or county highway sign shields within advertising displays; and

**B.** any words that could be construed as a command, such as "stop, turn right (or left)," or any such words whether used alone or in combination on signs which duplicate or resemble official signs and notices so as to cause a motorist to be misled in any manner.

[18.21.5.11 NMAC - Rp, 18 NMAC 21.5.11, 02/14/14]

#### **18.21.5.12 ON-PREMISE SIGNS:**

On-premise signs are limited to signs advertising on-premise activities only and shall adhere to the following requirements.

**A.** Signs must be used only to advertise the activities conducted on the property where the sign is located.

**B.** There must be a regularly used building, service, repair, processing, storage, or parking area used in conjunction with the on-premise activity.

**C.** Land, whether contiguous or not, and whether owned or not, that is not used as part of the major activity as set forth herein, but is surplus if held for future use, shall not qualify as a part of the immediate on- premise area, including railroad mainline tracks, siding, spurs and loading docks.

**D.** The lands that are directly used as an integral part of the principal activity of the subject advertised, even though the sign site and principal activity are separated by a roadway, shall be deemed to be contiguous.

**E.** On-premise parking lots, storage areas, and servicing areas are those areas regularly used in conjunction with on-premise activity and in which surfacing and lighting are continuously maintained.

**F.** Upon the termination or cessation for twelve (12) consecutive months of the activities, services or products advertised by an on-premise sign along the interstate system, NHS or primary system, the sign advertising that activity shall no longer qualify as an on-premise sign and shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.12 NMAC - Rp, 18 NMAC 21.5.42, 02/14/14]

#### **18.21.5.13 OFF-PREMISE CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS) - SPECIFICATIONS:**

**A.** The use of changeable electronic variable message sign (CEVMS) technology, shall not, in itself, constitute the use of flashing, intermittent or moving light or lights.

**B.** Off-premise changeable electronic variable message signs (CEVMS) shall be allowed, regardless of the technology used, provided such signs shall:

(1) utilize only one (1) advertisement at any given time for each advertising face, and do not display, contain or utilize multiple advertisements or displays;

(2) contain a static display that shall remain for no less than eight (8) seconds in duration;

(3) achieve a transition to another static display in less than two (2) seconds and shall not contain or utilize transitional elements or any movement at all between copy changes, except tri-vision signs;

(4) not incorporate or display any illumination that changes in intensity during the static display or transition period as described above;

(5) change copy uniformly in a fluid, seamless transition not capable of being detected, except tri-vision signs;

(6) not exceed a maximum surface area of six hundred seventy-two (672) square feet per advertising face, with a maximum length of forty-eight (48) feet and a maximum height of fourteen (14) feet; length and height measurements shall include border and trim, but shall not include any ornamental base or apron support;

(7) not be placed within one thousand (1,000) feet of another off-premise changeable electronic variable message sign on the same side of the highway, regardless of face orientation, except for those tri-vision signs lawfully permitted and erected prior to the effective date of this rule;

(8) not contain or include any advertisements that employ the use of intermittent or flashing light or lights or that are illuminated by intermittent or flashing light or lights;

(9) not include animated, flashing, scrolling, or full-motion video elements, and may not incorporate or display segmented or traveling advertisements;

(10) be shielded so as to prevent light from being directed at any portion of the main-traveled way, or if not so shielded, are of such low intensity or brilliance so as not to cause glare or impair the operation of a motor vehicle or violate the New Mexico Night Sky Protection Act, Sections 74-12-1 et seq., NMSA 1978, to the extent it applies;

(11) have brightness levels capable of being measured and such brightness shall be limited to an acceptable, safe level or measurement, as follows: CEVMS shall utilize automatic dimming technology to adjust the brightness of the sign relative to ambient light so that at no time shall a sign exceed a brightness level of three tenths (0.3) foot candles above ambient light, as measured using a foot candle meter and in conformance with the following process: light measurements shall be taken with the meter aimed directly at the advertisement or sign face, or at the area of the sign emitting the brightest light if that area is not the advertisement or sign face; measurements shall be taken as follows:

<b>Table: CEVMS Sign Brightness</b>	
<b>Sign Face Area</b>	<b>Distance of Measurement</b>
681-1200 sq. ft.	350 feet
385-680 sq. ft.	250 feet
300-384 sq. ft.	200 feet
200-299 sq. ft.	150 feet
150-199 sq. ft.	136 feet
125-149 sq. ft.	118 feet
100-124 sq. ft.	107 feet
75-99 sq. ft.	96 feet
50-74 sq. ft.	83 feet

35-49 sq. ft.	67 feet
25-34 sq. ft.	56 feet
15-24 sq. ft.	47 feet
1-14 sq. ft.	36 feet

(12) not incorporate, utilize or emit any sound or noise capable of being detected or emit any smoke, scent or odors;

(13) not contain, incorporate or utilize any interactive component or medium, and not interact or interface with drivers, pedestrians or the general public;

(14) not interfere with or direct, or attempt to direct, the movement of traffic, or resemble or simulate any warning or danger signal, or any official traffic control device, and not contain wording, color, shapes or likenesses of official traffic control devices;

(15) contain a default mechanism so that in the event 50% or more of a sign has failed, the sign will immediately revert to a black screen and remain in such condition until the malfunction is corrected; in all such cases, the malfunctioning sign must be expediently repaired;

(16) utilize sufficient safeguards to prevent unauthorized access, use or hacking of changeable electronic variable message signs and related technology, including infrastructure, hardware, software and networks, by unauthorized users;

(17) be continuously monitored twenty-four (24) hours per day by the device owner or the permit holder, including monitoring of hardware, software, network and other infrastructure; and

(18) comply with all applicable provisions, restrictions and prohibitions regarding outdoor advertising devices contained in federal and state law.

**C.** With the exception of tri-vision signs legally permitted and erected prior to the effective date of this rule, any changeable electronic variable message sign existing prior to the effective date of this rule, 18.21.5 NMAC, shall conform with this section within sixty (60) days of the effective date of this section or such changeable electronic variable message sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.13 NMAC - N, 02/14/14]

#### **18.21.5.14 OFF-PREMISE CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS) - ADDITIONAL REQUIREMENTS:**

**A. Permit required.** A person desiring to erect, install, convert or maintain an off-premise changeable electronic variable message sign shall obtain a new permit from

the department pursuant to this rule for that use prior to erection, installation, conversion or maintenance of the sign.

**B. Location.** No sign utilizing changeable electronic variable message technology may be erected, installed, converted or maintained outside the limits of any municipality, town or village, or within the boundaries or limits of any designated scenic byway, or outside the boundaries or limits of any designated scenic byway where the intent or result is that the changeable electronic variable message advertisements are oriented to, or visible or legible from, the scenic byway.

**C. Modification.** The permit holder and the owner of the sign are responsible for any changes, alterations or modifications to the advertisements or to the use of the changeable electronic variable message sign made by an unauthorized user, or by an advertiser authorized to facilitate such changes, alterations or modifications.

**D. Conversion.**

(1) An existing static outdoor advertising device may be converted to a changeable electronic variable message sign, provided the existing sign:

(a) has been approved by the local government;

(b) is a legal, conforming sign;

(c) is in good repair;

(d) has had all permit fees timely paid; and

(e) does not violate any applicable sections of this rule or of the Beautification Act.

(2) No existing static outdoor advertising device may be converted to changeable electronic variable message sign technology if the existing sign has a non-conforming or grandfathered status.

(3) The conversion of a static outdoor advertising device to a changeable electronic variable message sign must be approved by the applicable local governmental entity.

(4) The application shall include written assurance from the applicant that the sign structure will meet or exceed current engineering standards or practices and all applicable building codes.

(5) The conversion of a static outdoor advertising device to a changeable electronic variable message sign must be accomplished within one hundred twenty (120) days after the issuance of the applicable permit.



[18.21.5.14 NMAC - N, 02/14/14]

#### **18.21.5.15 LANDMARK SIGNS:**

**A.** An outdoor advertising device shall qualify as a landmark sign of historical or artistic significance under 23 U.S.C. Section 131 upon presentation, to the department, of satisfactory proof as determined by the department, that the sign has been lawfully in place and maintained at the same location for a period of twenty-five (25) years or more, and that the sign:

(1) has not substantially changed in size, lighting or advertising content after designation as a landmark sign;

(2) has not been significantly altered from its historic appearance, or, if it has been altered, is potentially restorable to its historic function and appearance;

(3) is structurally safe or can be made safe without significantly altering its historical appearance; and

(4) complies with all applicable requirements of this rule.

**B.** Any substantial change or significant alteration, as determined by the department, after designation as a landmark sign shall result in termination of the sign's landmark status.

[18.21.5.15 NMAC - Rp, 18 NMAC 21.5.12, 02/14/14]

#### **18.21.5.16 DIRECTIONAL SIGN REQUIREMENTS:**

**A. Directional signs prohibited.** The following signs are prohibited:

(1) signs advertising activities that are illegal under federal or state laws in effect at the location of those signs or at the location of those activities;

(2) signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging or intersection traffic;

(3) signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features;

(4) obsolete signs;

(5) signs which are structurally unsafe or in disrepair;

(6) signs which move or have any animated or moving parts; and

- (7) signs located in safety rest areas, parklands or scenic areas.

**B. Size requirement of directional signs.** No sign shall exceed the following limits:

- (1) maximum area - one hundred fifty (150) square feet;
- (2) maximum height - twenty (20) feet; and
- (3) maximum length - twenty (20) feet.

**C. Dimensions.** All dimensions include border and trim, but exclude supports.

**D. Lighting of directional signs.** Signs may be illuminated, subject to the following:

- (1) signs, which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited;
- (2) signs which are not effectively shielded so as to prevent beams or rays of light from being directed by any portion of the traveled way of an interstate system, NHS or primary system or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited; and
- (3) no sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device or signal.

**E. Spacing of directional signs.**

- (1) Each location of a directional sign must be approved by the department.
- (2) No directional sign may be located within two thousand (2,000) feet of an interchange or intersection at grade along the interstate system or other freeways (measured along the interstate system or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).
- (3) No directional sign may be located within two thousand (2,000) feet of the safety rest area, parkland or scenic area.
- (4) No two directional signs facing the same direction of travel shall be spaced less than one (1) mile apart.
- (5) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.

(6) Signs located adjacent to the interstate system shall be within seventy-five (75) air miles of the activity.

(7) Signs located adjacent to the primary system shall be within fifty (50) air miles of the activity.

**F. Permitted content of directional signs.** The content of directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers or exit numbers. Descriptive words or phrases, and pictorial or photograph representations of the activity or its environs are prohibited.

[18.21.5.16 NMAC - Rp, 18 NMAC 21.5.20, 02/14/14]

#### **18.21.5.17 LANDOWNER PERMISSION:**

No outdoor advertising device shall be erected or maintained without documentation that the applicant or permit holder has the legal right to occupy or possess the site on which the outdoor advertising device is to be located or currently resides. Violation of this provision shall render the outdoor advertising device illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.17 NMAC - N, 02/14/14]

#### **18.21.5.18 MAXIMUM SIZE AND AREA LIMITATIONS:**

**A.** The maximum area of the face of any outdoor advertising device, including any embellishments, extensions or add-ons, shall be eight hundred (800) square feet, except as otherwise provided in this rule. Length and height measurements shall include border and trim, but shall not include any ornamental base or apron support.

**B.** Exceptions to the maximum size and area limitations are:

(1) stacked signs, which shall be limited to three hundred fifty (350) square feet per face;

(2) directional signs, which shall be limited to a maximum area of one hundred fifty (150) square feet and no more than twenty (20) feet in any dimension;

(3) public service signs, which shall be limited to thirty-two (32) square feet;

(4) ranch/farm notices, service club notices and religious notices, which shall not exceed eight (8) square feet; and

(5) CEVMS signs, which shall not exceed a maximum surface area of six hundred seventy-two (672) square feet per advertising face, with a maximum length of forty-eight (48) feet and a maximum height of fourteen (14) feet; length and height measurements shall include border and trim, but shall not include any ornamental base or apron support.

**C.** The areas shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the basic advertising face.

**D.** A sign may have two or more faces that are placed back-to-back, side-by-side, stacked, or in a "V" type construction with not more than two (2) faces presented in each direction, and each face must be separately permitted.

**E.** The maximum area of any single advertisement on a single face shall not exceed eight hundred (800) square feet, or, in the case of stacked signs, no more than three hundred fifty (350) square feet.

**F.** Two (2) sign faces presented in the same direction may be presented as one (1) face on legal conforming signs by covering both faces and the area between the faces with an advertisement, as long as the size limitations of Subsection A of this section are not exceeded.

[18.21.5.18 NMAC - Rp, 18 NMAC 21.5.13, 02/14/14]

#### **18.21.5.19 MINIMUM SPACING REQUIREMENTS:**

For all signs other than directional signs and CEVMS signs.

**A. Interstate systems and access-controlled freeways.** No two (2) signs on the same side of the right-of-way shall be spaced less than five hundred (500) feet apart inside and outside villages and cities.

**B. NHS or primary systems.** Outside of incorporated villages and cities, no two (2) signs on the same side of the right-of-way shall be spaced less than three hundred (300) feet apart. Inside incorporated villages and cities, no two (2) signs on the same side of the right-of-way shall be spaced less than one hundred (100) feet apart.

**C. Interstate systems, NHS and primary systems.** Any sign adjacent to an interstate, NHS or primary system which is located within the control area of the interstate system must meet the minimum spacing requirements of the interstate system specified in Subsection A of this section.

#### **D. Exceptions.**

(1) On-premise, directional signs and official signs and notices or illegal signs within the right-of-way shall not be counted nor shall measurements be made from them

for purposes of determining compliance with the five hundred (500), three hundred (300) or one hundred (100) foot spacing requirements.

(2) CEVMS signs shall comply with minimum spacing requirements contained in 18.21.5.13 NMAC.

**E. Intersections, interchanges and safety rest areas.** Outside of incorporated villages and cities, no sign shall be placed within five hundred (500) feet of an interchange, or an intersection at grade, or a roadside safety rest area on any portion of an interstate system or primary system which is an access-controlled highway. The five hundred (500) feet shall be measured from the beginning or ending of the pavement widening at the exit from the entrance to the main-traveled way. The minimum spacing requirement provisions do not apply to signs separated by buildings or other obstructions in such a manner that only one (1) sign located within the minimum spacing requirement distance of this subsection is visible from the highway system at a time.

[18.21.5.19 NMAC - Rp, 18 NMAC 21.5.15 & 16, 02/14/14]

#### **18.21.5.20 UNZONED COMMERCIAL OR INDUSTRIAL AREAS:**

**A. Measurements.** An unzoned commercial or industrial area shall be measured from the outer edge of the regularly used buildings, parking lots, storage or processing areas of the activities, and not from the property line of the activity, unless the property line and outer edge of the building, parking lots, storage or processing areas of the activities coincide. Such measurements shall be along or parallel to the edge of the right-of-way on the same side of the highway as the sign site.

**B. Temporary unzoned commercial or industrial areas.** Buildings or open sales areas actively used for commercial or industrial activities for six (6) or more consecutive months shall qualify an area as an unzoned commercial or industrial area, provided a twelve (12) month business license for that activity is obtained from the local governing authority.

**C. Simulated commercial activity.** Buildings or activities constructed or initiated to simulate legitimate commercial or industrial activity but not constituting commercial or industrial activity, shall not be used as a basis for determining unzoned commercial or industrial areas.

**D. Farming-agriculture and related activities.** The following shall not constitute an unzoned commercial or industrial area:

- (1) use of feeder pens and dairy activities; and

(2) roping arenas, rodeo grounds, or fair grounds, unless the activities are open to the public and are conducted continuously for six (6) consecutive months or more during each calendar year.

**E. Municipal land ownership.** Municipal property located in an area governed by these rules that is not zoned, whether within or outside city, town or village limits, must conform to these rules in every respect concerning the unzoned commercial or industrial area. This requirement also applies to signs intended to advertise the local community or local community services.

[18.21.5.20 NMAC - Rp, 18 NMAC 21.5.17, 18, 19, 40 & 41, 02/14/14]

#### **18.21.5.21 LIGHTING RESTRICTIONS:**

Signs shall not be placed with illumination that interferes with the effectiveness of any official traffic sign or device. Signs shall not contain, include or be illuminated by flashing, intermittent or moving light or lights (except that part necessary to give public service information such as time, date, temperature, weather or similar information). The term flashing lights is not limited to actual lighting, and includes stationary and moving reflective disks and rotating slats that reflect light in a flashing or moving manner, and that create the effect of flashing or moving light. No sign shall cause beams or rays of light of such intensity or brilliance to be mistaken for a warning or danger signal as to cause glare or impair the vision of any driver's operation of a motor vehicle.

[18.21.5.21 NMAC - Rp, 18 NMAC 21.5.21, 02/14/14]

#### **18.21.5.22 APPLICATION FOR SIGN PERMIT:**

**A. Permit required.** No outdoor advertising device or face allowed under Subsections A, D, E, F and G of 18.21.5.8 NMAC may be erected or maintained unless the owner of the outdoor advertising device or face first obtains a permit for the device or face from the department. Exceptions to this requirement are:

(1) signs on a piece of property giving notice that said specific land or improvements alone are offered for sale; generalized real estate signs are not excepted; and

(2) on-premise signs that are in compliance with 18.21.5.12 NMAC.

**B. Change in size, location or materials.** Any change, reconfiguration, conversion to CEVMS, addition of lighting, or change in location or upgrade in size or materials of the outdoor advertising device shall require a new application. The outdoor advertising device shall match the permit description.

**C. New highway construction.** A permit will not be issued for a sign to be located along a new interstate system, NHS or primary system, until the system is accepted by the department and is open to traffic in accordance with federal and state law.

**D. Application form.** To obtain a permit for an outdoor advertising device a person shall first file an application with the department. A person may obtain an application by contacting the department at 505-827-5460 or accessing the department's website at [www.dot.state.nm.us](http://www.dot.state.nm.us).

**E. Contents of application and fee.** An application for an outdoor advertising device permit shall contain:

- (1) the applicant's name, mailing address, telephone number, fax number and e-mail address;
- (2) a description and location of the outdoor advertising device;
- (3) documentation that the applicant has the legal right to possess and occupy the site upon which the outdoor advertising device will be located or currently resides; and
- (4) a non-refundable application fee of seven hundred fifty dollars (\$750) for changeable electronic variable message signs, or four hundred dollars (\$400) for all other outdoor advertising devices, except that directional sign applications need not be accompanied by a fee.

**F. Completeness.** When the department receives an application for an outdoor advertising device permit, the department shall check the application for completeness.

- (1) If the application is not complete, the department shall contact the applicant for additional information. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the application shall be deemed denied.
- (2) If the application is complete, the department shall review the application.

[18.21.5.22 NMAC - Rp, 18 NMAC 21.5.22, 23 & 29, 02/14/14]

#### **18.21.5.23 ISSUANCE OF SIGN PERMIT:**

**A. Site review.** In reviewing an application for an outdoor advertising device permit, the department shall conduct a site review and inspection to ensure that the description, location and other information contained in the application are in compliance with this rule.

**B. Permit.** If the site review and inspection results are satisfactory to the department, and all other applicable requirements, standards and specifications have been met, the department shall issue a permit and send an approval letter to the applicant. The department shall otherwise issue a denial letter stating the reasons for denial of the permit.

**C. Term.** The department shall issue a sign permit on a calendar year basis, January 1 through December 31; sign permits shall be valid from the date of their issuance until the following December 31.

**D. Transfer permitted.** A holder of a sign permit may transfer the permit to a new holder, upon filing with the department a transfer form signed by the current and future permit holders within ninety (90) days of the transfer of legal interest in the outdoor advertising device that is subject to the permit. The transfer form shall include any change of address and contact information, and a photocopy of any lease or sale agreement pursuant to such transfer. Any change in size, location, or materials of the outdoor advertising device shall require a new application.

[18.21.5.23 NMAC - N, 02/14/14]

#### **18.21.5.24 RENEWAL OF SIGN PERMIT:**

Every permit shall be renewed annually and accompanied by a renewal fee in the amount of twenty-five dollars (\$25.00) for the calendar year. Effective January 1, 2015, the annual renewal fee for every permit shall be forty dollars (\$40.00). The department shall issue renewal invoices, which shall be paid within thirty (30) days of receipt. The failure to timely renew a permit shall render the permit invalid and subject to revocation. In that event, the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.24 NMAC - Rp, 18 NMAC 21.5.25, 02/14/14]

#### **18.21.5.25 SIGN PERMIT TAGS:**

**A.** Upon the approval of an application for a permit, the department shall issue a sign permit tag for the specific sign at a given location.

**B.** A sign permit tag shall be valid from the date of its issuance until the following December 31 unless otherwise notified by the department. Upon annual renewal of the permit pursuant to the provisions of 18.21.5.24 NMAC, the validity of the sign permit tag shall continue for that calendar year.

**C.** Permit tags are transferable with the ownership of signs, but shall not be relocated from one (1) site to another. A permit tag shall be issued to a specific sign at a specific location and shall not be transferred from one (1) location to another. Any



change in size, location, or materials of the outdoor advertising device shall require a new permit tag.

**D.** Permit tags shall be displayed, legible and visible at all times. If a permit tag is lost or stolen, the sign owner shall contact the department for a replacement. There shall be a twenty-five (\$25) charge for each replacement.

**E.** Within thirty (30) days of issuance of the sign permit tag (one hundred twenty (120) days should the sign not be constructed at the date of such issuance), the sign permit tag shall be affixed to the sign on its face in the lower corner nearest the highway right-of-way line, or to the surface of the upright leg or pole of the sign nearest the right-of-way line.

[18.21.5.25 NMAC - Rp, 18 NMAC 21.5.24 & 27, 02/14/14]

#### **18.21.5.26 SIGN OWNER NAME PLATES:**

All signs must have affixed the sign owner's name on a separate name panel of durable material fastened to the sign. A commercial sign company shall limit the name plate to its trade name only, provided that the trade name is as indicated on all the company's outdoor advertising permit applications.

[18.21.5.26 NMAC - Rp, 18 NMAC 21.5.30, 02/14/14]

#### **18.21.5.27 SIGN CONSTRUCTION TIME LIMITS:**

When a sign which is the subject of the issuance of a permit and tag is not erected at the date of such issuance, such sign must be erected within one hundred twenty (120) days after such issuance, with the tag properly affixed, or the permit and tag shall be void. Upon written request to the department, a one-time sixty (60) day extension to erect a previously permitted sign may be granted.

[18.21.5.27 NMAC - Rp, 18 NMAC 21.5.26, 02/14/14]

#### **18.21.5.28 LOCAL ZONING AUTHORITIES:**

Local political subdivisions shall have authority under their own zoning laws to create zoned commercial or industrial areas, and the valid action of such local political subdivision in this regard will be accepted for the purposes of these rules. The department will not issue permits for the erection of new signs in areas where county and municipal zoning ordinances are in effect and which require a permit to be issued for such signs by the county or municipal authority, unless the applicant has received a local permit for the sign from the governmental authority promulgating such ordinances, and a photocopy of the approved local permit application or a letter granting approval is attached to the department's sign permit application. If the department determines that the local zoning does not amount to or come within a comprehensive zoning plan, or

that it is created primarily to permit outdoor advertising devices, a permit for the erection of the outdoor advertising device shall be denied. In determining whether a zoning action is created primarily to permit outdoor advertising devices, the department may consider various factors, such as, but not limited to, the expressed reasons for the zoning change; the zoning for the surrounding area; the actual land uses nearby; the existence of plans for commercial or industrial development; the availability of utilities (such as water, electricity and sewage) in the newly zoned area; and the existence of access roads or dedicated access to the newly zoned area.

[18.21.5.28 NMAC - Rp, 18 NMAC 21.5.28, 02/14/14]

#### **18.21.5.29 CUSTOMARY MAINTENANCE OF SIGNS:**

**A.** Customary maintenance shall be performed on all permitted signs. For the purpose of this section, a sign owner shall be allotted six (6) months to restore and replace copy, at which time the department may give a thirty (30) day notice to the owner to revitalize the sign or remove it as an abandoned sign. If the owner fails to revitalize the sign or remove it as an abandoned sign within thirty (30) days, the permit shall be revoked and the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

**B.** No sign owner shall erect, maintain, dismantle or remove any outdoor advertising device from or in the right-of-way of any interstate system, NHS or primary system. Any sign owner violating this subsection shall have the sign permit revoked whether or not the sign is conforming and such action shall render the sign illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.29 NMAC - Rp, 18 NMAC 21.5.35, 02/14/14]

#### **18.21.5.30 CUSTOMARY MAINTENANCE OF NON-CONFORMING SIGNS:**

**A.** Customary maintenance of non-conforming signs may only include the following:

- (1) changing existing non-structural external light fixtures for energy efficiency;
- (2) replacing structural components with the same materials consistent with this rule, including replacement of poles, but only if not more than 1/2 of the total number of poles of the sign are replaced in any twelve (12) month period and the same material is used for the replacement poles;
- (3) nailing, cleaning and painting, and replacement of nuts and bolts;
- (4) changes in the advertisement; and

- (5) plumbing or leveling the structure.

**B.** Customary maintenance of non-conforming signs shall not include the following:

- (1) any increase in the size of the sign from the date of its non-conformance, or increasing the size or dimension of the sign face, or adding a face;
- (2) any structural change resulting in an increase in the sign's value; any such increase in value shall be deemed non-compensable should the sign be acquired by the department through the condemnation process;
- (3) adding CEVMS or other changeable message capability, except that gas price, lottery and other add-ons utilizing changeable message technology may be allowed where the use of that technology would not result in a change to the physical structure of the outdoor advertising device, such as the addition of electrical or other power, including solar power, guy wires and bracing where the structure did not have such features at the time of its non-conformance, and where the gas price, lottery and other add-ons are included within the structure's copy;
- (4) adding lighting, attached or unattached, to a sign that previously did not have lights;
- (5) adding bracing, guy wires or other reinforcing devices;
- (6) changing the vertical support materials, such as replacing wooden supports with metal, or replacing I-beams with a monopole;
- (7) changing the configuration of the sign structure, such as changing a "V" sign to a stacked or back-to-back sign, or a single-face sign to a double face or back-to-back sign;
- (8) merging or consolidating multiple faces into a single face, whether on the same or separate outdoor advertising devices; and
- (9) except at the request of a governmental authority, removing and erecting the structure, or changing the physical location of the sign or the direction of the sign face.

**C.** A non-conforming sign destroyed by natural causes, such as, but not limited to, wear and tear, deterioration and weather, may not be reconstructed and its permit shall be revoked. Reconstruction shall render the sign a new structure and result in revocation of its permit and the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

**D.** Non-conforming signs which have been destroyed due to vandalism and other criminal or tortious acts may be re-erected in kind.

**E.** For purposes of this section, "destroyed" means completely down, or where more than 50% of the upright supports of a sign structure are physically damaged such that normal repair practices of the industry would, in the case of wooden sign structures, require replacement of the broken supports, and, in the case of metal sign structures, require replacement of at least 25% of the length above ground of each broken, bent or twisted support.

[18.21.5.30 NMAC - Rp, 18 NMAC 21.5.36, 02/14/14]

#### **18.21.5.31 RIGHT-OF-WAY:**

**A.** It is unlawful for any sign owner or his agents to damage the landscape of any right-of-way. These damages are more specifically described as follows:

(1) cutting trees or vegetation on the right-of-way for the purpose of facilitating the readability of an outdoor advertising device;

(2) damage to any landscaping, such as grass, shrubs, rocks, gravel or cement; or

(3) damage to any improvements in the right-of-way such as fences, ditches and structures.

**B.** Access gates shall not be installed in any right-of-way or access control fencing, nor shall right-of-way or access control fencing be cut, altered or damaged in any way.

**C.** The sign owner shall reimburse the state for the costs of replacing any damaged improvements or features or for returning all features to their original condition, and the sign owner's permits shall be revoked for any signs involved in such acts and the involved signs shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

**D.** Any outdoor advertising device which has been erected in such a manner that all or part of the device encroaches into or upon the right-of-way of any interstate system, NHS or primary system, as defined by the Beautification Act, shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

**E.** Stopping or parking on the right-of-way of any access-controlled highway, or violation of the access control line to service any outdoor advertising device, is unlawful and may constitute grounds for revocation of the permit as to such outdoor advertising device. In the event of such revocation the outdoor advertising device which is the

subject of the revoked permit shall be deemed illegal and non-compensable and subject to removal at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

**F.** If vegetation on the right-of-way must be cut or otherwise maintained for the purpose of facilitating the readability of an outdoor advertising device, the owner of the outdoor advertising device, or the permit holder or landowner shall contact the department's office of the district engineer for the district where the device is located and request cutting or other maintenance of the vegetation.

[18.21.5.31 NMAC - Rp, 18 NMAC 21.5.32, 37, 38 & 43, 02/14/14]

#### **18.21.5.32 LOCATION VIOLATIONS:**

Any outdoor advertising device which has been erected and maintained under permit, but is at variance from the location set forth in the permit application, and which location variation has not resulted from department's actions, may have its permit revoked and the sign deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC. Where a location variation results from department's actions, the department's permit file may be amended to reflect the actual location of the outdoor advertising device.

[18.21.5.32 NMAC - Rp, 18 NMAC 21.5.32, 02/14/14]

#### **18.21.5.33 REMOVAL OF SIGNS:**

**A. Compensable signs.** Any outdoor advertising device that meets the requirements of Subsection A of Section 67-12-6 NMSA 1978 may be acquired by the commission by agreement or condemnation in the manner provided by law, with just compensation paid pursuant to Subsection B of Section 67-12-6 NMSA 1978.

**B. Non-compensable signs.** Any outdoor advertising device, which has been erected or maintained:

(1) in violation of the permit and permit fee requirements of the Beautification Act or this rule; or

(2) in accordance with all permit and permit fee requirements of the Beautification Act and this rule, but which violates the standards, specifications and requirements of the Beautification Act and this rule; shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of this section.

**C. Notice.** Any such removal under Subsection B of this section shall be preceded by notice via certified mail, to the owner of the outdoor advertising device and to the

owner of the land upon which the device is located, if known, of the failure to conform and that if the device is not brought into conformity within thirty (30) days, the device must be removed within thirty (30) days or will be subject to removal by the department at the owner's expense. If the defects are not corrected and the outdoor advertising device is not removed within thirty (30) days after the date of notice, the department shall revoke the permit and the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of this section.

**D. State immunity.** Agents or employees of the department who remove illegal outdoor advertising devices in compliance with the Beautification Act and these rules shall be immune from criminal prosecution or civil liability for the injury, loss or destruction of any property which occurs in connection with the removal.

**E. Interference.** Landowners who interfere with the removal of signs from their property, preventing either the sign owner or the department from removing same, may be liable for the additional costs of removal associated with the landowner's interference.

[18.21.5.33 NMAC - Rp, 18 NMAC 21.5.31, 32, 33 & 34, 02/14/14]

#### **18.21.5.34 PENALTIES FOR REPEATED VIOLATIONS:**

**A.** In addition to the specific penalties set forth in this rule, the department may suspend permitting privileges if repeated violations by a permit holder, sign owner or landowner establish a pattern or practice of disregard for these rules, as determined by the department. A notification of such intent to suspend permitting privileges will be sent to the permit holder, sign owner or landowner stating the grounds upon which the proposed suspension is based.

**B.** Upon receipt of a notice of intent to suspend, the permit holder, sign owner or landowner shall have a right to a hearing before the department on whether the suspension should be imposed. To request a hearing, the permit holder, sign owner or landowner shall submit a written request within fourteen (14) days from the date of receipt of the notice.

**C.** The department shall assign a hearing officer within fifteen (15) days of receipt of the hearing request, and the hearing officer shall schedule a hearing within thirty (30) days of being assigned as hearing officer, and shall notify the requesting party of the time, date and place of the hearing.

**D.** The requesting party may present information orally and in writing at the hearing. The requesting party may at their own expense be represented by legal counsel.

**E.** After considering all written and oral views presented at the hearing, the hearing officer shall within thirty (30) days after the date of the hearing make a written

explanation and determination and submit it to the department's chief engineer for consideration and final decision. Within thirty (30) days from the hearing officer's determination, the department's chief engineer shall make a final decision and the department shall furnish the requesting party with the final decision in writing.

**F.** A party aggrieved by the chief engineer's decision shall have the right to seek judicial review through the appropriate court system.

[18.21.5.34 NMAC - Rp, 18 NMAC 21.5.44, 02/14/14]

## **CHAPTER 22: TRAFFIC CONTROL SPEED LIMITS [RESERVED]**

## **CHAPTER 23: HIGHWAY HEIGHT, LENGTH AND WEIGHT LIMITATIONS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: [RESERVED]**

### **PART 3: MOVEMENT OF FOURTEEN FOOT MANUFACTURED HOMES ON DESIGNATED FOUR LANE HIGHWAYS WITHOUT AN ESCORT**

#### **18.23.3.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department

P. O. Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5499

[10/31/98; 18.23.3.1 NMAC – Rn, 18 NMAC 23.3.1, Recompiled 11/16/01]

#### **18.23.3.2 SCOPE:**

All movers of manufactured homes and general public.

[10/31/98; 18.23.3.2 NMAC – Rn, 18 NMAC 23.3.2, Recompiled 11/16/01]

#### **18.23.3.3 STATUTORY AUTHORITY:**

This rule is adopted pursuant to NMSA 1978 Section 66-7-413C(4).

[10/31/98; 18.23.3.3 NMAC – Rn, 18 NMAC 23.3.3, Recompiled 11/16/01]

#### **18.23.3.4 DURATION:**

Permanent.

[10/31/98; 18.23.3.4 NMAC – Rn, 18 NMAC 23.3.4, Recompiled 11/16/01]

**18.23.3.5 EFFECTIVE DATE:**

October 31, 1998, unless a later date is cited at the end of a section or paragraph.

[10/31/98; 18.23.3.5 NMAC – Rn, 18 NMAC 23.3.5, Recompiled 11/16/01]

**18.23.3.6 OBJECTIVE:**

The purpose of this rule is to designate which four-lane highways within the State of New Mexico are safe for the operation and movement of fourteen foot wide manufactured homes without an escort pursuant to NMSA 1978 Section 66-7-413C(4).

[10/31/98; 18.23.3.6 NMAC – Rn, 18 NMAC 23.3.6, Recompiled 11/16/01]

**18.23.3.7 DEFINITIONS:**

"Manufactured Home" means a moveable or portable housing structure that exceeds either a width of eight feet or a length of forty feet, constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy.

[10/31/98; 18.23.3.7 NMAC – Rn, 18 NMAC 23.3.6, Recompiled 11/16/01]

**18.23.3.8 DESIGNATED HIGHWAYS:**

The following four lane divided highways and portions thereof are deemed safe for the operation and movement of fourteen foot wide manufactured homes without an escort:

A. Interstate 10 - In its entirety from the Arizona State line to the Texas State line for a total of 164.3 miles.

B. Interstate 25 - In its entirety from the junction of the I10/I25 Interchange in Las Cruces to the Colorado State line for a total of 462.1 miles.

C. Interstate 40 - In its entirety from the Arizona State line to the Texas State line for a total of 373.5 miles.

D. US 54/70 - from the Alamogordo north City Limit to Jct. US 70 in Tularosa for a total of 9.8 miles.

E. US 60/84 - from Jct. NM 224 east to the Texas State line excluding the portion within the Clovis City Limits and the Texico City Limits for a total of 20.8 miles.



F. US 62/180 - from south Jct. US 285 in Carlsbad east to the Texas State line for a total of 76.2 miles

G. US 64 - from Jct. US 666 south of Shiprock to Jct. NM 544 excluding the portion within the Farmington City Limits for a total of 48.1 miles.

H. US 70 - from Jct. I25 Interchange in Las Cruces east to the Alamogordo west City Limit for a total of 62.2 miles.

I. US 70 - from Jct. US 54 in Tularosa east to Jct. NM 244 for a total of 38.6 miles.

J. US 70/380 - from beginning of four lane 7.6 miles east of Lincoln/Chavez County Line to the Roswell west City Limit for a total of 9.0 miles.

K. US 70 - from Portales east City Limit to Clovis south City Limit for a total of 14.7 miles.

L. US 84/285 - from the Santa Fe north City Limit to the Espanola south City Limit for a total of 30.2 miles.

M. US 180 - from Bayard to Silver City for a total of 10.5 miles.

N. US 285 - from Jct. NM 31 north of Loving to Jct. US 62/180 in Carlsbad for a total of 11.7 miles.

O. US 285 - from Jct. NM 137 north of Carlsbad to Jct. NM 2 north of Artesia for a total of 21.1 miles.

P. US 550 - from Farmington north City Limit to Jct. NM 173 in Aztec for a total of 15.0 miles.

Q. NM 18 - from Jct. NM 234 east of Eunice to Jct. US 82 in Lovington for a total of 40.9 miles.

R. NM 68 - from Espanola north City Limit to Jct. NM 582 for a total of 13.2 miles.

S. NM 122 - from Jct. NM 606 to Milan west City Limit for a total of 7.3 miles.

[10/31/98; 18.23.3.8 NMAC – Rn, 18 NMAC 23.3.8, Recompiled 11/16/01]

### **18.23.3.9 MUNICIPALITIES REQUIRING ESCORT:**

Fourteen foot wide manufactured homes may not travel without escort within the city limits of the following municipalities, as the governing bodies of those municipalities have withheld their consent. The above limitation does not apply to Interstate Highways passing through such municipalities.

- A. Truth or Consequences
- B. Tucumcari
- C. Las Vegas
- D. Espanola
- E. Wagon Mound
- F. Farmington
- G. Alamogordo
- H. Santa Fe
- I. Las Cruces
- J. Texico
- K. Roswell
- L. Santa Rosa
- M. Portales
- N. Albuquerque
- O. Clovis

[10/31/98; 18.23.3.9 NMAC – Rn, 18 NMAC 23.3.9, Recompiled 11/16/01]

## **CHAPTER 24: AUTONOMOUS MOTOR VEHICLES**

### **PART 1: GENERAL PROVISIONS - DEFINITIONS AND TESTING**

#### **18.24.1.1 ISSUING AGENCY:**

New Mexico department of transportation, Post Office Box 1149 Santa Fe, New Mexico 87504-1149 (505) 795-1401.

[18.24.1.1 NMAC - N, 04/19/2022]

#### **18.24.1.2 SCOPE:**

This rule covers autonomous motor vehicle testing on public roadways in New Mexico.

[18.24.1.2 NMAC - N, 04/19/2022]

**18.24.1.3 STATUTORY AUTHORITY:**

Sections 67-3-2, 67-3-11, and 67-3-14 NMSA 1978, and H.B. 270 2021 Legislative Session.

[18.24.1.3 NMAC - N, 04/19/2022]

**18.24.1.4 DURATION:**

Permanent.

[18.24.1.4 NMAC - N, 04/19/2022]

**18.24.1.5 EFFECTIVE DATE:**

April 19, 2022, unless a later date is cited at the end of a section.

[18.24.1.5 NMAC - N, 04/19/2022]

**18.24.1.6 OBJECTIVE:**

The objective of these regulations is to establish the notification requirements for entities that wish to test autonomous motor vehicles on public roadways in New Mexico.

[18.24.1.6 NMAC - N, 04/19/2022]

**18.24.1.7 DEFINITIONS:**

As used in these rules the context clearly indicates otherwise, the following definitions apply:

**A. Definitions beginning with "A":**

(1) "Active safety system" means the vehicle systems that sense and monitor conditions inside and outside the vehicle for the purpose of identifying perceived present and potential dangers to the vehicle, occupants, and other road users, and automatically intervene to help avoid or mitigate potential collisions via various methods, including alerts to the driver, vehicle system adjustments, and active control of the vehicle subsystems (brakes, throttle, suspension, etc.).

(2) "Automated driving system" or "ADS" means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain; "automated driving system" is used specifically to describe a level three, four or five driving automation system as defined in Society of Automotive Engineers Standard

J3016, as published in the Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

(3) "Autonomous commercial motor vehicle" means a commercial motor vehicle, as defined in Subsection J of Section 66-1-4.3 NMSA 1978, that is equipped with and may be controlled by an automated driving system.

(4) "Autonomous motor vehicle" means a motor vehicle that is equipped with and may be controlled by an automated driving system and includes an autonomous commercial motor vehicle.

(5) "Autonomous motor vehicle operator" means the person who engages the automated driving system of an autonomous motor vehicle or autonomous commercial motor vehicle.

(6) "Autonomous motor vehicle tester" or "tester" means the entity who is testing autonomous motor vehicles on New Mexico public roadways.

(7) "Autonomous motor vehicle testing" or "autonomous commercial motor vehicle testing" means activities taken in full or in part to evaluate and assess:

(a) the automated driving system's performance of the dynamic driving task;  
and

(b) the automated driving system's performance with respect to applicable safety

areas as defined by the federal national highway traffic safety administration for autonomous motor vehicle operations.

**B. Definitions beginning with "B" [RESERVED]**

**C. "Commission" means the New Mexico state transportation commission.**

**D. Definitions beginning with "D":**

(1) "Department" means the New Mexico department of transportation.

(2) "Department secretary" means the cabinet secretary of the New Mexico department of transportation or his designated representative.

(3) "Driving automation" means the performance of part of all of the dynamic driving task by hardware or software on a sustained basis.

(4) "Dynamic driving task" as defined in Society of Automotive Engineers Standard (SAE) J3016 all of the real-time operational and tactical functions required to

operate a vehicle in on-road traffic, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints, and including without limitation:

- (a) lateral vehicle motion control via steering;
- (b) longitudinal vehicle motion control via acceleration and deceleration;
- (c) monitoring the driving environment via object and event detection, recognition, classification, and response preparation;
- (d) object and event response execution;
- (e) maneuver planning; and
- (f) enhancing conspicuity via elements including but not limited to lighting, signaling, and gesturing.

(5) "Dynamic driving task fallback" means the response by the user or by an automated driving system to either perform the dynamic driving task or achieve a minimal risk condition after occurrence of a dynamic driving task performance-relevant system failure(s) or upon exit of the automated driving system's operational design domain.

#### **E. Definitions beginning with "E" [RESERVED]**

#### **F. Definitions beginning with "F":**

(1) "Fallback-ready user" means the user of a vehicle equipped with an engaged level 3 automated driving feature who is able to operate the vehicle and is receptive to automated driving system-issued requests to intervene and to evident dynamic driving task performance-relevant system failures in the vehicle compelling him or her to perform the dynamic driving task fallback.

(2) "Federal motor vehicle safety standards" or "FMVSS" means a motor vehicle safety standard, as defined in 49 U.S.C Section 30102, issued by the National Highway Traffic Safety Administration.

(3) "Fully autonomous motor vehicle" means an autonomous motor vehicle that is equipped with an automated driving system designed to function as a level 4 or level 5 system under SAE J3016 and that may be designed to function either:

- (a) solely by use of the automated driving system;
- (b) by a human driver when the automated driving system is not engaged.

#### **G. Definitions beginning with "G" [RESERVED]**

**H. Definitions beginning with "H" [RESERVED]**

**I. Definitions beginning with "I" [RESERVED]**

**J. Definitions beginning with "J" [RESERVED]**

**K. Definitions beginning with "K" [RESERVED]**

**L. "Levels of driving automation"** means the functionality of an automated driving system and allocation of roles between a human user (if any) and the driving automation system in performing the dynamic driving task and fallback. Levels of driving automation is categorized into six levels by the SAE in Standard J3016, Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles. The six levels include:

(1) Level 0 means 'no driving automation' in that the performance by the driver of the entire dynamic driving task even when enhanced by active safety systems.

(2) Level 1 means 'driver assistance' in that the sustained and operational design domain-specific execution by a driving automation system of either the lateral or the longitudinal vehicle motion control subtask of the dynamic driving task (but not both simultaneously) with the expectation that the driver performs remainder of the dynamic driving task.

(3) Level 2 means 'partial driving automation' in that the sustained and operational design domain-specific execution by a driving automation system of both the lateral and longitudinal vehicle motion control subtasks of the dynamic driving task with the expectation that the driver completes the object event detection and response subtask and supervises the driving automation system.

(4) Level 3 means 'conditional driving automation' in that the sustained and operational design domain-specific performance by an automated driving system of the entire dynamic driving task with the expectation that the dynamic driving task fallback-ready user is receptive to automated driving system-issued requests to intervene, as well as to dynamic driving task performance-relevant system failures in other vehicle systems and will respond appropriately.

(5) Level 4 means 'high driving automation' in that the sustained and operational design domain-specific performance by an automated driving system of the entire dynamic driving task and dynamic driving task fallback without any expectation that a user will respond to a request to intervene.

(6) Level 5 means 'full driving automation' in that the sustained and unconditional (i.e., not operational design domain-specific) performance by an automated driving system of the entire dynamic driving task and dynamic driving task fallback without any exception that a user will respond to a request to intervene.

#### **M. Definitions beginning with "M":**

(1) "Minimal risk condition" means a stable, stopped condition to which a user or an automated driving system may bring a vehicle after performing the dynamic driving task fallback in order to reduce the risk of a crash when a given trip cannot or should not be completed.

(2) "Monitor" means a general term referencing a range of functions involving real-time human or machine sensing and processing of data used to operate a vehicle, or to support its operation.

(3) "Monitor automated driving system performance" means the activities and automated routines for evaluating whether the driving automation system is performing part or all of the dynamic driving task appropriately.

(4) "Monitor the driving environment" means the activities and automated routines that accomplish real-time roadway environmental object and event detection, recognition, classification, and response preparation (excluding actual response), as needed to operate a vehicle.

(5) "Monitor vehicle performance" means the activities and automated routines that accomplish real-time evaluation of the vehicle performance, and response preparation, as needed to operate a vehicle.

#### **N. Definitions beginning with "N":**

(1) "National highway traffic safety administration" or "NHTSA" means the operating administration of the United States department of transportation that is delegated the responsibilities described in 49 CFR Section 1.94.

(2) "NMDOT program administrator" means that person assigned by the NMDOT to oversee and coordinate the autonomous motor vehicle testing program and when applicable the program manager's activity.

(3) "Notification" means the act of providing required information.

(4) "Notification receipt" means formal acknowledgment of having received a notification.

#### **O. Definitions beginning with "O":**

(1) "Object and event detection and response" means the subtasks of the dynamic driving task that include monitoring the driving environment (detecting, recognizing, and classifying objects and events and preparing to respond as needed) and executing an appropriate response to such objects and events (i.e., as needed to complete the dynamic driving task and dynamic task fallback).

(2) "Operate" means collectively, the activities performed by a (human) driver (with or without support from one or more level 1 or 2 driving automation features) or by an automated driving system (level 3-5) to perform the entire dynamic driving task for a given vehicle during a trip.

(3) "Operational design domain" means the specific conditions under which a given driving automation system or feature thereof is designed to function, including, but not limited to, driving modes.

(4) "Owner" means the holder of the legal title of a vehicle.

**P. "Program manager" or "contractor"** means, when applicable, that person, firm, or organization selected by the NMDOT for the purpose of administering the autonomous motor vehicle testing program in New Mexico.

**Q. Definitions beginning with "Q" [RESERVED]**

**R. "Request to intervene"** means an alert provided by an automated driving system to a driver or fallback-ready user indicating that they should promptly perform the dynamic driving task fallback, resume manual operation of the vehicle, or achieve a minimal risk condition.

**S. Definitions beginning with "S":**

(1) "SAE J3016" means the Society of Automotive Engineers current standard for the Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

(2) "System failure" means a malfunction in an automated driving system and other vehicle system that prevents the automated driving system from reliably sustaining dynamic driving task performance (partial or complete).

(3) "Sustained" (operation of a vehicle) means performance of part or all of the dynamic driving task both between and across external events, including responding to external events and continuing performance of part or all of the dynamic driving task in the absence of external events.

**T. "Trip"** means the traversal of an entire travel pathway by a vehicle from the point of origin to a destination.

**U. Definitions beginning with "U":**

(1) "Usage specification" means a particular level of driving automation within a particular operational design domain.



(2) "User" means a general term referencing the human role in driving automation.

(3) "User receptivity" means an aspect of consciousness characterized by a person's ability to reliably and appropriately focus their attention in response to a stimulus.

**V. Definitions beginning with "V" [RESERVED]**

**W. Definitions beginning with "W" [RESERVED]**

**X. Definitions beginning with "X" [RESERVED]**

**Y. Definitions beginning with "Y" [RESERVED]**

**Z. Definitions beginning with "Z" [RESERVED]**

[18.24.1.7 NMAC - N, 04/19/2022]

#### **18.24.1.8 RESPONSIBILITY:**

It shall be the responsibility of each division and section within the department to carry out their pertinent functions relating to programming, design and contracting for each project concerning the autonomous motor vehicle testing program. The department shall handle all phases of the autonomous motor vehicle testing program.

[18.24.1.8 NMAC - N, 04/19/2022]

#### **18.24.1.9 AUTONOMOUS MOTOR VEHICLE TESTING AND OPERATION:**

**A.** The testing and operating of autonomous motor vehicles on public roads in New Mexico require compliance with all applicable federal and state laws and regulations and municipal ordinance that govern motor vehicle operations, unless an exemption or waiver has been granted from the governing authority.

**B.** Vehicles equipped with an automated driving system shall meet and follow all applicable federal laws, regulations, and guidelines governing motor vehicles; meet all applicable certificates, title and registration, licensing, and insurance requirements; and be capable of complying with all applicable traffic and motor vehicle safety laws and regulations of the state of New Mexico, unless an exemption or waiver has been granted from the governing authority.

**C.** For autonomous motor vehicle testing or operating with a human driver:

(1) The person testing or operating the autonomous motor vehicle may be issued a traffic citation or other applicable penalty in the event of a failure to comply with traffic and motor vehicle laws.

(2) Only a trained employee, contractor or other person authorized by the company developing the automated driving system may operate or monitor the performance of the vehicles and automated driving system.

**D. For fully autonomous motor vehicle testing or operating without a driver:**

(1) Testing or operation of vehicles that do not have a person present in the vehicle shall be allowed only if such vehicles are fully autonomous, and if prior to commencing testing or operation of the fully autonomous motor vehicles, an autonomous motor vehicle testing statement and certification has been submitted to the New Mexico department of transportation acknowledging:

(a) When required by federal law, the fully autonomous motor vehicle is equipped with an automated driving system that in compliance with all applicable federal law and federal motor vehicle safety standards and the vehicle bears the required certification label(s) including reference to any exemption granted under applicable federal law.

(b) If a failure of the automated driving system occurs that renders that system unable to perform the entire dynamic driving task relevant to its intended operational design domain, the fully autonomous motor vehicle will achieve a minimal risk condition.

(c) The fully autonomous motor vehicle is capable of complying with all applicable traffic and motor vehicle safety laws and regulations of the state of New Mexico that do not relate to or support motor vehicle operation by a human driver, and the person testing or operating the fully autonomous motor vehicle may be issued a traffic citation or other applicable penalty in the event the vehicle fails to comply with traffic and motor vehicle laws.

(d) The fully autonomous motor vehicle registered owner is required to ensure it meets all applicable certificate, title registration, licensing, and insurance requirements.

(e) Compliance with the law enforcement protocol and submission of a Law Enforcement Interaction Protocol outlined in Section 18.24.1.10 NMAC.

(2) If a person fails to submit the required documents outlines above, the New Mexico department of transportation has the authority to immediately issue a cease and desist letter revoking any permissions to operate a fully autonomous motor vehicle on New Mexico's public roads, until the person has submitted the statement and is in compliance with laws and regulations relating to fully autonomous motor vehicles.

[18.24.1.9 NMAC - N, 04/19/2022]

**18.24.1.10 LAW ENFORCEMENT INTERACTION PROTOCOL:**

**A.** Prior to testing or operating a fully autonomous motor vehicle on New Mexico public roadways without a driver, the autonomous motor vehicle owner shall provide the New Mexico department of public safety and the New Mexico department of transportation a copy of a law enforcement interaction protocol that will instruct first responders in the vicinity of the operational design domain how to interact with the fully autonomous motor vehicle in emergency and traffic enforcement situations. This interaction protocol shall be on file with and available through the New Mexico state police.

**B.** The law enforcement interaction protocol shall include:

- (1) How to communicate with a fleet support specialist who is available during the times the vehicle is in operation;
- (2) How to safely remove the vehicle for the roadway;
- (3) How to recognize whether the vehicle is in autonomous mode and steps to safely ow the vehicle;
- (4) A description of the cities where the vehicle will be in operation;
- (5) Any additional information the manufacturer or owner deems necessary regarding hazardous conditions or public safety risks associated with the operation of the autonomous motor vehicle.

**C.** For the purpose of this section, vehicle owner, registration, insurance, and contact information for the fully autonomous motor vehicle can be accessed through the New Mexico motor vehicle division system. Exchange of information, issuance of citations and repair orders with the fully autonomous motor vehicle owner shall be done through the electronic mail or physical mailing address provide, which can be accessed through the MVD system.

**D.** The law enforcement interaction protocol submitted by the vehicle owner will detail how compliance with the relevant sections of Part 3, Article 7 of Chapter 66, Motor Vehicles, will be ensured in the event of a collision.

- (1) The fully autonomous motor vehicle's owner contact information, registration, and insurance information shall be noted on the New Mexico crash report.
- (2) If injury to a person, damage to any vehicle, or damage to any other property occurred in the collision, the officer shall provide the fully autonomous motor vehicle owner's name, address, and insurance information to the drivers of all other vehicles, any injured parties involved in the collision, and owners of damaged property.
- (3) If the fully autonomous motor vehicle violates a traffic law resulting in the collision, the officer may issue a citation to the registered owner of the vehicle.

**E.** If the fully autonomous motor vehicle that is operated on a roadway doesn't display license plates for the current registration year, officers shall issue a citation to the vehicle owner.

**F.** If the fully autonomous motor vehicle does not have documents on file with the New Mexico motor vehicle division that show it meets the financial responsibility requirements under Section 66-5-205 NMSA 1978, officers shall issue a citation to the registered owner of the vehicle.

**G.** If a fully autonomous motor vehicle becomes disabled as a result of a collision or malfunction, and the owner is unable to provide for its custody or removal, the officer shall remove the vehicle or cause it to be removed for any of the following:

- (1) pursuant to Section 66-7-350 NMSA 1978;
- (2) for seizure pursuant to law;
- (3) for obstruction of traffic;
- (4) when disabled at a gore point;
- (5) when disabled or abandoned in a hazardous location.

**H.** Officers shall inventory the fully autonomous motor vehicle prior to its removal, documenting the contents and condition of the vehicle on the vehicle removal report.

[18.24.1.10 NMAC - N, 04/19/2022]

#### **18.24.1.11 LOCATION:**

The testing or operations of autonomous motor vehicles shall not be restricted by geographic location or roadway type other than as defined by the automated driving system's operational design domain inclusive of any other restrictive limitations inherent to a vehicle's operation.

[18.24.1.11 NMAC - N, 04/19/2022]

#### **18.24.1.12 NOTIFICATION INFORMATION:**

**A.** Prior to testing or operating a fully autonomous motor vehicle, and in addition to the law enforcement interaction protocol, the vehicle owner shall supply the New Mexico department of transportation with the following:

- (1) owner and business name;
- (2) mailing address;

- (3) physical address;
- (4) contact information including:
  - (a) business telephone number;
  - (b) business fax number;
  - (c) email address;
- (5) business type (sole proprietorship, partnership, LLP, LLC, corporation);
- (6) state where incorporated;
- (7) business principal;
- (8) upon request, make a list of authorized agents and drivers (if applicable);
  - (a) driver's credentials (CDL if applicable);
  - (b) vehicles being tested including:
    - (c) year;
    - (d) make;
    - (e) model;
    - (f) vehicle identification number (VIN).
- (9) level of automation being tested.
- (10) operational design domain being test including:
  - (a) roadway classifications.
    - (i) freeway;
    - (ii) highway;
    - (iii) arterials;
    - (iv) streets;
    - (v) unimproved;

- (vi) urban;
- (vii) rural;
- (viii) other - not included above.

(b) environmental limitations:

- (i) snow;
- (ii) ice;
- (iii) limited visibility;
- (iv) night driving;
- (v) other - not included above.

(c) speeds;

(d) geo-fencing.

(11) description of the minimal risk condition for system failure.

(12) location or areas testing will occur.

(13) dates and frequency of testing.

(14) level of autonomous being tested.

(15) demonstration of having an instrument of insurance, surety bond, or proof of self insurance in an amount of at least \$5 million.

(16) proof of registration and licensing for each autonomous motor vehicle being tested and operated.

**B.** The vehicle owner shall supply the New Mexico department of transportation with the forementioned information biennially or when changes occur with the information previously provided, whichever occurs first.

[18.24.1.12 NMAC - N, 04/19/2022]

**18.24.1.13 PROCEDURES TO BE FOLLOWED BY THE DEPARTMENT:**

**A.** The department will make available on on-line information and notification form for submitting the information required in Subsection A of 18.24.1.12 NMAC.

**B.** Upon submittal of the required information the notifier will receive an acknowledgment receipt from the department. If a person fails to submit that notification required under 18.24.1.12 NMAC, the New Mexico department of transportation has the authority to immediately issue a cease and desist letter suspending operation of the autonomous vehicle on New Mexico's public roads, until the notification has been submitted.

**C.** The department will maintain a database of current autonomous motor vehicle testing occurring in New Mexico.

**D.** The database will include information that is self-reported by the registered autonomous motor vehicle owner.

[18.24.1.13 NMAC - N, 04/19/2022]

#### **18.24.1.14 FEES:**

It will be the responsibility of the autonomous vehicle owner to pay all necessary registration, titling, and licensing fees as required under all other relevant regulations specific to motor vehicle registration titling and licensing.

[18.24.1.14 NMAC - N, 04/19/2022]

## **CHAPTER 25-26: [RESERVED]**

## **CHAPTER 27: HIGHWAY CONSTRUCTION GENERAL PROVISIONS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: DIVISION 100-GENERAL PROVISIONS STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION**

#### **18.27.2.1 ISSUING AGENCY:**

New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504-1149.

[18.27.2.1 NMAC - Rp, 18.27.2.1 NMAC, 5/31/2013]

#### **18.27.2.2 SCOPE:**

All agencies, the general public and highway construction contractors.

[18.27.2.2 NMAC - Rp, 18.27.2.2 NMAC, 5/31/2013]

**18.27.2.3 STATUTORY AUTHORITY:**

Sections 9-5-1, 13-1-99, 13-1-170, 13-1-174, 67-3-8, 67-3-11, and 67-3-43, NMSA 1978.

[18.27.2.3 NMAC - Rp, 18.27.2.3 NMAC, 5/31/2013; A, 1/1/2019]

**18.27.2.4 DURATION:**

Permanent.

[18.27.2.4 NMAC - Rp, 18.27.2.4 NMAC, 5/31/2013]

**18.27.2.5 EFFECTIVE DATE:**

May 31, 2013, unless a later date is cited at the end of a section.

[18.27.2.5 NMAC - Rp, 18.27.2.5 NMAC, 5/31/2013]

**18.27.2.6 OBJECTIVE:**

The purpose of this regulation, Division 100-General Provisions Standard Specifications for Highway and Bridge Construction, is to implement and enforce Division 100 of the *New Mexico department of transportation 2019 standard specifications for highway and bridge construction as replacement to the 2013 edition of the standard specifications for highway and bridge construction*, and shall be controlling for all projects advertised and all contracts executed after the date this rule is promulgated by the New Mexico department of transportation and duly filed in the state records center.

[18.27.2.6 NMAC - Rp, 18.27.2.6 NMAC, 5/31/2013; A, 1/1/2019]

**18.27.2.7 DEFINITIONS:**

[RESERVED]

[18.27.2.7 NMAC - Rp, 18.27.2.7 NMAC, 5/31/2013; Rp, 1/1/2019]

**18.27.2.8 ADOPTION OF THE NEW MEXICO DEPARTMENT OF TRANSPORTATION 2019 STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION:**

This rule adopts by reference Division 100-General Provisions of the *New Mexico department of transportation 2019 standard specifications for highway and bridge*



*construction as replacement to the 2013 edition of standard specifications for highway and bridge construction.*

[18.27.2.8 NMAC - Rp, 18.27.2.8 NMAC, 5/31/2013; A, 1/1/2019]

### **PART 3: LOCAL GOVERNMENT ROAD FUND GUIDELINES FOR WAIVER OF LOCAL ENTITIES MATCHING FUNDS DUE TO FINANCIAL HARDSHIP**

#### **18.27.3.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department

Post Office Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5498

[11/30/98; 18.27.3.1 NMAC – Rn, 18 NMAC 27.3.1, Recompiled 11/16/01]

#### **18.27.3.2 SCOPE:**

This rule covers all Counties, Municipalities or entities experiencing financial hardship.

[11/30/98; 18.27.3.2 NMAC – Rn, 18 NMAC 27.3.2, Recompiled 11/16/01]

#### **18.27.3.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 67-3-11, 67-3-28 and 67-3-28.2.

[11/30/98; 18.27.3.3 NMAC – Rn, 18 NMAC 27.3.3, Recompiled 11/16/01]

#### **18.27.3.4 DURATION:**

Permanent.

[11/30/98; 18.27.3.4 NMAC – Rn, 18 NMAC 27.3.4, Recompiled 11/16/01]

#### **18.27.3.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of a section or paragraph.

[11/30/98; 18.27.3.5 NMAC – Rn, 18 NMAC 27.3.5, Recompiled 11/16/01]

#### **18.27.3.6 OBJECTIVE:**

The New Mexico Legislature occasionally provides a certain amount of Local Government Road Funds to be used by the State Highway and Transportation Department in place of normally required Local Government Matching Funds for Cooperatives, School Bus Routes, Municipal Arterial or County Arterial Projects, in any

given fiscal year, in the event of financial hardship by an eligible entity as determined by the Secretary of the State Highway and Transportation Department and as authorized by the State Highway Commission.

[11/30/98; 18.27.3.6 NMAC – Rn, 18 NMAC 27.3.6, Recompiled 11/16/01]

#### **18.27.3.7 DEFINITIONS:**

- A. "Commission" means State Highway Commission.
- B. "Department" means New Mexico State Highway and Transportation Department.
- C. "DFA" means Department of Finance & Administration.
- D. "LGRF" means Local Government Road Fund.
- E. "Secretary" means Cabinet Secretary of the New Mexico State Highway and Transportation Department.

[11/30/98; 18.27.3.7 NMAC – Rn, 18 NMAC 27.3.7, Recompiled 11/16/01]

#### **18.27.3.8 GUIDELINES:**

The following guidelines are established for administration of funds authorized by the legislature.

- A. Only entities which submitted requests for Cooperative, School Bus Routes, Municipal Arterial, or County Arterial projects from the Local Government Road Fund Program by the deadline specified by the District Engineer shall be eligible for waivers.
- B. Entities eligible for participation in the LGRF Program may request a waiver of their matching share in whole or in part due to financial hardship. All project requests including all waiver requests with supporting documentation shall be submitted to the District Engineer or designee for their respective areas.
- C. Waiver of matching funds shall not be considered if an entity already has a project under agreement using current fiscal year funding. Matching funds will not be waived for more than one project per entity, except for counties which would be eligible for one cooperative project and one county arterial project.
- D. A waiver must be requested and determination made before a Cooperative Project Agreement has been signed with the Department. The Secretary may waive this provision when it is in the best interest of the State to do so.

E. If an entity wants to establish a financial hardship, it should submit a resolution or certification indicating that it cannot match all or a portion of its share. The resolution or certification shall be signed by the appropriate official(s).

F. After receiving a resolution or certification declaring financial hardship, the District Engineer shall consider all known facts such as severe winter weather, flooding, emergency work, past history, whether the entity has exhausted taxing authority, and other information that would tend to prove financial hardship.

G. The District Engineer shall request from the Local Government Division of the DFA, or State Board of Education, a financial analysis and recommendation on an entity's financial hardship for the fiscal year in which the waiver is requested.

H. If financial hardship is evident the District Engineer shall submit the entity's request and resolution or certification along with recommendation that the waiver of matching funds be granted. If financial hardship is not evident, the District Engineer shall so notify the entity in writing.

I. If financial hardship has been determined and the entity is not providing matching funds, the maximum amount the entity can receive from the LGRF in any fiscal year is \$75,000, except for County Arterial Projects where the maximum shall be the county's share mandated by legislative formula, plus the standard 25% match. This maximum amount may be waived depending on the demand on the funds which are available.

J. The Secretary shall review the District Engineer's recommendation and recommend action to the Commission. The Commission shall take action on the Secretary's recommendation at a regularly scheduled Commission meeting.

K. The District Engineer shall be notified of the Commission's action by the Secretary and in turn shall notify the entity.

L. If the Commission approves the recommended action, a Cooperative Agreement shall be accordingly entered into.

M. The State Maintenance Bureau shall be responsible for accounting and totaling the funds being expended out of the funds provided for financial hardships.

N. For Municipal Arterial Projects, the State Maintenance Engineer shall be substituted and take the place of the District Engineer in these guidelines.

O. Any agreement involving waiver of an entity's fiscal year matching funds shall be processed prior to December 31, of that fiscal year, or as otherwise determined by the Secretary.

P. If a public entity is not using maximum tax levy authority, the entity shall provide a written explanation of why the maximum tax levy is not being imposed prior to the Department considering the waiver request.

[11/30/98; 18.27.3.8 NMAC – Rn, 18 NMAC 27.3.8, Recompiled 11/16/01]

## **PART 4: GUIDELINES FOR PURCHASE OF SURPLUS EQUIPMENT VIA LOCAL GOVERNMENT ROAD FUNDS**

### **18.27.4.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation

Department Post Office Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5587.

[11/30/98; 18.27.4.1 NMAC – Rn, 18 NMAC 27.4.1, Recompiled 11/16/01]

### **18.27.4.2 SCOPE:**

This provides guidelines on the expenditure of funds in the Local Government

Road Fund for the purchase of New Mexico State Highway and Transportation  
Department surplus

equipment for all counties, municipalities or entities who demonstrate financial hardship.

[11/30/98; 18.27.4.2 NMAC – Rn, 18 NMAC 27.4.2, Recompiled 11/16/01]

### **18.27.4.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 67-3-28.2.

[11/30/98; 18.27.4.3 NMAC – Rn, 18 NMAC 27.4.3, Recompiled 11/16/01]

### **18.27.4.4 DURATION:**

Permanent.

[11/30/98; 18.27.4.4 NMAC – Rn, 18 NMAC 27.4.4, Recompiled 11/16/01]

### **18.27.4.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of a section or paragraph.

[11/30/98; 18.27.4.5 NMAC – Rn, 18 NMAC 27.4.5, Recompiled 11/16/01]

#### **18.27.4.6 OBJECTIVE:**

To allow qualified entities up to \$25,000 to purchase surplus equipment that would not otherwise be available due to financial hardship.

[11/30/98; 18.27.4.6 NMAC – Rn, 18 NMAC 27.4.6, Recompiled 11/16/01]

#### **18.27.4.7 DEFINITIONS:**

A. "Commission" means State Highway Commission.

B. "Department" means New Mexico State Highway and Transportation Department.

[11/30/98; 18.27.4.7 NMAC – Rn, 18 NMAC 27.4.7, Recompiled 11/16/01]

#### **18.27.4.8 GUIDELINES:**

The following guidelines are established for administration of the provisions:

A. Only municipalities and counties that can demonstrate financial hardship shall be eligible.

B. Entities shall submit to the State Maintenance Bureau a resolution or certification indicating their financial hardship. The resolution or certification shall be signed by the Municipal Mayor or Manager, County Commission Chairman, or other authorized official. Also, the entities shall provide a listing of equipment that will be desired.

C. If a public entity is not using maximum tax levy authority, the entity shall provide a written explanation of why the maximum tax levy is not being imposed prior to the Department considering the waiver request.

D. Determination of financial hardship status shall be based on contents of submitted resolution or certification; financial statements requested from DFA, Local Government Division, and any other information available or provided by the entity that would tend to substantiate financial hardship. An annual deadline for receipt of these documents is the last day of April each year. This will allow time for a sufficient review and processing time.

E. All qualified entities will be reviewed on a competitive basis. If financial hardship is evident, the State Maintenance Engineer or his designee shall submit the entity's request and resolution or certification along with a recommendation for approval to the Department's Secretary. If financial hardship is not evident, the State Maintenance Engineer shall so notify the entity in writing.

F. The Department is Secretary shall review the recommendation of the State Maintenance Engineer and recommend action to the Commission.

G. Upon notification of the Commission's action, the State Maintenance Engineer shall, in turn, notify the entity.

H. Approved/qualifying entities shall be allowed to purchase surplus equipment at a location and during a time period determined by Department and shall be provided necessary sale information upon notification of approval. Entity representations shall be limited to two (2) individuals per entity during the Hardship Auction. Entities shall be limited to two consecutive annual awards, and then a maximum one year restriction will be enforced to allow for fair and proper distribution of State funds. This restriction is waived if the total number of qualified entities does not exceed twenty (20).

I. Approved entities will be limited to two (2) items in class (02) vehicles (sedans) and up to four (4) items in class (03) (pickups, 1/2 ton to 3/4 ton). There is also a limit of two (2) in other classes of equipment. The total dollar amount shall not exceed \$25,000 per entity.

J. Monies uncommitted by entities during the designated sale period shall revert to the Local Government Road Fund.

[11/30/98; 18.27.4.8 NMAC – Rn, 18 NMAC 27.4.8, Recompiled 11/16/01]

## **PART 5: CONTRACTOR PREQUALIFICATION RULE**

### **18.27.5.1 ISSUING AGENCY:**

The New Mexico department of transportation, PO Box 1149, Santa Fe, New Mexico, 87504-1149.

[18.27.5.1 NMAC - Rp, 18.27.5.1 NMAC, 6/8/2021]

### **18.27.5.2 SCOPE:**

This rule applies to the New Mexico department of transportation construction projects and to all contractors and subcontractors seeking or anticipating the performance of work within project limits.

[18.27.5.2 NMAC - Rp, 18.27.5.2 NMAC, 6/8/2021]

### **18.27.5.3 STATUTORY AUTHORITY:**

Section 13-1-82 NMSA 1978 13-1-133 to -134 NMSA 1978, 67-3-2, 67-3-11, 67-3-14, and 67-3-43 NMSA 1978, 23 USC Section 112(b), 23 CFR Sections 635.110 and 635.114.

[18.27.5.3 NMAC - Rp, 18.27.5.3 NMAC, 6/8/2021]

**18.27.5.4 DURATION:**

Permanent.

[18.27.5.4 NMAC - Rp, 18.27.5.4 NMAC, 6/8/2021]

**18.27.5.5 EFFECTIVE DATE:**

June 8, 2021, unless a later date is cited at the end of a section.

[18.27.5.5 NMAC - Rp, 18.27.5.5 NMAC, 6/8/2021]

**18.27.5.6 OBJECTIVE:**

To establish policies and procedures for a determination of responsibility through a contractor prequalification system that directly rewards good performers and encourages poor performers to improve.

[18.27.5.6 NMAC - Rp, 18.27.5.6 NMAC, 6/8/2021]

**18.27.5.7 DEFINITIONS:**

**A.** This rule adopts the abbreviations, symbols and definitions in the division 100-general provisions of the current edition of the *New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction* and incorporates the same by reference.

**B.** CID is the abbreviation of construction industries division.

**C.** Compass form means the New Mexico department of transportation form generated at prequalification project closure that documents certain contractor performance measurement data.

**D.** Department means the New Mexico department of transportation.

**E.** Innovative contracting is an alternate form of competitive bidding consistent with federal and state procurement laws that can result in work being awarded to a responsible bidder that did not submit the lowest monetary bid.

**F.** Modified bid amount means the contractor's bid multiplied by the contractor's prequalification factor rolling average or Pqfra. The modified bid amount will be used solely for determining the apparent lowest responsible bidder. The modified bid amount will not be used for payment.

**G.** Packet or prequalification packet means the current New Mexico department of transportation contractor prequalification application form issued by the office of inspector general and completed by a contractor or subcontractor.

**H.** Performance factor or Pf means the numerical quantification of a contractor's past performance on closed projects for certain objectively measureable criteria.

**I.** Pf claim or Pfc means the performance measurement of a contractor's unsuccessful demand for reconsideration of a claim, pursued beyond the cabinet secretary administrative remedy level final determination through recourse to litigation or arbitration subsequent to an unsuccessful public works mediation.

**J.** Pf disincentive or Pfd means the performance measurement of a contractor's quality of work for certain contract items related to pavement and structures work where the materials are subject to laboratory testing by both the contractor and department or quality-based price reductions. Applicable project contract items for Pf disincentive are governed by division 400, 500, and 900 quality criteria, as established in the current edition of the *New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction* and as may be amended by special provision.

**K.** Pf liquidated damages or Pfld means the performance measurement of a contractor's timely completion of the contract.

**L.** Pf non-conformance or Pfn means the performance measurement of a contractor's compliance with the terms and conditions of the contract.

**M.** Pf safety or Pfs means the performance measurement of a contractor's safety reflected by the contractor's experience modifier rate or emr provided by the contractor's bonding company.

**N.** Prequalification factor rolling average or Pqfra means the final measure of responsibility that may be applied to a contractor's bid resulting in a modified bid amount.

**O.** Prequalification factor year or Pqfyr means the yearly calculation of a contractor's performance factors.

**P.** Prequalification factor or Pqf means the overall mathematical analysis of the performance factors that measure contractor responsibility.

**Q.** Prequalification project means a major construction project that is let through the plans specifications and estimates bureau of the department, as a competitive sealed bid procurement resulting in a contract executed by the department. The definition of prequalification project expressly excludes maintenance and other construction services work procured by any other means, including but not limited to, multiple source award,



price agreement, sole source, qualification-based, design-build, job order contracting or small purchase procurement methods.

**R.** Prequalification project closure for purposes of the application of the prequalification calculation means the date of physical completion of the project as established in the current edition of the *New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction*, section 109.10.8, which is documented on the compass form.

**S.** Responsibility means an objective determination made by the department, based on past performance, of the contractor's capability in all respects to perform fully and make satisfactory delivery of the requirements of the contract including the integrity and reliability that will assure good faith performance.

**T.** Rolling average means a calculation to analyze data points by creating a series of averages of different subsets of the full data set.

[18.27.5.7 NMAC - Rp, 18.27.5.7 NMAC, 6/8/2021]

#### **18.27.5.8 PREQUALIFICATION PROCEDURE:**

To obtain prequalified status, the current version of the prequalification packet must be obtained from the office of inspector general through use of the department website. Each contractor and subcontractor seeking to become prequalified shall submit its prequalification packet and any supporting information to the department's office of inspector general as indicated in the prequalification packet. Untimely, incomplete and non-conforming packets will not be processed.

**A.** Prequalified status will be granted upon the approval of a timely, complete and conforming prequalification packet by the office of inspector general.

**B.** An untimely, incomplete, or nonconforming packet will result in delays affecting prequalification status and will negatively impact the prime contractor's ability to bid on New Mexico department of transportation projects.

**(1)** Obtaining prequalified status is a condition to submitting a bid. Prime contractors submitting a new prequalification packet or renewal prequalification packet must be approved no later than seven calendar days before the opening of any bid.

**(2)** A prime contractor's submitting a bid without timely obtaining prequalified status shall result in a determination that its bid is non-responsive and the bid shall be rejected.

**C.** Subcontractors, at any tier, must obtain prequalified status before performing any work on the project. Work performed without prequalified status shall be non-compensable.

**D.** For prime contractors and subcontractors who are currently prequalified by the effective date of this rule the applicant will not need to submit a new prequalification packet until the anniversary date of their last packet.

**E.** Within five calendar days from the receipt of a prequalification packet the office of inspector general will provide notice of receipt of the packet to the contractor.

**(1)** If the packet submitted is complete and conforming then the office of inspector general will provide written notice to the applicant of approved prequalified status.

**(2)** If the packet submitted is incomplete or does not conform to the requirements then the office of inspector general will provide written notice to the applicant that the packet will not be processed until the packet is complete and conforms to the requirements.

**(3)** The date of the written notice of approved prequalified status shall establish prequalification eligibility for a period of one year. Prequalified status shall automatically terminate if not renewed prior to the expiration date established by the written notice of approved prequalification status.

**F.** Renewal packets shall be submitted no more than 30 calendar days before the expiration date on the document published by the office of inspector general titled prequalified contractors and subcontractors list. Prequalified status shall automatically terminate for the failure to submit a timely, complete and conforming renewal packet. Prequalified status shall be re-established upon the approval of a complete and conforming renewal packet.

**G.** Appeal of the denial of prequalification eligibility based upon the receipt of untimely, incomplete or non-conforming packet shall be submitted in writing to the office of inspector general with supporting documentation within seven calendar days of the denial of prequalified status. If the appeal is untimely the aggrieved party waives the right to appeal. The inspector general, or designee, will issue a final written decision upholding or reversing the denial of prequalified status within seven calendar days of the receipt of a timely appeal. The inspector general's decision constitutes the final action taken by the office of inspector general related to a denial of prequalified status under this section.

**H.** Obtaining prequalification status, a performance factor, or a prequalification factor rolling average does not grant a license to do business, a right to bid or to be awarded a contract.

**I.** In the event a contractor or subcontractor is suspended or debarred, its prequalification status shall immediately and automatically terminate without further notice. In order to obtain renewed prequalification status after a period of suspension or

debarment a new complete and conforming prequalification packet must be submitted and approved.

[18.27.5.8 NMAC - Rp, 18.27.5.8 NMAC, 6/8/2021]

#### **18.27.5.9 DEFICIENT, FALSE OR MISLEADING STATEMENTS:**

Any deficient, deceptive, false, fraudulent or misleading statements in the prequalification packet or incomplete affidavit may subject the offending party to an automatic rejection or revocation of prequalified status, suspension, debarment proceedings or other civil and criminal penalties under the department rules and may be reported to the New Mexico attorney general and the federal highway administration for further action.

[18.27.5.9 NMAC - Rp, 18.27.5.9 NMAC, 6/8/2021]

#### **18.27.5.10 LICENSING:**

Only contractors licensed in New Mexico may perform highway construction work for the department. The timing and requirements for licensure appear in the invitation for bids for the project. All persons seeking additional information should refer to the New Mexico CID rules and regulations and the Construction Industries Licensing Act. Contractors are not required to have the necessary construction industry licenses to submit a prequalification packet.

[18.27.5.10 NMAC - Rp, 18.27.5.10 NMAC, 6/8/2021]

#### **18.27.5.11 PREQUALIFICATION CALCULATION:**

Prequalification calculations shall only be applied to those prequalification projects, which the contractor performed pursuant to a contract with the department and obtained prequalification project closure status documented by a completed compass form. The department will gather prime contractor performance data from each prequalification project upon prequalification project closure. The data collected will be used to calculate a yearly prequalification factor. The department may apply prequalification factor rolling average calculations as a responsibility evaluation to evaluate prime contractor bids for award of department projects, as indicated in the invitation for bids.

**A.** The performance factors are claims, disincentives, liquidated damages, non-conformance, and safety.

**(1)** Pf claim data will be documented on the compass form and will be collected from the department's closed project records.

**(2)** Pf disincentive data will be documented on the compass form and will be collected from the department's closed project records indicating whether disincentives were assessed based on calculations in the applicable standard specifications.

**(3)** Pf liquidated damages data will be documented on the compass form and will be collected from the department's closed project records indicating whether liquidated damages were assessed.

**(4)** Pf non-conformance data will be documented on the compass form and will be collected from the department's closed project records indicating whether non-conformances were assessed.

**(5)** Pf safety data will be the contractor's experience modifier rating as reported on its prequalification packet.

**B.** The performance factors are assigned percentage values within the yearly prequalification factor calculation.

**(1)** The percentage associated with claims is fifteen percent.

**(2)** The percentage associated with disincentives is thirty percent.

**(3)** The percentage associated with the liquidated damages is thirty percent.

**(4)** The percentage associated with non-conformances is twenty percent.

**(5)** The percentage associated with safety is five percent.

**C.** Pf claim or Pfc is calculated in the following manner:

**(1)** Claims that are not pursued subsequent to the cabinet secretary administrative remedy level or to a public works mediation held pursuant to the public works mediation act, section 13-4C-1 NMSA 1978, will not be included in the calculation for Pf claim.

**(2)** For claims that a contractor pursues beyond the cabinet secretary administrative remedy level, and for which the department receives service of process of a summons and complaint or a request for arbitration, a binary system will be used to assign a value of zero or one to evaluate claims.

**(a)** Claims resolved for more than the value offered by the department at the cabinet secretary administrative remedy level will be assigned a value of zero.

**(b)** Claims resolved for less than or equal to the value offered by the department at cabinet secretary administrative remedy level will be assigned a value of one.

**(3)** Pf claim is calculated by adding the number one to the outcome of the sum of the claim value divided by the sum of closed projects.

**(4)** Pf claim resulting in a value of one will be assigned a bonus value for Pf claim equal to 0.9.

**(5)** Pf claim will then be multiplied by the percentage associated with Pf claim. The resulting value will be incorporated into Pqfyr.

**D.** Pf disincentive or Pfd is calculated in the following manner:

**(1)** For each closed project:

**(a)** Sum paid and accepted applicable contract items.

**(b)** Sum paid and accepted applicable contract items less applicable contract disincentives.

**(c)** Divide the total of Subparagraph (a) by the total of Subparagraph (b).

**(d)** If Subparagraph (a) is equal to zero, Subparagraph (c) will be assigned a value of one.

**(e)** If the result of Subparagraph (c) is exactly one with paid and accepted applicable contract items, Subparagraph (c) will be assigned a value equal to 0.9.

**(2)** Sum all closed projects of Subparagraph (c) in a given year and divide by the count of closed projects resulting in Pfd.

**(3)** Pf disincentive will then be multiplied by the percentage associated with Pf disincentive. The resulting value will be incorporated into Pqfyr.

**E.** Pf liquidated damages or Pfld has two separate methods of calculation one for mandatory completion date projects and one for calendar or working day projects:

**(1)** For mandatory completion date projects liquidated damages equivalence is calculated:

**(a)** Subtract the mandatory completion date including any awarded time from the notice to proceed date to equate to a whole number.

**(b)** Subtract the actual completion date from the notice to proceed date to equate to a whole number.

**(c)** Divide the total of Subparagraph (b) by the total of Subparagraph (a) of Paragraph (1) of Subsection E of this section.

**(d)** A resulting value less than or equal to one from Subparagraph (c) of Paragraph (1) of Subsection E of this section will be assigned a bonus value equal to 0.9.

**(2)** For calendar or working day projects liquidated damages equivalence is calculated:

**(a)** Sum of the total days charged.

**(b)** Sum of the total days contracted.

**(c)** Divide the total of Subparagraph (a) by Subparagraph (b).

**(d)** A resulting value less than or equal to one from Subparagraph (c) will be assigned a bonus value equal to 0.9.

**(3)** Pf liquidated damages for a given year is calculated from all project liquidated damages. Pf liquidated damages is the sum of liquidated damages equivalence for mandatory completion date, calendar or working day projects divided by the count of closed projects resulting in Pfld.

**(4)** Pf liquidated damages will then be multiplied by the percentage associated with Pfld. The resulting value will be incorporated into Pqfyr.

**F.** Pf non-conformance or Pfn is calculated in the following manner:

**(1)** Sum the number of progress payments per project.

**(2)** Sum the number of progress payments without non-conformance.

**(3)** Divide Paragraph (1) by Paragraph (2).

**(4)** A resulting value of one for Paragraph (3) will be assigned a bonus value equal to 0.9.

**(5)** Sum all closed projects of Paragraph (4) in a given year and divide by the count of closed projects resulting in Pfn.

**(6)** Pf non-conformance for a given year will then be multiplied by the percentage associated with Pfn. The resulting value will be incorporated into Pqfyr.

**G.** The performance factor for safety or Pfs is the contractor's experience modifier rate supplied annually by the contractor at the time of submission of the prequalification packet.

**(1)** Pfs for a given year is the numerical value of the contractor's experience modifier rate.

**(2)** If the experience modifier is equal to or less than one the Pfs is assigned a value of 0.9.

**(3)** The experience modifier rate is multiplied by the percentage associated with Pfs. The resulting value will be incorporated into Pqfyr.

**H.** The contractor's yearly performance factor or Pqfyr is the sum of the individual performance factors multiplied by their associated percentages.

**I.** The equation is  $Pqfyr = Pfc * \text{fifteen percent} + Pfd * \text{thirty percent} + Pfd * \text{thirty percent} + Pfn * \text{twenty percent} + Pfs * \text{five percent}$ .

**J.** The contractor's prequalification factor rolling average will be denoted as Pqfra, which will be calculated through the use of a rolling average covering a period of three years. Each rolling average year will be assigned a weighting factor and will be multiplied by the appropriate weighting factor starting with the most recent year.

**(1)** The equation for Pqfra =  $((Pqfyr\ 1 * 0.9) + (Pqfyr\ 2 * 0.6) + (Pqfyr\ 3 * 0.3)) / (0.9 + 0.6 + 0.3)$ . A contractor's overall Pqfra is the sum of Pqfyr 1 through Pqfyr 3, each multiplied by the appropriate weighting factor, is divided by the sum of all weighting factors to result in the contractor's overall Pqfra.

**(a)** Pqfyr 1, the most recent year, will be multiplied by the weighting factor of 0.9.

**(b)** Pqfyr 2, the first preceding year. will be multiplied by the weighting factor of 0.6.

**(c)** Pqfyr 3, the second preceding year, will be multiplied by the weighting factor of 0.3.

**(d)** In the absence of data for any given year, a contractor's Pqfyr will be assigned a value of one.

**(2)** All equations and calculations whether interim or final will be rounded to the thousandths place.

**(3)** After all rounding has occurred any Pqfra that has an assigned value of less than or equal to 0.94 will, then, be assigned a value of 0.94, for the purposes of calculating the modified bid amount.

**K.** The resulting Pqfra calculation will be the final department determination of a contractor's most recent Pqfyr and Pqfra calculations.

L. The department may reset the Pqfra calculation for all contractors in the event the Pqfyr equation is amended.

(1) Upon reset all contractor scores will be set to one.

(2) The department may implement the reset by setting Pqfyr 1 to cover a period of performance not to exceed two years.

(3) The new calculation will apply to those prequalification projects let after the effective date of the amendment.

[18.27.5.11 NMAC - Rp, 18.27.5.11 NMAC, 6/8/2021]

#### **18.27.5.12 POSTING, REVIEW AND APPLICATION OF PREQUALIFICATION FACTOR:**

The following procedures will apply to the posting, review and application of the prequalification factor:

A. The Pqfra will be calculated once a year on prequalification projects closed between March first of the previous year and the last calendar day in February of the current year.

B. The Pqfra will be posted on the department's website, in the office of inspector general document titled prequalified contractors and subcontractors list, by the second Friday in March.

C. The Pqfra will be applied to a prime contractor's bid(s) for prequalification projects in accordance with the invitation for bids beginning with the May bid opening until superseded by an updated Pqfra

D. The Pqfra may be used to determine the modified bid amount.

E. A Pqfra may be re-calculated and reposted at times other than the second Friday in March in order to implement the decision of a hearing officer, a court order or a required correction.

[18.27.5.12 NMAC - Rp, 18.27.5.12 NMAC, 6/8/2021]

#### **18.27.5.13 ADMINISTRATIVE REVIEW:**

This section governs the exclusive administrative review procedure and remedy to address prequalification calculations performed under 18.27.11 NMAC.

A. To protest the department's application of a prequalification score to a bid, the contractor must follow the bidding dispute resolution procedures in the current edition of



the *New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction*, section 103.3.

**B.** Administrative review of a prequalification calculation is available only for a contractor seeking reconsideration of its own score. The department shall reject a request for administrative review of another contractor's score.

**C.** To be considered by the department, a request for administrative review shall strictly conform in timing form and service of filing as provided in this section. Any request for administrative review that does not comply with these directives may be rejected and deemed denied.

**(1)** Form: the request shall be in writing. The request shall include a plain statement of the issue, grounds for reconsideration, and requested relief.

**(2)** Timing: The request for review shall be served within 10 days of the date the office of inspector general posts the prequalified contractors and subcontractors list.

**(3)** Service: A request shall be served on the department cabinet secretary with a contemporaneous copy provided to the office of inspector general and the office of general counsel at the respective address for each.

**(a)** A request may be served in person, by certified mail, return receipt requested, or by delivery by a nationally recognized courier. Service cannot be perfected and the department shall not consider requests made by electronic mail or facsimile.

**(b)** Service shall be made during the department's normal business hours. Any service made after business hours will be considered effective the next business day.

**D.** The department cabinet secretary shall, within 10 days of receipt of a conforming request, provide written notice to the contractor of the department's decision resolving the matter or submitting the matter to an informal hearing.

**(1)** Notice of the election to refer the matter for an informal hearing shall designate a neutral person or the cabinet secretary as the hearing officer.

**(2)** Notice of the election submitting the matter to an informal hearing shall stay application of the contractor's Pqfra pending completion of the administrative remedy.

**E.** The designated hearing officer shall, within 10 days of the notice of appointment, provide written notice of the scheduled informal hearing date, time and location.

(1) The notice of hearing will be provided to the parties no later than seven calendar days before the chosen hearing date.

(2) The hearing officer has the discretion to determine the location of the hearing and whether telephonic or video appearance will be allowed.

(3) No continuances of the hearing will be granted except as determined by the hearing officer.

(4) The hearing officer shall set the deadlines and method for pre-hearing submittals no later than three business days before the hearing.

**F.** The informal hearing shall be a hearing on the record. The hearing officer will conduct the hearing as informally as is practicable to facilitate fact-finding. The formal rules of civil procedure, formal discovery processes and the formal rules of evidence shall not apply to the conduct of the informal hearing.

(1) The hearing officer shall determine the degree of formality of the hearing, the total time allotted for the informal hearing and how the time will be apportioned between the parties.

(2) Legal representation is not required but any party may choose to have legal counsel present. Legal counsel is prohibited from testifying but may offer opening or closing statements.

(3) The contractor has the burden of proof to show by substantial evidence the department incorrectly performed the prequalification factor calculation.

(4) A party may call its own witnesses to provide relevant testimony but may not subpoena or cross-examine witnesses. The hearing officer shall have the exclusive authority to question any party or witness.

(5) A party may provide written documents to the hearing officer, including relevant laws, rules, regulations, specifications to support the party's position, at least three business days prior to the hearing date. Presentation of such evidence shall be made electronically to the hearing officer and opposing party, whenever practicable. During a hearing, a party may offer additional written evidence to the hearing officer with copy to opposing party. Such evidence may be added to the record at the hearing officer's discretion.

(6) Before concluding the hearing, the hearing officer may hold the proceeding open for three days after the hearing date for receipt of supplemental evidence, material or closing statements. When directed, parties may timely supplement the record after the hearing by providing such materials to the informal hearing officer and the opposing party.

**G.** The hearing officer's final written decision concludes the administrative remedy and constitutes the department's final agency action on the matter.

**(1)** The hearing officer shall issue the written decision within seven calendar days of the conclusion of the administrative hearing proceedings unless the deadline is otherwise extended by the hearing officer. The deadline for issuing the determination shall not exceed twenty-one calendar days from the conclusion of the hearing proceedings or April 30, whichever occurs first.

**(a)** To reach a decision, the hearing officer may use any reliable information, no matter the source. If the hearing officer uses information not provided by either party that information shall be entered into the record and the use of that information will be documented in the written decision.

**(b)** In the written decision, the hearing officer will make findings concerning the credibility of witness testimony and the reliability, significance and sufficiency afforded the evidence on the record.

**(2)** The hearing officer shall be responsible for maintaining a record of the evidence and proceeding during the administrative review. After completion of the decision, the hearing officer shall provide the department with a certified copy of the record. The administrative record shall be maintained by the department for seven years after the date of the decision on the matter.

**H.** The department shall implement the hearing officer's decision for the May bid openings.

**(1)** If a party remains aggrieved by the hearing officer's decision that party may seek judicial review.

**(2)** Judicial review shall be an appellate, record review and must be brought in the first judicial district court.

**(3)** If the matter is submitted to judicial review, each party shall bear its own costs and attorney fees.

[18.27.5.13 NMAC - Rp, 18.27.5.13 NMAC, 6/8/2021]

#### **18.27.5.14 PREQUALIFICATION COMMITTEE:**

Members of the prequalification committee will be designated by the department's cabinet secretary and shall meet annually to review the prequalification process. Any information reported by a prime contractor or subcontractor during the prequalification process may be reviewed by the prequalification committee to determine responsibility. The cabinet secretary has the exclusive authority to determine the department threshold applicable to project lettings. The committee may make recommendations to the

cabinet secretary for adjusting the department threshold for application of Pqfra to project bid lettings.

[18.27.5.14 NMAC - Rp, 18.27.5.14 NMAC, 6/8/2021]

**18.27.5.15 PREQUALIFICATION FOR CONSOLIDATED CORPORATIONS, MERGED CORPORATIONS, AND JOINT VENTURES:**

The following prequalification packet procedure and Pqfra will apply to consolidated corporations, merged corporations and joint ventures:

**A.** For a consolidated or merged corporation pursuant to Section 53-14-6 NMSA 1978, or a similar statutory provision, the new corporation must be prequalified no later than seven calendar days before the opening of any bid. The Pqfra score of the surviving corporation will be the highest Pqfra of the individual corporations.

**B.** Each prime contractor participating in the joint venture must be individually prequalified seven calendar days before bid opening to join forces as a joint venture for bidding and performing work related to a single project. The joint venture itself need not prequalify.

**(1)** The joint venture shall file with the office of inspector general at least seven calendar days before the opening of any bid a completed statement of joint venture form. The most current version of the statement of joint venture form must be obtained from the New Mexico department of transportation website.

**(2)** For joint ventures the higher value of all joint venture applicant's Pqfra will be used for the modified bid amount.

**(3)** Each prime contractor participating in the joint venture will receive a compass form for the project to be used in calculating the prime contractor's individual prequalification factor.

[18.27.5.15 NMAC - Rp, 18.27.5.15 NMAC, 6/8/2021]

**18.27.5.16 ADOPTION OF THE NEW MEXICO STATE DEPARTMENT OF TRANSPORTATION CURRENT EDITION OF THE STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION:**

This rule adopts by reference the current edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, as amended by this rule.

[18.27.5.16 NMAC - Rp, 18.27.5.16 NMAC, 6/8/2021]

**PART 6: LOCAL GOVERNMENT TRANSPORTATION PROJECT FUND**

**18.27.6.1 ISSUING AGENCY:**

New Mexico department of transportation, Post Office Box 1149, Santa Fe, New Mexico 87504-1149.

[18.27.6.1 NMAC - N, 4/20/2021]

**18.27.6.2 SCOPE:**

This rule covers the application, evaluation, award and close out process for the transportation project fund (the fund) and all eligible entities in the state of New Mexico applying for and receiving grant money from the fund.

[18.27.6.2 NMAC - N, 4/20/2021]

**18.27.6.3 STATUTORY AUTHORITY:**

Sections 67-3-11, 67-3-28 and 67-3-78 NMSA 1978.

[18.27.6.3 NMAC - N, 4/20/2021]

**18.27.6.4 DURATION:**

Permanent.

[18.27.6.4 NMAC - N, 4/20/2021]

**18.27.6.5 EFFECTIVE DATE:**

April 20, 2021 unless a later date is cited at the end of a section.

[18.27.6.5 NMAC - N, 4/20/2021]

**18.27.6.6 OBJECTIVE:**

**A.** In 2019, the New Mexico legislature enacted Laws of 2019, Chapter 205, Section 1, which created the local government transportation project fund and was compiled as Section 67-3-78 NMSA 1978. In 2020, the New Mexico legislature enacted Laws of 2020, Chapter 31, Section 1, which made certain amendments to the local government transportation project fund enabling statute including changing the title of the fund to simply "transportation project fund." Money in the transportation project fund is appropriated to the New Mexico department of transportation to administer the fund and to make grants to eligible entities for transportation projects.

**B.** The purpose of this rule is to describe the application, evaluation, award, and close out processes to be administered by the department for money appropriated to

the fund by the New Mexico legislature for the development of transportation infrastructure.

[18.27.6.6 NMAC - N, 4/20/2021]

#### **18.27.6.7 DEFINITIONS:**

As used in this rule:

**A. "Annual appropriation"** means the annual amount of state funds appropriated to the fund by the legislature.

**B. "Beautification project"** means a landscape project that is intended to enhance the attractiveness of a public right-of-way or a transportation facility.

**C. "Commission"** means the state transportation commission.

#### **D. Definitions beginning with "D":**

**(1) "Department"** means the New Mexico department of transportation.

**(2) "DFA"** means the department of finance and administration of the state of New Mexico.

**(3) "Directive"** is a written communication that prescribes or establishes policy, organization, methods, procedures, requirements, guidelines, or delegations of authority. It also provides information essential to the administration or operation of the fund.

**(4) "District"** means one of the six New Mexico department of transportation districts.

**(5) "District engineer"** means the department of transportation district engineer as designated pursuant to Subsection C of Section 67-3-8 NMSA 1978.

**E. "Eligible entity"** means those entities eligible under the provisions of the transportation project fund to receive grants for transportation projects.

#### **F. Definitions beginning with "F":**

**(1) "Fiscal year"** means 12 calendar months commencing on July first and ending on June 30 of the year being described.

**(2) "Fund"** has the same meaning as defined in Section 67-3-78 NMSA 1978 (2019).

**G. Definitions beginning with "G":**

- (1) "Grant"** means the award of funds from the fund to a grantee for a transportation project.
- (2) "Grantee"** means an eligible entity receiving a grant.
- (3) "Grant agreement"** means a written document memorializing the terms and conditions of a grant award granted pursuant to the grant program.
- (4) "Grant award"** means the funds awarded to a grantee from the fund pursuant to a grant.
- (5) "Grant program"** means the grant program established by the department to make grants to eligible entities for transportation projects.

**H. Definitions beginning with "H": [RESERVED]**

**I. Definitions beginning with "I": [RESERVED]**

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L":**

- (1) "Landscape" or "landscaping"** means any vegetation, mulches, irrigation systems, and other landscape components, such as street furniture, specialty paving, tree gates, walls, planters, fountains, fences, and lighting (excluding public utility street and area lighting).
- (2) "Landscape project"** means any planned or actual landscape or landscaping on a public right-of-way, including its construction or installation, planning, beautification, and maintenance thereof, by a municipality, county, tribe, or an abutting private property owner or other non-governmental entity.
- (3) "Letter of approval"** means a document issued by a district engineer that authorizes an eligible entity to proceed with a project that is located in full or in part within a department right-of-way or NHS route, or when the project ties into or crosses a department right-of-way or an NHS route, or when the project may have an effect on existing improvements within department rights-of-way. A project agreement is not required for a project that receives a letter of approval.
- (4) "Letter of authorization"** means a document issued by a district engineer that authorizes an eligible entity to proceed with seeking funding for a project that is located in full or in part within a department right-of-way or NHS route, or when the

project ties into or crosses a department right-of-way or an NHS route, or when the project may have an effect on existing improvements within department rights-of-way. A letter of authorization is a conditional approval of a project. Final approval shall be given by a project agreement.

(5) **"Local funds"** means revenue received from any locally imposed gross receipts tax, property tax, municipal gasoline tax, franchise fee, user fees or any other locally imposed fees or taxes, and enterprise activities, which can be lawfully used for transportation projects, but excluding state grants and loans and federal grants.

#### **M. Definitions beginning with "M":**

(1) **"Maintenance"** is defined as the planned strategy of extending the service life of an existing roadway system, including its structures and appurtenances, by applying cost-effective treatments or procedures that preserves the system, retards future deterioration, and maintains or improves the functional condition of the system without significantly increasing the structural capacity. Examples of pavement related maintenance activities include asphalt crack sealing, chip sealing, slurry or micro-surfacing, thin and ultra-thin hot-mix asphalt overlay, concrete joint sealing, diamond grinding, dowel-bar retrofit, and isolated, partial or full-depth concrete repairs to restore functionality of the slab; e.g.; edge spalls, or corner breaks. Examples of maintenance activities for bridge structures include deck joint repair and replacement; bearing repair and replacement; localized deck repairs; deck sealing; grid deck section repair or localized section replacement; concrete repair on pedestals, bents, caps, piling, piers, and columns; and bridge deck drainage.

(2) **"Metropolitan transportation plan"** means the official multimodal transportation plan addressing no less than a 2-year planning horizon that a MPO develops, adopts, and updates through the metropolitan transportation planning process.

(3) **"MPO"** means metropolitan planning organization.

#### **N. Definitions beginning with "N":**

(1) **"National highway system" or "NHS"** means that system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).

(2) **"Non-state money"** has the same meaning as defined in Section 67-3-78 NMSA 1978.

#### **O. Definitions beginning with "O": [RESERVED]**

#### **P. Definitions beginning with "P":**



(1) **"Program guidelines"** means guidelines for the operation of the grant program established and revised by the department from time to time.

(2) **"Project agreement"** means a written document between an eligible entity and the department that memorializes the roles and responsibilities of the parties with respect to a project that receives a letter of authorization. The project agreement will include, but is not limited to, the roles and responsibilities with respect to design standards and exceptions, compliance with state, local and federal regulations, survey and right of way acquisition requirements, and construction phase duties and obligations. A project agreement is required in addition to a grant agreement.

(3) **"Public authority"** is defined as a Federal, State, county, municipality, village, town, tribe, or other local government or instrumentality with authority to finance, build, operate, or maintain a public roadway.

(4) **"Public highway"** means every public street, road, highway or thoroughfare of any kind in this state used by the public whether actually dedicated to the public and accepted by proper authority or otherwise.

(5) **"Public right-of-way"** means a strip of property, owned by a public authority, within which a public roadway exists or is planned to be built. The public right-of-way consists of all lands within the defined highway right-of-way limits, including airspace above and below the facility. This area typically includes, but is not limited to, the roadway(s), shoulders, and sidewalk(s), if any; areas for drainage, utilities, landscaping, berms, and fencing; rest areas; and the defined clear zone.

(6) **"Public roadway"** means any road or street owned and maintained by a public authority and open to public travel.

#### **Q. Definitions beginning with "Q": [RESERVED]**

#### **R. Definitions beginning with "R":**

(1) **"Regional transportation plan"** means the multimodal transportation plan for the non-metropolitan area covered by the RTPO, developed, adopted and updated through the RTPO planning process.

(2) **"Roadway"** means that portion of a public roadway intended for vehicular use.

(3) **"RTPO"** means regional transportation planning organization.

#### **S. Definitions beginning with "S":**

(1) **"Secretary"** means the cabinet secretary of the New Mexico department of transportation or designee.

(2) **"State highway"** means every public highway which has been designated as a state highway either by the legislature or by the state transportation commission.

**T. Definitions beginning with "T":**

(1) **"Transportation facility"** means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, sidewalk, bicycle facility or similar facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility.

(2) **"Transportation infrastructure"** has the same meaning as defined in Section 67-3-78 NMSA 1978.

(3) **"Transportation project"** has the same meaning as defined in Section 67-3-78 NMSA 1978.

(4) **"Transportation improvement program" (TIP)** means a prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by a MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

(5) **"Tribal/local public agency handbook"** means the most recent edition of the guidance developed by the department to assist tribal and local public agencies in successfully navigating the planning, design, and implementation of federally-funded transportation projects.

**U. Definitions beginning with "U": [RESERVED]**

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": [RESERVED]**

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[18.27.6.7 NMAC - N, 4/20/2021]

**18.27.6.8 GENERAL GUIDELINES:**

**A.** The department may make grants to eligible entities for transportation projects as funds are appropriated in a manner deemed necessary to effectuate the purposes of the fund.

**B.** Eligible projects include environmental and other studies, planning, design, construction and acquisition of rights of way necessary for the development of transportation infrastructure, and includes highways, streets, roadways, bridges, crossing structures, parking facilities, including all areas for vehicular, transit, bicycle or pedestrian use for travel, ingress, egress and parking. An eligible entity may seek funding for any discrete phase of a transportation project. A project included in a transportation improvement program is an eligible project provided the project is not funded with federal funds and the project does not qualify as a beautification project.

**C.** The department will award up to ninety-five percent of the total cost of a transportation project provided that the eligible entity has demonstrated an ability to provide the remainder of the project costs in local funds. The eligible entity is responsible for any and all expenditures in excess of the grant award.

**D.** The department will award up to one hundred percent of the total cost of a transportation project if a financial hardship qualification certificate is issued by DFA, or if the department makes such a determination in the event a tribe requests a waiver. The eligible entity is responsible for any and all expenditures in excess of the grant award.

**E.** Costs associated with preparing, reviewing, and submitting an application and any required supporting documentation prepared by the eligible entity, and any costs of a consultant's services incurred in preparing an application, are not eligible for grant funding participation.

**F.** The department will not perform any in depth analysis or review of project scope, cost estimates, functionality, project phasing and scheduling or overall constructability. The department may conduct an in-depth analysis after the completion of a project when evaluating the eligible entity's ability to properly administer, implement and complete a project.

**G.** Applicants must have the ability to successfully deliver their project.

**H.** All grant awarded funds must be spent no later than 30 months from the effective date of the grant agreement.

**I.** All grants are subject to department audit.

**J.** Grants awarded to an eligible entity will be provided for a specific project. Unexpended funds cannot be used for any other purpose or project. A grant award can be used for any project included in the state transportation improvement program provided the project will not be receiving any federal funding and is not a

transportation beautification project. Unexpended grant awards will be returned to the department after project completion.

[18.27.6.8 NMAC - N, 4/20/2021]

#### **18.27.6.9 CALL FOR PROJECTS:**

**A.** The department will invite eligible entities to submit applications for grants from the fund for transportation projects by a call for projects letter using a two-phase application process. The first phase will consist of a request to submit a project feasibility form. Submittal of the project feasibility form is mandatory in order to be eligible to submit a full application in the second phase. If a project is determined to be feasible, phase two will consist of a request for the eligible entity to submit a completed project application. Any specific criteria applicable to the funding cycle will be specified in the call for projects. Applications for program funds shall conform to the application instructions described in the call for projects or the phase two request. Any procedures, requirements, conditions, restrictions, and limitations applicable to the funding cycle other than those contained in this rule will be specified in the call for projects or the phase two application request.

**B.** The completed phase one feasibility form must be submitted to the appropriate MPO or RTPO based on a project's physical location on or before the date specified in the call for projects. Failure to timely submit the required project feasibility form as required in the call for projects will result in the eligible entity being ineligible for funding in the funding cycle.

**C.** The completed project application must be submitted to the same MPO or RTPO where the project feasibility form was submitted unless otherwise instructed in writing by the department. Failure to timely submit the phase two project application will result in the eligible entity being ineligible for funding in the funding cycle.

**D.** An incomplete project feasibility form or project application will be rejected and will not be considered for funding in the funding cycle unless amended or corrected on or before the date specified in the call for projects.

[18.27.6.9 NMAC - N, 4/20/2021]

#### **18.27.6.10 FINANCIAL HARDSHIP:**

**A.** Eligible entities may request a waiver of their share in whole or in part due to financial hardship. Waiver requests with supporting documentation shall be submitted to the department's division or bureau designated in the call for projects.

**B.** If the eligible entity's application is accepted, the eligible entity shall submit a resolution or certification indicating that it cannot match all or a portion of its share. The resolution or certification shall be signed by the appropriate eligible entity official(s).

**C.** The department will request from the DFA's local government division a financial analysis and recommendation on a financial hardship request submitted by a county or municipality. The department will conduct the financial analysis if a waiver request is made by a tribe. The eligible entity shall cooperate with any request to provide necessary financial documents or other information requested by DFA or the department in conjunction with a financial analysis. Failure to do so will result in a denial of the waiver request.

**D.** If a waiver is granted, the eligible entity must request an amendment to its grant agreement.

[18.27.6.10 NMAC - N, 4/20/2021]

#### **18.27.6.11 APPLICATION PROCEDURES, REVIEW AND EVALUATION PROCESS:**

**A.** Any eligible entity interested in applying for a grant award must submit a completed project feasibility form to their MPO or RTPO. A complete project feasibility form must be submitted to the appropriate MPO or RTPO before the deadline specified in the call for projects.

**B.** If a project is determined to be feasible, the eligible entity will be requested to submit a project application.

**C.** Timely application packages will be reviewed and ranked by the MPO/RTPO using the criteria specified in the call for projects.

**D.** Each MPO/RTPO will submit its ranked list of projects to the district engineer for the district where the project is located no later than 30 days prior to the start of the fiscal year in which funding is available.

**E.** Each individual district engineer will present their recommendation to the secretary prior to start of the fiscal year in which funding is available.

**F.** The secretary shall by August first of the fiscal year in which funds are available submit a proposed list of transportation projects identified by the above described project review process to the commission.

**G.** Final project selection and funding amounts will be determined by the commission no later than September first of that same fiscal year. The commission's decision will be final. At its discretion, the commission may adjust the projects selected in an effort to program funds in a geographically equitable manner or in any other manner. The commission may, in its sole discretion, reject all applications or award grants totaling less than the funds appropriated for the particular fiscal year. The commission may approve subsequent changes to a priority list as it deems necessary.

**H.** After projects are selected, the department will send out award letters and grant agreements to the selected eligible entities. Applicants whose projects were not selected will be notified as well. Each awarded eligible entity must execute a grant agreement with the department. Once a fully executed grant agreement has been received by the department, the eligible entity may then proceed with authorized project activities. If the eligible entity fails to execute and return the grant agreement within 60 days of receiving the notice of award, the project shall be considered lapsed and may be submitted to the commission for re-programming.

**I.** The department shall disburse the grant to the eligible entity after receipt of a request for disbursement submitted by the eligible entity to the department and receipt of a fully executed project agreement. The format of the request for disbursement will be determined by the department.

**J.** Any moneys appropriated to a specific eligible entity by the legislature shall be disbursed to the eligible entity after receipt of a request for disbursement submitted by the eligible entity to the department and the receipt of a fully executed project agreement.

[18.27.6.11 NMAC - N, 4/20/2021]

#### **18.27.6.12 APPLICATION REQUIREMENTS:**

Applicants must submit the following documents (as a single PDF) as part of the application process:

**A.** Completed application: The format and content of the application will be determined by the department.

**B.** Resolution of sponsorship from their governing body, indicating the availability of the proposed match. Subject to any local restrictions, the resolution may provide that the applicant's chief executive or other appropriate officer is authorized to sign the grant agreements and all associated documents and amendments on behalf of the eligible entity as required for receipt of the grant. Alternatively, the applicant may submit an official letter signed by the applicant's chief executive or official with budget authority, indicating the availability of the match.

**C.** Detailed map of project location.

**D.** If applicable, letters of support from the governmental entity that owns in fee simple or possesses a perpetual easement for the project right-of-way (ROW) if the applying applicant does not own in fee simple or possess a perpetual easement for all of the project ROW.

**E.** If applicable, a letter of approval or authorization from the district engineer.

[18.27.6.12 NMAC - N, 4/20/2021]

#### **18.27.6.13 EVALUATION PROCESS:**

Each MPO/RTPO will be evaluating and ranking projects based on the specific merits of the individual projects using the evaluation criteria specified in the call for projects.

[18.27.6.13 NMAC - N, 4/20/2021]

#### **18.27.6.14 AGREEMENT CONDITIONS, REQUIREMENTS AND PROCEDURES:**

**A.** The eligible entity must expend and account for grant funds in accordance with state laws and procedures for expending and accounting for its own funds.

**B.** If an eligible entity commences performance on a transportation infrastructure project but fails to complete the project, the department may seek reimbursement of the grant award received by the eligible entity for that project.

**C.** The department shall have the right to evaluate the activities of eligible entity as necessary to ensure grant awards are used for authorized purposes in compliance with applicable laws, regulations and the provisions of the grant agreement.

[18.27.6.14 NMAC - N, 4/20/2021]

#### **18.27.6.15 DESIGN/BIDDING/CONSTRUCTION:**

**A.** A transportation project that is located in full or in part within a department right-of-way or NHS route eligible entity must be administered in accordance with the "*Tribal/Local Public Agency Handbook*".

**B.** A transportation project that ties into or crosses a department right-of-way or an NHS route, or when the project may have an effect on existing improvements within department rights-of-way, requires the approval of the department as evidenced by either a letter of approval or letter of authorization from the district engineer for the district where the project is located. The eligible entity shall contact the appropriate district engineer to determine if either is needed for the project. The district engineer will conduct a review of the project and determine whether the project requires a letter of approval or a letter of authorization from the department. If the district engineer determines the project does not require a letter of authorization, the district engineer, or designee, will submit a letter of approval to the eligible entity. If the district engineer determines the project requires a letter of authorization, the eligible entity must enter into a project agreement with the department before any grant funding will be distributed. The eligible entity shall cause the project to be constructed in compliance with any and all department designated standards, conditions and criteria as specified in the project agreement.

**C.** For transportation projects funded entirely by the fund, or in combination with local funds, and no Federal-aid funds are involved, the following apply:

**(1)** It will be the eligible entity's responsibility to ensure compliance with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources. The department will not be involved in permit preparation, review, or coordination with the regulatory agencies. However, the eligible entity shall provide to the district where the project is located a copy of any permit identified by the department in the project feasibility form.

**(2)** Projects on locally owned roadways are to be designed in accordance with the eligible entity's established design standards. The eligible entity is responsible for ensuring that the plans, specifications and estimates meet applicable design criteria and standards. The department will not perform any detailed technical reviews of project design and related documents.

**D.** In accordance with Section 67-3-62 NMSA 1978, any transportation projects for constructing highways along new alignments or for purposes of substantially widening highways along the existing alignments must consider provisions for pedestrian, bicycle, and equestrian facilities concurrent with the design of the project.

**E.** Pursuant to Section 61-23-26 NMSA 1978, all transportation projects involving engineering requires the engineering to be under the responsible charge of a licensed professional engineer.

**F.** The eligible entity will be responsible for advertising the project for construction bids and for receiving and publicly opening bids received for the project. The department will have no involvement in the bidding process.

**G.** The eligible entity shall follow its normal procedures for award of the contract and assure that all applicable requirements are followed. The eligible entity shall retain the executed contract, document the award date, and the preconstruction conference minutes as part of the project files. The department will have no involvement in the award of the contract and will not participate in resolving any disputes between the eligible entity and its bidders.

**H.** The eligible entity will have the responsibility and control of the construction phase and resulting quality of the completed work. The department will have no involvement in the construction phase other than its discretionary ability to periodically monitor the implementation of the project, and will not participate in resolving any disputes between the eligible entity and its contractor.



I. Department personnel will not conduct periodic assurance inspections or comparison material testing. The department, at its discretion, may perform a final inspection upon project completion.

[18.27.6.15 NMAC - N, 4/20/2021]

#### **18.27.6.16 PROJECT EVALUATION:**

A. The eligible entity's performance and administration of the grant funding will be reviewed and evaluated by the department at the completion of the project or, if the eligible entity fails to complete the project, following the close of the fiscal year in which the project was to be completed. If an eligible entity demonstrates, pursuant to the criteria set forth in subsection B below, an inability to properly administer a project a reduction of twenty five percent will be applied to the scoring criteria applicable to the eligible entity's next project application.

B. The following criteria shall be used in determining the ability of an eligible entity to properly administer a project:

(1) whether the eligible entity demonstrated a pattern of unsatisfactory project implementation and completion;

(2) whether the eligible entity has failed to keep all required books, make all requested reports, and conform to all rules and regulations adopted by DFA's local government division, financial management bureau applicable to the grant;

(3) whether the eligible entity fails the complete the project within the allotted time; or

(4) whether the department obtains documentation through an audit or audits that finds the eligible entity has not performed in accordance with the terms of the grant agreement, the standards set forth in the grant agreement, in accordance with generally accepted governmental accounting principles, or failed to comply with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources.

C. In the event the department has conducted an evaluation pursuant to this section and has issued a preliminary determination that the eligible entity has demonstrated an inability to properly administer a project, the department shall provide written notice of the determination to the eligible entity with an opportunity to provide additional information within 30 calendar days, unless the parties to some other timeframe, to address, mitigate or refute the conclusions of the department.

(1) If the eligible entity does not produce any additional information with the designated timeframe, the preliminary determination of the department shall become final.

(2) If the eligible entity produces information with the designated timeframe, after considering the additional information the department will promptly issue a final determination.

[18.27.6.16 NMAC - N, 4/20/2021]

#### **18.27.6.17 PROJECT DOCUMENTATION:**

The eligible entity shall maintain a complete set of project files for a period of not less than five years following the completion of the project. The project files shall contain all documents that are specified as required by the grant agreement.

[18.27.6.17 NMAC - N, 4/20/2021]

#### **18.27.6.18 PROJECT MONITORING AND CLOSE OUT:**

A. The department reserves the right to request the eligible entity to submit progress reports at any time. Reports are due within 30 days of such a request.

B. Within 60 days after the date of completion of the project, the eligible entity must submit a written certification that it has complied with the requirements of this rule and the grant agreement.

C. The department reserves the right to request the eligible entity to submit additional documentation to demonstrate completion of the terms and conditions required by the grant program. It is the responsibility of the eligible entity to comply in full with all such requests and to submit the requested documentation in a timely manner.

D. Financial audits of the project may be required. Financial audits do not limit the authority of the department to conduct or arrange for additional audits, reviews, and evaluations. The eligible entity must make records available for review or audit upon request by the department. The department is entitled to recover amounts based on the results of an audit.

[18.27.6.18 NMAC - N, 4/20/2021]

## **CHAPTER 28: HIGHWAY CONTRACTING AND BIDDING**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2: [RESERVED]**

## **PART 3: SELECTION COMMITTEE FOR QUALIFICATIONS BASED PROPOSALS**

### **18.28.3.1 ISSUING AGENCY:**

New Mexico Department of Transportation, P.O. Box 1149 Santa Fe, New Mexico 87504-1149.

[18.28.3.1 NMAC - Rp, 18.28.3.1 NMAC, 7/11/2017]

### **18.28.3.2 SCOPE:**

New Mexico department of transportation. General public. Engineering consultants.

[18.28.3.2 NMAC - Rp, 18.28.3.2 NMAC, 7/11/2017]

### **18.28.3.3 STATUTORY AUTHORITY:**

Subsection D of 13-1-121 NMSA 1978.

[18.28.3.3 NMAC - Rp, 18.28.3.3 NMAC, 7/11/2017]

### **18.28.3.4 DURATION:**

Permanent.

[18.28.3.4 NMAC - Rp, 18.28.3.4 NMAC, 7/11/2017]

### **18.28.3.5 EFFECTIVE DATE:**

July 11, 2017, unless a later date is cited at the end of a section.

[18.28.3.5 NMAC - Rp, 18.28.3.5 NMAC, 7/11/2017]

### **18.28.3.6 OBJECTIVE:**

To create a professional services selection committee to serve as the selection committee for transportation projects of the New Mexico department of transportation using competitive sealed qualifications based proposals. This selection committee is necessary in order for the New Mexico department of transportation to fulfill its duties and responsibilities by effectively and continuously managing and conducting its work on transportation projects through the procurement process.

[18.28.3.6 NMAC - Rp, 18.28.3.6 NMAC, 7/11/2017]

#### **18.28.3.7 DEFINITIONS:**

**[RESERVED]**

#### **18.28.3.8 COMMITTEE FOR QUALIFICATIONS BASED PROPOSALS:**

**A.** The professional services selections committee for transportation projects using competitive sealed qualifications based professional services shall consist of the following members:

**(1)** voting members:

**(a)** two employees of the New Mexico department of transportation as requested to serve on the committee designated by the deputy secretary of operations for the New Mexico department of transportation;

**(b)** two employees of the New Mexico department of transportation as requested to serve on the committee designated by the division director of design and construction for the New Mexico department of transportation;

**(c)** the employee of the New Mexico department of transportation in responsible charge of the contract; and

**(d)** the committee shall consist of a minimum of three registered New Mexico professional engineers.

**(2)** advisory (non-voting) members:

**(a)** the New Mexico department of transportation chief procurement officer and staff; and;

**(b)** any other employee of the New Mexico department of transportation as requested to serve by the cabinet secretary of the New Mexico department of transportation.

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

[18.28.3.8 NMAC - Rp, 18.28.3.8 NMAC, 7/11/2017]

### **PART 4: DEBARMENT AND SUSPENSION OF CONTRACTORS**

#### **18.28.4.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department

P. O. Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5320.

[Recompiled 11/16/01]

**18.28.4.2 SCOPE:**

All agencies, the general public and highway construction contractors.

[Recompiled 11/16/01]

**18.28.4.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 13-1-28 et seq., 13-1-177, 13-1-178, 13-1-179, 13-1-180, 67-3-1 et seq., 67-3-43, 57-1-1 et seq.; 15 USCS Section 1, et seq., as amended; New Mexico State Highway Commission Policy 92-6, approved 04-16-92.

[Recompiled 11/16/01]

**18.28.4.4 DURATION:**

Permanent.

[Recompiled 11/16/01]

**18.28.4.5 EFFECTIVE DATE:**

March 15, 1999, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

**18.28.4.6 OBJECTIVE:**

This rule embodies the policies and procedures to be employed by the Department regarding the debarment or suspension of bidders, offerors, and contractors in instances where there is cause to believe that they lack the necessary qualities of moral and/or ethical integrity. These policies and procedures are intended to protect the interests of the citizens of the State of New Mexico. Among these protected interests are open competition in bidding, impartiality in the selection of contractors, integrity in business practices and skillful performance of public contracts. The overriding purpose of this rule is to provide safeguards for maintaining a procurement system of quality and integrity.

[Recompiled 11/16/01]

#### **18.28.4.7 DEFINITIONS:**

A. "Bidder" One who submits or is eligible to submit a bid to the Department in response to an invitation for bids.

B. "Contractor" Any business having a contract with the New Mexico State Highway and Transportation Department. The term includes prime contractors; subcontractors and suppliers; and further includes the affiliates of contractors, as well as the individual officers and directors of corporate contractors.

C. "Debarment" A determination of ineligibility to be a bidder, offeror or contractor on Department highway construction projects for a period not less than three months nor more than three (3) years, in conformance with the procedures set forth in this rule.

D. "Department" The New Mexico State Highway and Transportation Department.

E. "Offeror" One who submits or is eligible to submit a proposal to the Department in response to a Request for Proposals.

F. "Secretary" The Secretary of the New Mexico State Highway and Transportation Department or designee.

G. "Suspension" A determination of ineligibility to be a bidder, offeror or contractor on Department highway construction projects for a period not to exceed three (3) months, in conformance with the procedures set forth in this rule.

[Recompiled 11/16/01]

#### **18.28.4.8 CAUSES FOR DEBARMENT OR SUSPENSION:**

The causes for debarment or suspension occurring within three years of a procurement include but are not limited to the following:

A. Conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

B. Conviction of a bidder, offeror or contractor under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;

C. Conviction of a bidder, offeror or contractor under state or federal antitrust statutes arising out of the submission of bids or proposals;

D. Violation by a bidder, offeror or contractor of contract provisions, as set forth in this subsection, of a character which is reasonably regarded by the Department to be so serious as to justify suspension or debarment action:

(1) Willful failure to perform in accordance with one or more contracts, provided that this failure has occurred within a reasonable time preceding the decision to impose debarment (or suspension); or

(2) A history of failure to perform, or of unsatisfactory performance of, one or more contracts, provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment (or suspension).

E. Any other cause occurring within three years of a procurement which the Department determines to be so serious and compelling as to affect responsibility as a contractor; and

F. A willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code within three years of a procurement.

[Recompiled 11/16/01]

#### **18.28.4.9 PROCEDURE:**

A. Notice of Proposed Suspension or Debarment:

(1) The Secretary may issue a Notice of Proposed Suspension or Notice of Proposed Debarment to any bidder, offeror, or contractor.

(2) Such notice shall be in writing and sent to the bidder, offeror, or contractor at its last known address by certified mail and shall contain at a minimum the following information:

(a) That the Department is contemplating debarment or suspension of the named bidder, offeror or contractor;

(b) The reasons such action is being contemplated by the Department;

(c) The proposed duration for the suspension or debarment of the named bidder, offeror or contractor;

(d) That the bidder, offeror or contractor may request a hearing before the Secretary prior to a final determination by the Department on the proposed suspension or debarment;

(e) That such a request for hearing must be directed to the Secretary in writing within ten (10) days of receipt of the Notice of Proposed Suspension or Notice of Proposed Debarment;

(f) That if a request for hearing is not received by the Secretary within ten (10) days of receipt of the Notice by the bidder, offeror, or contractor, a period of suspension or debarment up to and including the period proposed in the Notice shall be made final and shall be imposed; and

(g) The specific effect such final determination will have on pending and future contracts and relations between the Department and the affected bidder, offeror or contractor.

B. Hearing:

(1) Any affected bidder, offeror, or contractor receiving a Notice of Proposed Suspension or Notice of Proposed Debarment may, within ten (10) days of receipt of the Notice, request in writing a hearing before the Secretary on the proposed suspension or debarment. Such written request must be directed to the Secretary.

(2) The Secretary shall schedule the date, time and place of a hearing and furnish this information to the affected bidder, offeror or contractor in a written Notice of Hearing.

(3) The Secretary shall arrange for a court reporter to transcribe the proceedings at the hearing. The Department shall bear the cost of the appearance of such court reporter; however, any party requesting a transcript of the proceedings from the court reporter shall bear the cost thereof.

(4) At the hearing, the affected bidder, offeror or contractor may be represented by counsel, may speak on its own behalf and may present witnesses and offer evidence. Neither the technical rules of evidence, nor the requirements of the Administrative Procedures Act, NMSA 1978, Section 12-8-1 et seq., shall apply. The affected bidder, offeror, or contractor at the hearing shall have the opportunity to confront witnesses and rebut documentation relied upon by the Department as supporting the proposed suspension or debarment. Counsel for the Department may likewise present witnesses, offer evidence, confront witnesses, and rebut documentation offered by the affected bidder, offeror or contractor.

(5) If the affected bidder, offeror or contractor does not request a hearing within the time limits set forth herein, it shall be deemed to have waived the opportunity for a hearing, and a Final Determination of Debarment or Suspension shall be issued in conformance with the requirements of this rule.

C. Final Determination on Suspension or Debarment:



(1) No bidder, offeror or contractor shall be debarred except by means of a written Final Determination of Suspension or Final Determination of Debarment issued by the Secretary.

(2) The Final Determination shall:

(a) State the reasons for the action taken;

(b) If adverse to the bidder, offeror or contractor, inform the debarred or suspended bidder, offeror or contractor of its rights to judicial review pursuant to NMSA 1978, Sections 13-1-179 and 13-1-183, of the Procurement Code; and

(c) State, with specificity, how pending or future contracts with the bidder, offeror or contractor shall be treated.

(3) Upon rendering the Final Determination the Secretary shall mail a copy of the Final Determination to the affected bidder, offeror or contractor.

(4) The Final Determination issued by the Secretary constitutes final agency action, and there shall be no right to further appeal to the State Highway Commission or to any other extra-judicial administrative authority by a debarred or suspended bidder, offeror or contractor.

[Recompiled 11/16/01]

#### **18.28.4.10 GENERAL REQUIREMENTS:**

A. This rule applies to all personnel and organizations of the Department, and to those with whom it deals, either directly or indirectly.

B. The Secretary may institute suspension or debarment proceedings in conformance with this rule according to the nature and seriousness of the offense. The Secretary may propose the maximum period of debarment or suspension or any period up to the maximum as he determines by the exercise of his discretion.

C. The Department's determination to impose debarment or suspension does not require a court finding, conclusion or judgment of failure to perform or unsatisfactory performance as a predicate or justification to take debarment or suspension action.

D. Nothing in this rule precludes the Secretary from entering into a written agreement with the affected bidder, offeror or contractor fixing the terms and conditions of a Final Debarment or Suspension.

E. Any action or proposed action taken by the Department with respect to debarment or suspension does not preclude referral to the New Mexico Attorney General, to a New Mexico District Attorney and/or to the United States Department of

Justice for further review and appropriate action. Any proceedings instituted by these agencies are independent of those pursued by the Department. A settlement between the Department and an affected bidder, offeror or contractor on the terms of its suspension or debarment shall not affect actions taken by the New Mexico Attorney General, District Attorneys or United States Department of Justice.

F. A Final Determination of Debarment or Suspension may be suspended at any time by the Secretary if in the best interests of the Department and the public.

G. In the event of an investigation being conducted by another agency, the Secretary may, in his sole discretion, delay any further debarment or suspension action pending the outcome of the investigation.

H. The illegal or improper conduct of an individual may be fully imputed to the business firm with which he is or was associated or by whom he is or was employed where that conduct was engaged in within the course of his employment or with the knowledge, approval or subsequent ratification of the business firm.

I. Debarment or suspension of a bidder, offeror or contractor in no way affects its obligations to the state under existing contracts. The Department may, at its option, void any contracts currently in force with any debarred contractor and either require its bonding company to perform or re-advertise and relet the project. This option, however, does not exist in the case of suspension of bidders, offerors, or contractors.

J. Any bidder, offeror or contractor shall have the affirmative duty to report to the Secretary any cause for debarment or suspension under Section 8 of this rule within thirty (30) days of its occurrence. Failure to provide such notice is a serious and compelling offense sufficient in and of itself to result in suspension or debarment.

K. Any state agency personnel determined to be involved in a violation shall be subject to the applicable state personnel disciplinary rules and criminal laws.

L. The names and addresses of any and all bidders, offerors, and contractors suspended or debarred pursuant to these procedures shall be forwarded by the Secretary to the Federal Highway Administration, the Attorney General for the State of New Mexico, and the American Association of State Highway and Transportation Officials.

[Recompiled 11/16/01]

## **PART 5: MOWING OF RIGHTS-OF-WAY**

### **18.28.5.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department

P.O. Box 1149 Santa Fe, New Mexico 87504-1149 (505)827-5498.

[Recompiled 11/16/01]

**18.28.5.2 SCOPE:**

The material in this Part was derived from that previously filed with the State Records and Archives under: SHTD Rule 87-2(L), Rule for Mowing of Rights-of-Way, filed July 1, 1987.

[Recompiled 11/16/01]

**18.28.5.3 STATUTORY AUTHORITY:**

This rule is adopted pursuant to NMSA 1978 Sections 67-3-11 and 67-3-13.

[Recompiled 11/16/01]

**18.28.5.4 DURATION:**

Permanent.

[Recompiled 11/16/01]

**18.28.5.5 EFFECTIVE DATE:**

October 31, 1998, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

**18.28.5.6 OBJECTIVE:**

The purpose of this rule is to establish regulations to enable the State Highway and Transportation Department to enter into written agreements with private citizens, firms or corporations to mow within designated state highway rights-of-way.

[Recompiled 11/16/01]

**18.28.5.7 DEFINITIONS:**

**[RESERVED]**

A. "Department" means the New Mexico State Highway and Transportation Department.

B. "Permittee" means a person, firm or corporation who has applied for and received a permit from the Department for the express purpose of mowing the state highway rights-of-way.

C. "Mowing Guidelines" means the Department guidelines governing the mowing of highway rights-of-way as set out in Section 9, subparagraphs 9.3.8 through 9.3.18 [Paragraphs 8 through 18, Subsection C., Section 9 of 18.28.9 NMAC] of this Rule.

[Recompiled 11/16/01]

#### **18.28.5.8     APPLICABILITY:**

This rule is applicable for mowing activities on state highway rights-of-way only.

[Recompiled 11/16/01]

#### **18.28.5.9     PROCEDURE:**

A. Application by Sponsor. No person, firm or corporation shall mow any portion of the state highway rights-of-way and keep the clippings from such mowing without first obtaining a written permit from the Department. Application for a permit shall be submitted to the appropriate District Engineer using forms provided by the Department. Permits shall be for a specific mowing season. Consideration for permit applications to mow a given area of rights-of-way will be granted first to the adjacent land owner with all others approved on a first come/first served basis. There will be no fee for the permit. A copy of the permit shall be available on the work site for inspection at all times.

B. Review of Application. The Secretary of the Department or his designee shall review the application and, when necessary, coordinate with the local authorities within whose jurisdiction the mowing is to take place.

C. Notice of action taken by the Department. The Secretary of the Department or his designee shall inform the sponsor in writing of the action taken on the notice, including all conditions imposed if approval is granted. Such conditions include without limitations:

(1) The requirement that the sponsor make adequate provisions for traffic control (i.e., law enforcement, traffic control devices and/or signing).

(2) The requirement that the sponsor and/or the participants in the mowing and baling operations execute releases of liability, indemnity and hold harmless agreements and also submit proof of insurance coverage for any liability arising out of the mowing and baling activities, in forms satisfactory to the Department.

(3) The permittee shall carry and keep in force liability insurance during the permit period in the following minimum amounts:

(a) Bodily Injury \$300,000 each occurrence

(b) Property Damage \$100,000 each occurrence

(c) Total Liability \$ 500,000

(4) The permittee shall be held responsible for any damage to fences, signs, guardrail, landscape plantings or other highway features resulting from his operations.

(5) Should permittee fail to comply with the provisions of this rule and the permit, the Department may revoke the permit until the permittee agrees to comply with any and all provisions required by the Department.

(6) The Department is not liable for the quality of the hay or clippings obtained through this agreement and the applicant assumes all risk of injury or damage to himself, his property or to others or to the property of others which may result from debris, foreign objects or chemical contamination of such hay or clippings.

(7) Mowing of state highway rights-of-way by the applicant will be done with the full knowledge that the vegetation may contain chemical residue of automotive emissions and chemical herbicides used for vegetative control.

(8) The permittee shall erect and maintain standard warning signs for mowing operations in compliance with Part VI of the Manual on Uniform Traffic Control Devices (MUTCD), latest edition and the Departments Maintenance Traffic Control Plans. All mowing and baling equipment shall have the standard "Slow Moving" vehicle emblems.

(9) Mowing shall conform to specifications as provided in the permit issued by the Department.

(10) No moving will be allowed on newly constructed or planted rights-of-way for a period of three (3) years.

(11) The permittee will confine his operations to daylight hours.

(12) When soil conditions are such that damage to the slopes is caused by mowing and baling equipment, operations shall be discontinued.

(13) When the Department determines and verbally notifies that the operations are creating an undue hazard, all operations will cease until further notice from the District Engineer.

(14) All mowing will be done in a workman-like manner and the mowed area shall be left in a neat condition upon completion of the work. Mowing will be continuous within the designated area. Selective mowing of vegetation will not be permitted.

However, the permittee will be allowed to bale only those areas of vegetation he chooses.

(15) Equipment necessary for this operation will not be left unattended on the rights-of-way within thirty (30) feet of the roadway shoulder.

(16) All hay must be removed from the highway right-of-way within ten (10) days after baling. Any bales not so removed may be removed by the Department without compensation to the permittee.

(17) Large round or rectangular bales will not be left unattended on the rights-of-way within thirty (30) feet of the roadway shoulder.

(18) No mowing will be permitted in wildflower areas.

[Recompiled 11/16/01]

## **PART 6: TRANSPORTATION CONSTRUCTION MANAGER GENERAL CONTRACTOR RULE**

### **18.28.6.1 ISSUING AGENCY:**

The New Mexico Department of Transportation, PO Box 1149, Santa Fe, New Mexico, 87504-1149.

[18.28.6.1 NMAC - N, 12/5/2023]

### **18.28.6.2 SCOPE:**

This rule applies to the New Mexico Department of Transportation construction projects.

[18.28.6.2 NMAC - N, 12/5/2023]

### **18.28.6.3 STATUTORY AUTHORITY:**

Sections 13-1-122.1 through 13-1-122.4 NMSA 1978 (2022), Section 67-3-8.4 NMSA 1978 (2022), Section 67-3-11 NMSA 1978 (2003), Section 67-3-14 NMSA 1978 (2003); 23 USC Section 112(b), 23 CFR Section 635.504.

[18.28.6.3 NMAC - N, 12/5/2023]

### **18.28.6.4 DURATION:**

Permanent.

[18.28.6.4 NMAC - N, 12/5/2023]

#### **18.28.6.5 EFFECTIVE DATE:**

December 5, 2023, unless a later date is cited at the end of a section.

[18.28.6.5 NMAC - N, 12/5/2023]

#### **18.28.6.6 OBJECTIVE:**

To establish procedures for the solicitation and award of a construction manager general contractor project delivery procurement method for department transportation projects. The construction manager general contractor project delivery method may be used to improve project quality, completion time and costs through early collaborative project development participation. This rule provides additional requirements and procedures for use of the construction manager general contractor project delivery method and is to be used in conjunction with the statutory requirements found in the transportation construction manager general contractor act, Sections 13-1-122.1 through 13-1-122.4 NMSA 1978.

[18.28.6.6 NMAC - N, 12/5/2023]

#### **18.28.6.7 DEFINITIONS:**

- A. All definitions in the procurement code.
- B. "**CMGC**" means construction manager general contractor.
- C. "**Department**" means the New Mexico department of transportation.
- D. "**GMP**" means guaranteed maximum price.
- E. "**RFP**" means request for proposals.

[18.28.6.7 NMAC - N, 12/5/2023]

#### **18.28.6.8 USE OF CMGC DELIVERY METHOD:**

The department may use a CMGC project delivery method after making written determination that a transportation project is eligible for procurement using the alternate method and posting the same on the department's website for 90 days.

**A. Project selection criteria:** To determine whether a project is eligible for use of the CMGC delivery method, the department must consider the criteria established in Subsection A of Section 13-1-122.3 NMSA 1978. The department must also ensure that any statutory limitations, established by Section 67-3-8.4 NMSA 1978, on the use of the project delivery method alternate to standard design-bid-build project procurement will not be exceeded by the proposed use.

**B. Scope of services:** The scope of any CMGC procurement shall identify two separate phases of work to be performed:

- (1) project specific range of preconstruction services, including design consultation and obligation to participate in project design, cost control, scheduling and value engineering efforts; and
- (2) construction services for the project or work packages associated with the project at a guaranteed maximum price for which the CMGC shall be financially responsible, in the event the second phase of the contract is executed.

**C. Procurement:** The department shall select a CMGC for a single project by using a sealed, qualifications-based proposal method, resulting in a professional services agreement.

- (1) The department will issue a request for proposals (RFP) that contains, at a minimum, the elements established in Section 13-1-122.4 NMSA 1978.
- (2) The RFP may require separate technical and price proposals.
- (3) The RFP may require a minimum mandatory technical score, minimum contractor prequalification score, or both.
- (4) The RFP shall include forms addressing required bid security, payment bonds and performance bonds in conformance with Sections 13-1-146 and 13-4-18 NMSA 1978.
- (5) The RFP may include use of a short-list procedure.

[18.28.6.8 NMAC - N, 12/5/2023]

#### **18.28.6.9 EVALUATION CRITERIA:**

The department shall evaluate proposals in accordance with the evaluation criteria and scoring parameters set forth in the RFP.

**A.** The evaluation criteria may require, at a minimum, offerors demonstrate:

- (1) construction experience with similar projects;
- (2) financial, manpower and equipment resources available for the project;
- (3) preconstruction or design support experience;
- (4) partnering approach to the project; and



(5) approach to safety, risk, schedule, and cost estimating.

**B.** The department may require offerors to participate in formal interviews as part of the evaluation process.

[18.28.6.9 NMAC - N, 12/5/2023]

#### **18.28.6.10 SELECTION COMMITTEE:**

The department shall use a selection committee for the evaluation of the qualifications submitted by offerors and to determine the offerors that qualify for award of the CMGC contract.

**A.** The selection committee composition shall be identified in the RFP; and

(1) shall include the following voting members, a minimum of three of whom will be registered New Mexico professional engineers:

(a) two employees of the department as requested to serve on the committee designated by the chief engineer for the department;

(b) two employees of the department as requested to serve on the committee designated by the deputy secretary of highway operations for the department;

(c) the employee of the department in responsible charge of the project; and

(2) may include the following advisory (non-voting) members:

(a) the department chief procurement officer or designee;

(b) any other employee of the department requested to serve by the secretary; or

(c) any other advisory members requested to serve by the secretary based on industry recommendation.

**B.** No selection committee member may be an employee of any offeror or firm selected to provide design services or independent cost estimates for the project.

**C.** Every member of the selection committee must disclose conflicts of interest pursuant to the requirements of state and federal ethics and procurement laws and the department's policies.

**D.** The selection committee will rank offerors in accordance with the RFP evaluation and scoring criteria and provide a recommendation for award to the secretary.

[18.28.6.10 NMAC - N, 12/5/2023]

#### **18.28.6.11 AWARD OF CONTRACTS:**

Nothing in this rule requires the department to award a contract during either of the contract phases.

**A.** The basis for selection for award of contract shall be stated in the RFP and may be based on any of the following approaches:

(1) responsible offeror with lowest priced, responsive proposal. If the RFP includes minimum technical level, no proposal shall be considered responsive unless it meets that level;

(2) responsible offeror whose proposal is evaluated as providing the best value to the department;

(3) responsible offeror whose proposal is evaluated as the most qualified; or

(4) other approaches determined by the chief engineer or designee, which satisfy the requirements of the procurement code.

**B.** The second phase construction services contract may be awarded after the project plans have been sufficiently developed and the GMP for construction services has been successfully validated and accepted by the department.

**C.** In the event a GMP is not validated and accepted, the department may:

(1) terminate the CMGC contract; and

(2) proceed to award the second phase construction services contract through the competitive sealed bid process.

**D.** If the department proceeds to award the second phase construction services contract through the competitive sealed bid process, the CMGC is prohibited from bidding.

[18.28.6.11 NMAC - N, 12/5/2023]

## **CHAPTER 29: HIGHWAY CONDEMNATION PROCEDURES [RESERVED]**

## **CHAPTER 30: HIGHWAY CONTRACTS FINANCIAL ACCOUNTING AND REPORTING**

## **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2: FUND SHARING WITH GOVERNMENTAL ENTITIES FOR AUTHORIZED TRANSPORTATION PROJECTS**

### **18.30.2.1 ISSUING AGENCY:**

New Mexico Department of Transportation, P.O. Box 1149 Santa Fe, New Mexico 87504-1149.

[18.30.2.1 NMAC - N, 01/27/05]

### **18.30.2.2 SCOPE:**

All local governmental entities and the general public.

[18.30.2.2 NMAC - N, 01/27/05]

### **18.30.2.3 STATUTORY AUTHORITY:**

Adoption of this rule is pursuant to authority granted to the New Mexico state transportation commission and the New Mexico department of transportation through its secretary pursuant to NMSA 1978, Section 67-3-11; NMSA 1978, Special Session Laws of 2004, Chapter 3, Section 28.

[18.30.2.3 NMAC - N, 01/27/05]

[Also pursuant to State Transportation Commission Policy 4]

### **18.30.2.4 DURATION:**

Six years ending January 31, 2011.

[18.30.2.4 NMAC - N, 01/27/05]

### **18.30.2.5 EFFECTIVE DATE:**

January 27, 2005, unless a later date is cited at the end of a section.

[18.30.2.5 NMAC - N, 01/27/05]

### **18.30.2.6 OBJECTIVE:**

To create a rule as pursuant to NMSA 1978, Section 67-3-59.1, NMSA 1978, Section 67-3-59.2, and NMSA 1978, Section 67-3-59.3 which identifies funding share and sliding scale of funding share for two projects: (1) the Rio Bravo boulevard extension

and interchange construction to access Mesa del Sol in the city of Albuquerque and Bernalillo county; and (2) the reconstruction of an interchange at Interstate 40 and West Central Avenue in the city of Albuquerque and Bernalillo county. The sliding scale is based on the local entity's ability to pay a portion of the project from local resources.

[18.30.2.6 NMAC - N, 01/27/05]

#### **18.30.2.7 DEFINITIONS:**

**A. "Commission"** means the New Mexico state transportation commission.

**B. "Department"** means the New Mexico department of transportation.

**C. "Secretary"** means the secretary of the New Mexico department of transportation or his or her designee.

[18.30.2.7 NMAC - N, 01/27/05]

#### **18.30.2.8 SLIDING SCALE FOR AUTHORIZED TRANSPORTATION PROJECTS WITH LOCAL GOVERNMENT:**

**A.** The authorized matching funds for the GRIP funded portion of the transportation project for the Rio Bravo boulevard extension and interchange construction to access Mesa del Sol in the city of Albuquerque and Bernalillo county from the local governments are:

(1) city of Albuquerque: funds from the capital program.

(2) Bernalillo county:

(a) funds for environmental analysis;

(b) funds for staff time devoted to project;

(c) value of estimated right-of-way contribution.

(3) Private share from private sources.

**B.** The authorized matching funds for the GRIP funded portion of the transportation project for the reconstruction of an interchange at Interstate 40 and West Central Avenue in the city of Albuquerque and Bernalillo county from the local governments are:

(1) city of Albuquerque-sliding scale as agreed to in cooperative project agreement;

(2) Bernalillo county-sliding scale as agreed to in cooperative project agreement.

C. The authorized match for the projects' matching funds for the New Mexico department of transportation are: (1) the Rio Bravo boulevard extension and interchange construction to access Mesa del Sol in the city of Albuquerque and Bernalillo county - \$6 million from the GRIP bond issue; (2) the reconstruction of an interchange at Interstate 40 and West Central Avenue in the city of Albuquerque and Bernalillo county - \$6 million from the GRIP bond issue.

[18.30.2.8 NMAC - N, 01/27/05]

## **CHAPTER 31: CLASSIFICATION AND DESIGN STANDARDS FOR HIGHWAYS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: NEW MEXICO SCENIC AND HISTORIC BYWAYS PROGRAM**

#### **18.31.2.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-5515.

[Recompiled 11/16/01]

#### **18.31.2.2 SCOPE:**

Application and acceptance procedures for sponsors participating in the Scenic and Historic Byways Program.

[Recompiled 11/16/01]

#### **18.31.2.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 67-3-11 and 67-3-14. NMSA 1978, Sections 67-3-11, 67-3-14, 67-12-12, and 67-12-14.

[Recompiled 11/16/01]

#### **18.31.2.4 DURATION:**

Permanent.

[Recompiled 11/16/01]

#### **18.31.2.5 EFFECTIVE DATE:**

July 31, 1998, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

#### **18.31.2.6 OBJECTIVE:**

This Rule has been prepared to provide information on and establish procedures for the State Highway and Transportation Department Scenic and Historic Byways Program ("Program").

[Recompiled 11/16/01]

#### **18.31.2.7 DEFINITIONS:**

A. "Corridor" means the road or highway right-of-way and the adjacent area that is visible from and extending along the byway. The distance the corridor extends from the byway could vary with the different intrinsic qualities.

B. "Corridor management plan (CMP)" means a written document that specifies the actions, procedures, controls, operational practices, and administrative strategies to maintain the intrinsic qualities of the byway.

C. "Intrinsic quality" means scenic, historic, recreational, cultural, archeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area. [

D. "Local commitment" means assurance provided by communities along the byway that they will undertake actions, such as zoning and other protective measures, to preserve the intrinsic qualities of the byway and the adjacent area as identified in the CMP.

E. "Regional significance" means characteristics that are representative of a geographic area encompassing two or more states.

F. "Scenic byway" means a public road having special intrinsic qualities that have been recognized as such through legislation or some other official declaration. The term road and highway are synonymous. They are not meant to define higher or lower functional classifications or wider or narrower cross-sections. Moreover, the term scenic byway refers not only to the road or highway itself but also to the corridor through which it passes.

G. "Scenic byways agency" means the SHTD, which is responsible for administering the States scenic and historic byways program, as recognized in the administration of Title 23, United States Code.

H. "SHTD" means the State Highway and Transportation Department.

I. "Sponsor" means a local historical society, cultural organization, government agency, chamber of commerce or other similar group that serves as a focal point for originating and developing route nominations or project proposals.

J. "State scenic byway" means a road or highway under State, Federal, or local ownership that has been designated as a scenic byway for the purposes of this Program.

[Recompiled 11/16/01]

#### **18.31.2.8 ROUTE NOMINATION ACCEPTANCE PROCEDURES FOR STATE SCENIC BYWAY DESIGNATION:**

##### **A. Introduction:**

(1) The Scenic and Historic Byways Program began as part of the Intermodal Surface Transportation Efficiency Act (ISTEA) initiated in 1991. The SHTD administers the Program with funds provided by the Federal Highway Administration for the purpose of protecting the scenic, historic, recreational, cultural, natural and archaeological integrity of New Mexico's highways and adjacent areas.

(2) The national funding level for the Program is established by Congress for a number of years. States compete for grant monies, annually. Funding is available each year for safety improvements, construction of pedestrian-use facilities, highway improvements to enhance scenic area access, protection of historical and cultural resources, and for the development of tourist information.

(3) The Program is two-part: 1) nominating a route for designation into the Scenic and Historic Byways System, and 2) applying for grant monies for a proposed eligible project on a state scenic byway. A route nomination can be submitted to SHTD at any time. A grant application can be submitted when applications are being accepted.

(4) The SHTD Scenic Byways Program Coordinator ("Coordinator") will announce to all Regional and Metropolitan Planning Organizations (RPOs and MPOs), various organizations known to have an interest in the program, and others when grant applications are being accepted and the deadline for submitting them (usually June).

(5) The SHTD formed the Scenic and Historic Byways Advisory Council (SHBAC) which is composed of 17 members from various government agencies or public organizations. The SHBAC has established the requirements and procedures for the program and is the final authority for determining what route nominations and grant applications are submitted for approval by the State Highway Commission (SHC).

(6) This document outlines the procedures and criteria for both nominating a route for designation as a scenic byway, and for applying for a grant for an eligible project on a state scenic byway.

#### B. Route Nomination Requirements:

(1) route sponsors are local historical societies, cultural organizations, government agencies, chambers of commerce or other similar groups that serve as focal points for originating and developing the nomination.

(2) A route sponsor must be recognized by the RPO or MPO as representing an interest in the scenic or historical development of that area.

(3) RPOs/MPOs from adjacent geographical areas are encouraged to coordinate on the sponsorship of a nominated route that is of mutual interest.

(4) The proposed state scenic byway shall be evaluated by the following criteria:

(a) The extent it possesses one or more of the following characteristics: unusual or distinctive scenic, recreational, historical, educational, geological, archaeological, natural, cultural, or ethnic features;

(b) Suitability for the prescribed type(s) of vehicular use;

(c) Existing route with legal public access and use; and

(d) Strong local support with proponents demonstrating coordination with relevant agencies.

(5) The nomination must be accompanied by a conceptual management plan as specified in the application process.

#### C. Route Sponsor's Responsibilities:

(1) Evaluate the proposed route to assure that it meets the criteria established by the SHBAC and outlined in this document.

(2) Demonstrate that the route nomination has strong local support, as follows:

(a) Initiate public meetings to gain strong local support from community leaders, citizens, and agencies having jurisdictional authority over the roadway [for example, U.S. Forest Service (USFS), Bureau of Land Management (BLM), National Park Service (NPS), or Bureau of Indian Affairs (BIA)].



(b) Assure that local zoning ordinances comply, or will comply, with the restriction on the erecting of new billboards along the proposed route.

(c) Make a preliminary presentation to the appropriate RPO/MPO for the purpose of gaining its support for the route nomination. The presentation should address the requirements for route nomination and should include exhibits, pictures and a map of the proposed route. The Coordinator should receive a copy of the presentation package prior to the RPO/MPO meeting.

(d) Present the final route nomination application to the appropriate RPO/MPO. The nomination application should include finalized plans for promotion, development, and corridor management of the proposed route.

(e) If approved by RPO/MPO, the sponsor shall submit the final route nomination application with a letter of recommendation from the RPO/MPO to the program coordinator.

#### D. RPO/MPO responsibilities:

(1) Evaluate route nomination applications to assure that it meets the requirements.

(2) Each RPO/MPO may submit one route nomination per each county within the planning organization or a maximum of five candidates, whichever is greater. If more than one application is submitted, a priority order should be indicated.

(3) RPO/MPO's recommendations should be submitted to the Coordinator. The Coordinator will present the nomination package(s) at the next SHBAC meeting for evaluation and recommendation. Upon SHBAC's recommendation, the Coordinator will present the nomination package(s) to the SHC for final approval of the proposed route(s) as official New Mexico Scenic and Historic Byways.

#### E. SHBAC's responsibilities:

(1) Evaluate nominations submitted by the RPO/MPOs. Conduct site visits as necessary. This may be accomplished through the Coordinator.

(2) Submit recommended routes for consideration and approval to the SHC. This may be accomplished through the Coordinator.

(3) Prepare and make a presentation to the SHC, as necessary. This may be accomplished through the Coordinator.

(4) Monitor development, operation and maintenance of projects that have receive Program funds. This may be accomplished through the Coordinator.

(5) Should the SHBAC become aware, either through its own monitoring activities or from external sources, that a designated scenic byway is not being managed in accordance with the management plan submitted by the route sponsor, or otherwise no longer meets established eligibility criteria, the SHBAC shall:

(a) Notify the route sponsor through the RPO/MPO of its concerns. This notification shall advise the sponsor that if the noted deficiencies are not resolved, the route may be removed from the New Mexico Scenic and Historic Byways System. The Sponsor shall be afforded a period of six months to correct the deficiencies or otherwise appeal the SHBAC decision.

(b) Following this notification period the SHBAC may, at its discretion, remove the route from the New Mexico Scenic and Historic Byways System. This action does not impact scenic byways designations made by other agencies, such as, USFS, BLM, BIA, NPS.

(c) Areas identified as lacking the unusual or distinctive features (intrinsic values), included in the Scenic and Historic Byways Program criteria, may be excluded or segmented from existing or future byway designation.

#### F. Route Nomination - Minimum Application Requirements:

(1) Format:

(a) Use 8 1/2" x 11" paper, vertically bound on the left side, with the capacity to add or delete material without destroying the binder.

(b) Provide a cover sheet with the proposed project name, route number, termini (identified with mileposts), sponsor's name, and date.

(c) Prepare a cover letter addressed to the Scenic and Historic Byways Program Coordinator, NMSHTD, P. O. Box 1149 (SB-1N), Santa Fe, New Mexico 87504-1149.

(d) Prepare a table of contents.

(e) Prepare the report with the information outlined under headings.

(f) Photographs included in the report for information and documentation should be enclosed in acetate sheet protectors on black background or in clear vinyl sheet holders.

(g) The application shall contain no more than 13 pages. (Suggest no more than 3 pages of text followed with up to 7 pages of exhibits, pictures, maps, etc.) Four (4) originals and five (5) reproductions of the nomination package shall be submitted to the RPOs/MPOs.

(2) Statement of Significance - Briefly describe the route that is being nominated and why it should become a State scenic byway.

(3) Road Section of Areas - The road sections or areas recommended for designation should be clearly described by a written paragraph and should be depicted on standard, published maps. Information concerning the entity responsible for the roadway should be included. The written description should include the general location within the state, the county, road name and number, length, mileposts, adjacent cities, direction of road and area or width of the zone of influence.

(4) Maps - Maps to be included in the report should be of a quality published by the United States Geological Survey, SHTD, the county or the city. The area to be depicted should be at a scale that will maximize the space on the 8 1/2" x 11" sheet. If a larger map is used it shall be folded and placed in a pouch at the back of the report. The area designated shall be delineated with marking pens or similar instruments of legible quality. Interesting, relevant points should be labeled.

(5) Local Support - Identify the individual(s) or organization(s) preparing the nomination. Show evidence that local counties, communities, agencies, land owners and private citizens have been involved in the nomination process. A public meeting is not required, however, it is recommended as a suitable method of demonstrating support.

(6) Conceptual/Management Plan:

(a) Discuss how the nominating organization proposes to promote and market the route on the local and regional level. Include promotional activities, placement of scenic or historic markers and proposed improvements or development along the route.

(b) Describe the availability of financial resources with which to upgrade, promote, and otherwise make the scenic road and its corridor available for its intended uses. If no funding is presently available, indicate how the organization plans to locate funding sources.

(c) Describe how the route will be managed to allow for future public use and development along the route and include evidence of a commitment to preserve the intrinsic qualities of the proposed byway.

(7) Inventory of Significant Findings - The inventory of natural, cultural, and visual resources is the main focus of the designation evaluation. It must be descriptive and provide complete and convincing information. The inventory should contain the following information as applicable to the road area under consideration:

(a) Natural Resources - Natural resources should be depicted on maps and described in written form. Areas of importance to the road designation should be sufficiently detailed. Natural resources are comprised of five distinct features

(i) Geology - Geology is the description of the physical history of the earth and the rocks and soil of which it is composed. This section should contain information on the bedrock strata, sections and rock outcrops, and the surface geology and soil types.

(ii) Hydrology - Hydrology contains information that addresses the occurrence, circulation and distribution of water. This section should contain information of interest about groundwater tables, aquifers and recharging basins. Surface drainage comprised of streams and bodies of water should also be inventoried.

(iii) Climate - The climate of the area should be comprised of the prevailing weather condition of the area. Issues such as the temperature, precipitation and seasonal distribution and prevailing winds should be addressed in this section.

(iv) Biota - The biota portion of the report shall contain a description of the living matter contained within the study area. This should outline the biotic communities, plants, animals, birds, insects and fish within the area. It should also contain information on the ecosystem values, changes and controls as they pertain to the proposed designation.

(v) Topographic - The topographic resources of the area are comprised of the land conformation and natural resources. The natural resources are comprised of relief, land form, water and vegetative cover.

(b) Cultural Resources - Cultural resources are the fragile, limited, and non-renewable portions of the human environment. They are comprised of the cultural heritage contained in civilization. Cultural resources should also inventory the man made features comprised of travel ways, buildings and structures, site improvements and changes, and utilities easements and constructs. They include:

(i) Architectural resources - Structures, landscaping or other human constructions that possess artistic merit which are particularly representative of their class or period, or which represent achievements in architecture, engineering, technology, design or scientific research and development.

(ii) Historical resources - Sites, districts, structures, artifacts or other evidences of human activities that represent facets of the history of a nation, state or locality; places where significant historic or unusual events occurred, even though no physical evidence of the event remains, or places associated with a personality important in history.

(iii) Archaeological Resources - Occupation sites, work areas, evidence of farming or hunting and gathering, burials and other funerary remains, artifacts, and structures of all types, usually dating from prehistoric or aboriginal periods, or from historic periods and non-aboriginal activities for which only vestiges remain.

(iv) Cultural Development - Cultural resources also encompass the historic development of civilization. These should include political/governmental development, socio/cultural and technological/economic impacts of civilizations on the study area.

(v) The information presented should deal with the impact of the road or area and what influence it has had in history. Focus on how it helped shape society on a local, state, and/or national level. The information may have been documented by a historical organization. Cultural resources should be depicted on maps, when applicable, and described in written form. Areas of importance to the road designation should be sufficiently detailed. For the historic designation of a route, the cultural resources section should comprise the main body of the report.

(c) Visual Resources - Visual resources are created by the physical components of the natural and cultural resources in the landscape. These components are so arranged that they make up the visual character of a landscape and distinguish it from others. Whereas natural and cultural resources may be well documented, their visual character requires direct observation in order to determine visual quality. Successful visual quality assessment requires two essential steps:

(i) The establishment of Landscape Assessment Units: 1) the selection of appropriate viewpoints, and (2) the classification of the viewpoints scenic element.

(ii) An evaluation of the visual quality of the landscape for each of the Landscape Assessment Units.

(8) Desirable Zone of Influence - The area, on either side of roadway, that would be necessary to protect the resources from damaging encroachments must be defined. These areas will generally be the same as that which can be seen from a viewpoint, but need to be clarified. They can be illustrated on a map.

(9) Land Ownership - Describe and illustrate the land ownership along the roadway. Use the following general categories: federal, state, city, Native American reservation or private.

(10) Land Use - Describe and illustrate the land uses along the roadway. Use the following categories: residential, commercial, industrial, agricultural, government, conservational, or recreational.

(11) Land Zoning - Describe and illustrate the zoning along the roadway. Consult local zoning boards for this information.

(12) Photographs and Supportive Materials - Provide photographs and other information that document the scenic or historic significance of the roadway.

Newspaper, magazine articles or other sources may be cited. Include letters from local agencies or groups indicating their concern with the proposed designation.

(13) Recommendations - List recommendations to protect or enhance the unique features and special natural or cultural resources on the area. Examples of recommendations are:

- (a) Modification to structures and signs;
- (b) Pruning or removal or addition of plant materials;
- (c) Enhancement of historical markers;
- (d) Erosion control;
- (e) Addressing vehicular and pedestrian traffic;
- (f) Compliance with area planning and zoning;
- (g) Location of scenic viewpoints; and
- (h) Restoration of vegetative cover in disturbed areas.

[Recompiled 11/16/01]

#### **18.31.2.9 GRANT APPLICATION/ACCEPTANCE PROCEDURES FOR PROPOSED SCENIC BYWAY PROJECT:**

A. Prescreening: The project sponsor should prescreen the project grant application to assure that it meets the basic requirements. Applications should be formatted as outlined in this document. The Coordinator may be contacted for assistance.

B. Types of projects eligible for Federal assistance with Scenic Byway grants:

- (1) Planning, design, and development of State scenic byways programs.
- (2) Safety improvements to a highway designated as a scenic byway to the extent such improvements are necessary to accommodate increased traffic and changes in the types of vehicles using the highway due to such designation.
- (3) Construction along the scenic byway of facilities for the use of pedestrians and bicyclists, rest areas, turnouts, highway shoulder improvements, passing lanes, overlooks, and interpretive facilities.
- (4) Improvements to the scenic byway that will enhance access to an area for the purpose of recreation, including water-related recreation.

(5) Protecting historical, archeological, and cultural resources in areas adjacent to the highways.

(6) Developing and providing tourist information to the public, including interpretive information about the scenic byway.

C. Basic Requirements for a Grant Application:

(1) To be eligible to apply for a grant, the route must be designated as a State scenic byway under this program prior to the annual grant-funding cycle.

(2) The minimum grant request that will be considered is \$10,000. The maximum grant that will be considered is \$1,000,000 for a single state project. Projects sponsored by multiple states may be up to \$1,000,000 per supporting state.

(3) National Environmental Policy Act (NEPA) compliance is the financial responsibility of the sponsor and is not eligible for grant funding. NEPA should be substantially complete at the time of application. Maintenance is not an eligible activity.

(4) The public must have a legal right to access the project.

(5) The federal share payable for the costs of carrying out projects and developing programs is 80%. The sponsor must secure 20% non-federal matching funds. Only cash or donations of land as described in USC Title 23, Section 323, are considered an allowable match for this criteria.

(6) The RPO or MPO must concur with the project grant application before forwarding it to the Coordinator. The project should be compatible with adjacent land uses.

D. Evaluation and Statewide Ranking of Project Grant Applications - The Coordinator will present the grant applications for consideration at a scheduled SHBAC meeting. The SHBAC will serve as a technical review committee, evaluating each proposal on criteria outlined in Appendix 3 of this document, and establish a statewide ranking for the projects. The SHBAC may choose to limit the number of projects it reviews if the quantity is too numerous. Therefore a sponsor submitting more than one application must prioritize their submittals. If necessary, the SHBAC may ask the RPO to screen submittals.

E. Concurrence - Projects approved by the SHBAC will be forwarded to the SHC for final concurrence. A list of those approved by the SHC will be forwarded to the appropriate RPOs or MPOs to prioritize and incorporate into the regional transportation improvement plan (RTIP).

F. Submittal of Grant Applications to FHWA - Approved grant applications are forwarded by the Coordinator to the FHWA division office with a state budget summary sheet.

[Recompiled 11/16/01]

#### **18.31.2.10 SHOULD YOU SPONSOR AN ISTE A SCENIC BYWAY GRANT?:**

A sponsor should evaluate its ability to implement a project prior to making a grant application. It is recommended that the sponsor be a governmental body. Private non-profit and civic organizations are encouraged to work with governmental agencies to develop project applications. A sponsor should consider the following questions before applying for a grant:

A. Does the RPO or MPO concur with the project proposal? A key concept of ISTE A is statewide planning for transportation improvements. The RPO or MPO must concur with the project and include it in the Transportation Plan.

B. Do you have the time, staff and skills needed to administer the project contract? This can involve planning, environmental analysis, survey and design, etc. The project sponsor will act as lead agency for project development and implementation, including NEPA compliance, survey and design, contract award and administration.

C. Are you aware that ISTE A grant funds are a reimbursement for actual costs incurred? Invoices submitted by the sponsor will be reimbursed at 80% of the total invoice amount, the 20% match is the sponsors responsibility.

D. Do you have a dependable source of partnership funds? Projects cannot be substituted if a selected grant falls through; the state and non-selected projects would lose the opportunity for that year. Therefore, the sponsor must identify the source of matching funds in the grant application and will be required to certify that matching funds are available prior to award of the grant.

E. How good is your cost estimate? It is the sponsor's responsibility to cover cost overruns.

F. Can you complete NEPA and survey and design within a year of grant award? Can you complete construction within two years? New Mexico's competitive status depends on demonstrated success on grants awarded.

G. Who will be responsible for operation and maintenance costs? The application must identify who will be responsible for ongoing operation and maintenance of the project. If the responsible party is other than the sponsor, they must agree in writing, or co-sponsor the project.



H. Is the project located on public land or public right-of-way? The public must have legal access to the project.

[Recompiled 11/16/01]

#### **18.31.2.11 PROJECT GRANT APPLICATION FORMAT:**

A. The application should be typewritten on 8 1/2" x 11" paper. Submit three (3) originals, of which two (2) shall be bound on the left margin, and one shall be unbound. The application should not exceed 13 pages, including the cover sheet, cover letter, and table of contents.

B. A cover letter addressed to the Scenic Byways Coordinator, New Mexico State Highway and Transportation Department, P. O. Box 1149, Santa Fe, New Mexico 87504-1149.

C. Complete appropriate portions of the Project Summary Form included with the Scenic Byways Program Grant Application Package provided by Federal Highways Administration each grant cycle. Instructions on how to fill out the application are included in the package.

D. Table of contents.

E. Text up to three typewritten pages addressing the description of the proposal:

(1) Project location and description;

(2) Project cost with breakdown of estimated cost for categories--land or easement acquisition, NEPA, survey, design, and contract documents, construction or publication, and annual operation and maintenance (O&M) [NOTE: NEPA and O&M are not eligible for grant funding.];

(3) Identification of the partner(s) responsible for the work. Clearly identify the amount of grant request and amount and source of required matching funds;

(4) Project timeline (when key steps can be accomplished, when matching funds are available, and when contract can be awarded);

(5) Identify which of the six eligible projects categories the proposed project fits and describe how; and

(6) Respond to criteria established by SHBAC.

F. A project location map. The map should be of a quality similar to that published by the United States Geological Survey, NMSHTD, the county or the city. The area to be depicted should be at a scale that will maximize the space on the 8 1/2" x 11" sheet.

If a larger map is used, it shall be folded and placed in a pouch at the back of the report. A drafted site plan may be included.

G. Any supporting illustrations or letters, or reference list of planning documents (not to exceed five pages).

H. If a comprehensive plan for the scenic byway has been developed, enclose a copy. Do not send other documents.

[Recompiled 11/16/01]

#### **18.31.2.12 EVALUATION CRITERIA:**

Grant applications will be evaluated and ranked according to the following criteria:

A. What is the relationship of the project to the scenic byway? (The relationship of the project to the byway may be one of proximity, impact or function.)

- (1) Is proximity to the byway adjacent, less than one mile, or over one mile?
- (2) Is there a direct impact to the site caused by the byway designation?
- (3) Does the project have a functional relationship to the byway?

B. Who does the project serve?

- (1) What is the average daily traffic for the byway?
- (2) How will this project serve byway users?
- (3) Does the project benefit more than one byway?

C. Public and private commitment and support:

(1) Is there support other than the sponsors? If so, identify supporters and type of support.

(2) Are there contributions of funds, materials, land, or labor in addition to the required 20% matching funds?

(3) Are other investments being made in scenic byway facilities and enhancements?

D. Status of comprehensive planning:

- (1) Is this project part of a comprehensive plan for the scenic byway?

(2) Does the plan address facilities and services needed to enhance the user experience?

(3) Does the plan protect the scenic or historic values for which the byway was established?

(4) Did the plan development include public involvement?

E. Status of project planning:

(1) Is there a conceptual plan (site plan or narrative) for the project?

(2) Has NEPA been completed for the project? If not, who is responsible for doing it, and what is the timeline? (For non ground disturbing projects substitute "Is graphic design complete?")

(3) Has survey and design been completed for the project? If not, who is responsible for doing it, and what is the timeline? (For projects such as brochures or signs, substitute "Is there camera ready art?")

(4) What are the projected operation and maintenance costs, and who will be responsible for O&M?

F. Benefit to the community or environment:

(1) Will the project benefit the local community economy?

(2) Will it solve an environmental problem?

(3) Will it provide needed visitor facilities or services that the community does not provide?

(4) Does it solve a health or safety problem?

G. Unique benefits of the project:

(1) Does the project have a multi-cultural emphasis?

(2) Does the project have educational values for natural or cultural resources?

(3) Will the project provide access to people with disabilities?

H. From a national perspective:

(1) Is the project sponsored by multiple states?

(2) Is the project a model for other states?

I. From a Statewide perspective:

(1) Does this project benefit tourism?

(2) Does this project foster economic development?

(3) Does the project implement a State initiative?

(4) Is it a timely companion to another project?

(5) Is there a risk that the sponsor will not be able to follow through with project implementation or funding?

[Recompiled 11/16/01]

#### **18.31.2.13 DESIGNATED SCENIC BYWAYS AND HISTORIC TRAILS:**

A. Sandia Crest Scenic Byway - NM 536, (Cibola National Forest); 11 miles.

B. Santa Fe National Forest Scenic Byway - NM 475; 15 miles.

C. 13.3 Gila Cliff Dwellings/Inner Loop Scenic Byway - NM 15 and NM 35, (Gila National Forest); 110 miles.

D. Sunspot Scenic Byway - NM 6563, (Lincoln National Forest); 14 miles.

E. Enchanted Circle Scenic Byway - NM 38, 522 and US 64, (Carson National Forest); 84 miles.

F. Wild Rivers Back Country Byway - NM 378, (BLM); 13 miles. G. Quebradas Back Country Byway - County Road A-135 from I-25 or County Road A-129 from US 380 (BLM); 24 miles.

H. All former US 66 (Route 66) alignments - mile marker 373.5 (Texas border) to mile marker 0 (Arizona border) excluding those portions overlaid by Interstate 40 and Interstate 25; 373 miles.

I. El Camino Real - US 85, 60, 380; NM 304, 47, 408, 1, 51, 187, 185, 273 (Santa Fe to Texas border); 276 miles.

J. The Jemez Mountain Trail - NM 4, 126, 44; 163 miles.

K. Narrow Gauge Scenic Byway - from mp 0, Dulce, New Mexico, to mp 9.8 at the Colorado border; 9.8 miles.

L. Mesalands Scenic Byway (Quay and Guadalupe Counties) - US 54, 84; NM 91, 104, 129, 156, 209, 219, 231, 252, 278, 469, and one un-numbered county road at Colonias; 320 miles.

M. Salt Missions Trail - NM 333, 41; US 60; NM 513, 55, 337, 131; 140 miles.

N. Santa Fe National Historic Trail - NM 410, 406, 453, 21, 161, 518, 63, 50; County Road 67-C; US 56, 64, 87, Old US Highway 85; 480 miles.

O. Billy the Kid Trail - NM 48, 270; US 70, 380; 84.2 miles.

P. Geronimo Trail - NM 51, 195, 52, 59, 61, 35, 152, 187; 220 miles.

Q. Corrales Road - NM 448; 6.7 miles.

R. Turquoise Trail - NM 14, 536 (from Santa Fe to Albuquerque); 48 miles.

S. Lake Valley Back Country Byway - NM 152, 27, (BLM); 47 miles.

T. Guadalupe Back Country Byway - NM 137 (begins at junction of NM 137/US 285), (BLM); 30 miles.

U. Abo Pass Trail - NM 47, US 60; 31 miles.

V. Dry Cimarron Scenic Byway - NM 406, 456, 370, 325, 551, 72; CO8, 18, 385; OK 325; (215 road miles in New Mexico, 80 in Colorado and 75 in Oklahoma).

[Recompiled 11/16/01]

### **PART 3: ALTERNATIVE MODES OF TRANSPORTATION ON LIMITED ACCESS HIGHWAYS**

#### **18.31.3.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-5547.

[Recompiled 11/16/01]

#### **18.31.3.2 SCOPE:**

This Rule will apply to all citizens of, and visitors to, New Mexico.

[Recompiled 11/16/01]

#### **18.31.3.3 STATUTORY AUTHORITY:**

Adoption of these regulations is pursuant to authority granted to the State Highway Commission under Sections 66-7-321 and 67-11-4, NMSA 1978, as amended

[Recompiled 11/16/01]

**18.31.3.4 DURATION:**

Permanent.

[Recompiled 11/16/01]

**18.31.3.5 EFFECTIVE DATE:**

March 15, 1997, unless a later date is cited at the end of a section or paragraph

[Recompiled 11/16/01]

**18.31.3.6 OBJECTIVE:**

The objective of this rule is to prohibit or regulate certain modes of transportation on limited access highways. Interstate highways are designed for motor vehicles. There is an inherent danger anytime motorized and non-motorized modes of transportation mix. There are, however, reasons for allowing bicycles on rural interstates, e.g., facilitating bicycle touring and recreation can benefit a state's economy; most western states, including four of the five states contiguous to New Mexico allow bicycles on the shoulders of interstate highways; interstate shoulders provide a less dangerous route for bike touring than some alternative rural highways; and, some bike touring routes in New Mexico can only be pursued by riding on the shoulders of some rural interstates. This rule is designed to delineate which modes of transportation are prohibited on interstates and to establish the conditions under which bicycles may be operated in interstate highways right-of-way. Allowing bicycles on the shoulders of some interstate highways is not intended to stand as a route recommendation, nor to imply that such shoulders are safer for bicyclists than other routes.

[Recompiled 11/16/01]

**18.31.3.7 DEFINITIONS:**

A. "Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels, except scooters and similar devices.

B. "Bikeway" means any road, path or way which in some manner is specifically designated as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.

C. "Equestrian" means a person on horseback.

D. "Interstate highway" means a principal highway system between states. The highest type of arterial highway; an expressway with full control of access.

E. "Pedestrian" means any natural person on foot.

F. "Right-of-way" means, in the appropriate context, a general term denoting land, property or interest therein, usually in a strip, acquired for or devoted to transportation needs.

G. "Shoulder" means outside portion of a highway contiguous to the roadway that is primarily for use by motor vehicles with problems.

H. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices that are moved exclusively by human power or used exclusively upon stationary rails or tracks.

[Recompiled 11/16/01]

#### **18.31.3.8 TRANSPORTATION MODES PROHIBITED FROM INTERSTATE HIGHWAYS:**

A. Equestrians, pedestrians, other non-motorized vehicles and low-power motor vehicles, such as motor scooters and all-terrain vehicles, are prohibited from using any interstate highway right-of-way for transportation or recreation purposes. Such interstate highways shall be signed appropriately.

B. Bicyclists are prohibited from using any interstate highway right-of-way for transportation or recreation purposes within the boundaries of cities with a population of 50,000 or more. Bicyclists are also prohibited from using any interstate highway right-of-way deemed inappropriate by the Secretary of Highways or his or her designee. Interstate highways prohibited for use by bicyclists shall be signed appropriately.

C. Where not otherwise prohibited, bicyclists are permitted to use interstate highways in New Mexico provided that they ride on the shoulders of the interstate highways.

[Recompiled 11/16/01]

#### **PART 4: LITTER CONTROL AND BEAUTIFICATION GRANT REQUIREMENTS [REPEALED]**

[This part was repealed on February 13, 2018.]

## **PART 5: BEAUTIFICATION OF HIGHWAY ROADSIDES AND MEDIANS**

### **18.31.5.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-5299.

[Recompiled 11/16/01]

### **18.31.5.2 SCOPE:**

This rule is to allow local governmental agencies, citizens' groups, adjacent property owners and others to beautify by landscaping highway roadsides and/or medians .

[Recompiled 11/16/01]

### **18.31.5.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 67-3-11, 67-3-14, 67-12-12, and 67-12-14. [Recompiled 11/16/01]

### **18.31.5.4 DURATION:**

Permanent.

[Recompiled 11/16/01]

### **18.31.5.5 EFFECTIVE DATE:**

August 31, 1998, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

### **18.31.5.6 OBJECTIVE:**

The objective of this rule is to establish regulations to allow local governmental agencies, citizens' groups, adjacent property owners and others to beautify by landscaping highway roadsides and/or medians.

[Recompiled 11/16/01]

### **18.31.5.7 DEFINITIONS:**



A. "Department" means the New Mexico State Highway and Transportation Department.

B. "Guide" means A Guide for Highway Landscape and Environmental Design dated June, 1970 published by AASHTO.

[Recompiled 11/16/01]

#### **18.31.5.8 PERMITS:**

A. Local governmental agencies, citizens' groups, adjacent property owners, and others are required to submit an application for permit to beautify by landscaping highway roadsides and/or medians under the jurisdiction of the Department.

B. To apply, an application in triplicate, obtainable from the affected District office, is submitted to the affected District office for review and approval. The District office shall coordinate with the Department's Landscape Architect in approving the application. The application shall be signed by the applicant. The District Engineer and the Landscape Architect shall sign the application for the Department.

C. A site and maintenance plan shall accompany the application showing the area(s) to be landscaped and the material, both non-organic and plants, to be used in the proposed locations. This plan need not be a finished drawing, but must be sufficiently detailed to present the plan.

D. The Guide, published by AASHTO which deals with roadside and median landscaping and safety shall be adopted as the design guide.

E. As between local governmental agencies and the Department, each entity shall be responsible for liability arising from personal injury or damage to persons or property occasioned by its own employees, subject in all cases to the immunities of the Tort Claims Act (NMSA 1978, Section 41-4-1, et seq.) and any amendment thereto.

F. Private entities, adjacent property owners or others that are granted a permit shall assume the risks which accompany the performance of the landscaping along and within Department roadsides and medians. Private entities, adjacent property owners and others that are granted a permit shall make no claim of any kind against the Department, its agents or employees for any injuries which may arise from the performance of the volunteer services permitted by this Rule.

G. Unless otherwise provided in the application, local governmental agencies, citizens' groups, adjacent property owners and others that are granted a permit shall provide all landscaping items, including but not limited to fertilizer, drip irrigation systems and related materials, and all plant materials and other materials necessary. Said items must be approved by the Department.

H. Unless otherwise agreed upon in the application, maintenance of the landscaping and systems such as drip irrigation systems shall be performed by the applicant. Electrical and water costs shall also be paid by the applicant, unless otherwise agreed upon in the application.

[Recompiled 11/16/01]

## **PART 6: STATE HIGHWAY ACCESS MANAGEMENT REQUIREMENTS**

### **18.31.6.1 ISSUING AGENCY:**

New Mexico Department of Transportation (NMDOT), 1120 Cerrillos Road, Post Office Box 1149, Santa Fe, New Mexico 87504-1149.

[18.31.6.1 NMAC - Rp, 18.31.6.1 NMAC, 6/27/2017]

### **18.31.6.2 SCOPE:**

New Mexico department of transportation districts and divisions, all other state agencies, local governments, land owners, developers, and general public.

[18.31.6.2 NMAC - Rp, 18.31.6.2 NMAC, 6/27/2017]

### **18.31.6.3 STATUTORY AUTHORITY:**

**A. State highway commission (now state transportation commission):** The basic enabling legislation for the management of access on state highways is Section 67-11-2 NMSA 1978, which states: "The state highway commission (now state transportation commission) is authorized and directed to do those things essential to plan, acquire by reasonable purchase or condemnation and construct a section or a part of a state or federally designated highway as a freeway or controlled-access highway or to make any existing state or federally designated highway a freeway or a controlled-access highway."

**B. New Mexico department of transportation:** Pursuant to Section 67-3-6 NMSA 1978, the New Mexico department of transportation shall exercise the power, authority, and duty granted to the state transportation commission. Therefore, the department may prescribe rules and regulations for providing access to state highways pursuant to Sections 67-11-1 NMSA 1978 through Sections 67-11-10 NMSA 1978. In addition, the following state transportation commission policy and department administrative directive supplement New Mexico state statutes and shall be followed when determining the type and extent of access to be provided along state highways.

- (1) State transportation commission Policy CP 65, Interstate Access.

(2) New Mexico department of transportation administrative directive AD 222, Highway Access Control.

[18.31.6.3 NMAC - Rp, 18.31.6.3 NMAC, 6/27/2017]

**18.31.6.4 DURATION:**

Permanent.

[18.31.6.4 NMAC - Rp, 18.31.6.4 NMAC, 6/27/2017]

**18.31.6.5 EFFECTIVE DATE:**

June 27, 2017 unless a later date is cited in the history note at the end of a section.

[18.31.6.5 NMAC - Rp, 18.31.6.5 NMAC, 6/27/2017]

**18.31.6.6 OBJECTIVE:**

**A.** By 18.31.6 NMAC, the department establishes access management requirements which will protect the functional integrity of the state highway system and the public and private investment in that system. Rule 18.31.6 NMAC, and its associated *state access management manual* which is attached to and filed concurrently with this rule, provides procedures and standards to preserve and protect the public health, safety and welfare, to maintain smooth traffic flow, and to protect the functional level of state highways while considering state, regional, local, and private transportation needs and interests. The access management requirements also consider other department regulations, policies and procedures related to highway rights-of-way such as drainage, archeology, hazardous materials and other environmental aspects.

**B.** Through the administration of 18.31.6 NMAC, it is the intent of the department to work with property owners and local governments to provide reasonable access to the state highway system. However, the access rights of an owner of property abutting a state highway shall be held subordinate to the public's right and interest in a safe and efficient highway.

**C.** All owners of property abutting a public road have a right of reasonable access to the general system of streets and highways in the state, but not to a particular means of access. The right of access is subject to regulation for the purpose of protecting the health, safety and welfare of the traveling public.

**D.** Rule 18.31.6 NMAC addresses the design and location of driveways, medians, median openings, intersections, traffic signals, interchanges and other points of access to public highways under the jurisdiction of the state transportation commission. It is based upon the authority granted to the New Mexico department of transportation.

**E.** As of June 9, 1989, no person shall construct or modify any permanent or temporary access providing direct vehicular movement to or from any state highway from or to property in close proximity to or adjoining a state highway without an access permit issued by the New Mexico department of transportation. Within those jurisdictions where the local governments and authorities have returned issuing authority to the department, the department has sole authority to issue state highway access permits. However, the department will delegate the authority under 18.31.6 NMAC to other public agencies provided that these agencies minimally adopt the rule and as the department determines in its discretion as delegable.

**F.** Access permits shall be issued only when the permit application is found to be in compliance with 18.31.6 NMAC. The department, or other issuing authority approved by the department, is authorized to impose terms and conditions as necessary and convenient to meet the requirements of 18.31.6 NMAC.

**G.** Direct access from a subdivision to a state highway shall be permitted only if the proposed access meets the purposes and requirements of 18.31.6 NMAC. All new subdivision of property shall provide access consistent with the requirements of 18.31.6 NMAC. The provisions of 18.31.6 NMAC shall not be deemed to deny reasonable access to the general street system. The issuance of any permit, agreement, plat, subdivision, plan or correspondence shall not abrogate or limit the regulatory powers of the department or issuing authority in the protection of the public's health, safety and welfare.

[18.31.6.6 NMAC - Rp, 18.31.6.6 NMAC, 6/27/2017]

#### **18.31.6.7 DEFINITIONS:**

**A. Acceleration lane--** A speed-change lane, including full-width auxiliary lane and tapered area, for the purpose of enabling a vehicle entering a roadway to increase its speed to a rate at which it can safely merge with through traffic.

**B. Access--** Any driveway or other point of access such as a street, road, or highway that connects to the general street system. Where two public roadways intersect, the secondary roadway shall be considered the access.

**C. Access category--** The definition by which access to a state highway is controlled according to the categories described in 18.31.6.10 NMAC.

**D. Access control--** The regulated limitation of access to and from a highway facility including full control of access, partial control of access, and driveway regulations.

**E. Applicant--** The owner of property or the representative of an owner applying for an access permit.

**F. Arterial roadway--** The primary function of an arterial roadway is to provide mobility for through traffic movements. Arterial roadways provide for land access as a secondary function.

**G. At-grade intersection--** A crossing of two or more highway facilities at the same elevation where through traffic movements on one or more of the highways cross and where turning movements between the highway facilities may be allowed.

**H. Auxiliary lane--** An additional lane adjoining the traveled way which may be used for parking, speed change, turning, storage for turning vehicles, weaving, truck climbing, and other purposes supplementary to through traffic movement.

**I. Average daily traffic (ADT)--** The average traffic volume per day, over a seven-day week, for a unique segment of roadway in both directions of travel on a two-way facility and in one direction of travel on a one-way facility.

**J. Average weekday traffic (AWDT)--** The average traffic volume for a unique segment of roadway on a typical weekday (Monday through Friday) in both directions of travel on a two-way facility and in one direction of travel on a one-way facility.

**K. Average weekend traffic (AWET)--** The average traffic volume for a unique segment of roadway over the weekend period (Saturday and Sunday) in both directions of travel on a two-way facility and in one direction of travel on a one-way facility.

**L. Developed area/business district--** A developed area/business district occurs along a highway when within 300 feet along such highway there are buildings in use for business or industrial purposes (including but not limited to hotels, banks or office buildings, railroad stations and public buildings) which occupy at least fifty percent of the frontage on one side or fifty percent of the frontage collectively on both sides of the highway.

**M. Capacity--** The maximum hourly rate at which persons or vehicles can reasonably be expected to traverse a point or uniform section of a lane or roadway under prevailing roadway, traffic, and control conditions.

**N. Change of use--** Occurs when a change in the use of the property including land, structures or facilities, or an expansion of the size of the structures or facilities, is expected to result in an increase in the trip generation of the property greater than twenty-five percent (either peak hour or daily) and greater than 100 vehicles per day more than the existing use.

**O. Channelized intersection--** An "at grade" intersection with painted islands, raised islands, or other devices for directing traffic along definite paths.

**P. Collector street--** Collector streets connect developed areas with the arterial street system, balancing the need to provide traffic movement with the need to provide property access.

**Q. Commission--** The New Mexico state transportation commission or its predecessor.

**R. Control of access--** The condition in which the right of owners or occupants of land abutting or adjacent to a roadway is controlled by public authority.

**S. Controlled-access highway--** Includes highways, streets or roadways to which owners or occupants of abutting lands, and other persons, have no legal right of access except as determined by the public authority having jurisdiction over the highway, street or roadway.

**T. Corner clearance--** At an intersecting street or highway, the dimension measured along the edge of the traveled way between the centerline of the intersecting street and the centerlines of the first adjacent access points on the approach and departure sides of the intersection.

**U. Cross street--** The lower function roadway that crosses a higher function facility, also referred to as minor street.

**V. Curb cut--** An opening along a state highway with raised curb or curb-and-gutter to provide for driveway access using drivepad construction. Also referred to as driveway cut.

**W. Curb return--** The access radius for an intersection or driveway opening, also referred to as radius return.

**X. Curb return construction--** As applied to a driveway opening, means that proper access radii are used in the design and construction of an access facility.

**Y. Deceleration lane--** A speed-change lane, including full-width auxiliary lane and tapered areas, for the purpose of enabling a vehicle to slow to a safe turning speed when exiting a roadway.

**Z. Department--** New Mexico department of transportation and all of its components, including but not limited to, the district engineers, and the department divisions.

**AA. Design vehicle--** A selected motor vehicle with the weight, dimensions, and operating characteristics used to establish highway design controls.

**AB. Developer--** A person or persons representing a proposed land development project.

**AC. Divided highway--** A highway with separated roadways for traffic traveling in opposite directions. Separation may be provided by depressed dividing strips, raised medians, traffic islands, other physical separations, standard pavement markings, or other traffic control devices.

**AD. Drivepad construction--** As applied to a driveway or curb cut, means that access radii are not used in the design and construction of an access facility.

**AE. Driveway--** For the purposes of department access management requirements, a driveway is a public or private access along a state highway serving a limited area where traffic signal control is not required. Excludes public streets, roads, highways, and other signalized intersections.

**AF. Driveway angle--** The angle of 90 degrees or less between the driveway centerline and the edge of the traveled way.

**AG. Driveway cut--** An opening along a state highway with raised curb or curb-and-gutter to provide for driveway access using drivepad construction. Also referred to as curb cut.

**AH. Driveway throat width--** The narrowest width of a driveway measured parallel with the edge of the traveled way exclusive of radii, ramps or tapers.

**AI. Edge clearance--** The distance measured along the edge of the traveled way between the frontage property line and the point of tangency of the nearest radius return for an access.

**AJ. Egress--** To exit an abutting property or intersecting roadway to gain access to a state highway.

**AK. Freeway--** A multi-lane divided highway having a minimum of two lanes in each travel direction, with access provided by grade-separated interchanges.

**AL. Frontage--** The distance along the highway right-of-way line of a single property tract or roadside development area between the limits of the property.

**AM. Frontage property line--** A line, perpendicular to the highway centerline, at each end of the frontage, extending from the right-of-way line to the edge of traveled way.

**AN. Full control of access--** That part of access control where preference is given to through traffic by providing access connections only with selected public roads, and by prohibiting at-grade crossings and direct private driveway connections. Access control is accomplished by legally obtaining right-of-way from the abutting property owners or by the use of frontage roads or other means to provide access to abutting properties.

**AO. Functional area of an intersection--** The areas of both upstream and downstream of an intersection where additional access points should not be allowed. The upstream area consists of length. The downstream area consists of stopping sight distance. Right-turn conflict overlap should also be considered when determining the downstream area.

**AP. Functional classification--** The grouping of highways by the character of service they provide to through traffic movements (mobility) versus access to abutting properties (land accessibility).

**AQ. General-purpose lanes--** The continuous through lanes on a highway, excluding auxiliary lanes. Sometimes referred to as mainline lanes.

**AR. General street system--** The interconnecting network of city streets, county roads, and state highways.

**AS. Grade separation--** A crossing of two transportation facilities, such as two roadways or a roadway and a railroad, at different elevations where access is not provided from either facility at their intersection.

**AT. Grade or gradient--** The rate (or percent) of change in slope. For highway facilities, it is measured along the centerline of the roadway or access facility.

**AU. Highway--** The entire width between the right-of-way lines of publicly maintained traveled way when any part thereof is open to the public for purposes of vehicular travel, or the entire width of any traveled way declared to be a public highway by law. It may include bridges, culverts, sluices, drains, ditches, waterways, embankments, walls, trees, shrubs and fences.

**AV. Highway improvement project--** Includes any project to improve a roadway segment or intersection facility to protect and maintain the general health, safety and welfare of the traveling public, typically conducted by the public entity having jurisdiction over the facility being improved. Highway improvement projects are generally included in the public entity's transportation improvement program, whether the program is local, regional or statewide.

**AW. Horizontal alignment--** The combination of curved and tangent sections of a highway in the horizontal plane.

**AX. Ingress--** To leave the highway and enter into an abutting property or intersecting roadway.

**AY. Intersection--** Public street or other access serving a large area or a major traffic generator(s) where traffic signal control may be provided.



**AZ. Interstate highway--** Represents the highest functional classification of a roadway in a highway network. Interstates are multi-lane divided highways having a minimum of two lanes in each travel direction, with access provided by grade-separated interchanges.

**BA. km/h--** A rate of speed measured in kilometers traveled per hour.

**BB. Land development project--** Includes any project to develop or redevelop private or public property adjacent or in close proximity to a state highway where direct or indirect access to the property is required from the state highway. Land development projects may be conducted by either private or public entities.

**BC. Lane--** The portion of a roadway for the movement of a single line of vehicles, not including the gutter or the shoulder of the roadway.

**BD. Level of service (LOS)--** A qualitative measure describing traffic operational conditions within a traffic stream based on factors such as speed, travel time, freedom to maneuver, traffic interruptions, comfort and convenience, and safety. Level of service designations range from A (best) to F (worse).

**BE. Local governments and authorities--** Every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of the State of New Mexico.

**BF. Local road--** Local roads primarily provide direct access to abutting land and to roads of higher functional classification. Mobility is discouraged, especially in urban areas.

**BG. May--** A permissive condition where the condition is suggested but not mandatory.

**BH. MUTCD--** Manual on uniform traffic control devices for streets and highways, latest edition.

**BI. Median--** That portion of a divided highway separating traffic traveling in opposite directions.

**BJ. Minor street--** The lower function roadway that crosses a higher function facility, also referred to as cross street.

**BK. mph--** A rate of speed measured in miles traveled per hour.

**BL. NMDOT--** The New Mexico department of transportation.

**BM. Nominal control of access--** That part of access control that may be applied when full or partial control of access has not been obtained by a highway

authority. A means of access control that is consistent with the functional classification of a state highway facility, and that is sufficient to maintain a safe and efficient transportation system.

**BN. Non-access controlled highway--** Includes state highways where roadside access is permitted and access control has not been established by legally obtaining right-of-way from the abutting property owners or by the use of frontage roads or other means to provide access to abutting properties.

**BO. Non-traversable median--** A median which, by its design, physically discourages or prevents vehicles from crossing it except at designated openings which are designed for turning or crossing movements.

**BP. Partial control of access--** That part of access control where preference is given to through traffic to a degree that some at-grade crossings may be permitted. Access control is accomplished by legally obtaining right-of-way from the abutting property owners or by the use of frontage roads or other means to provide access to abutting properties.

**BQ. Permittee--** The individual(s) responsible for fulfilling the terms and conditions of the access permit as imposed by the department.

**BR. Property owner--** The person or persons holding the recorded title to property abutting a state highway, and other persons holding a recorded interest in such property, that includes a right to reasonable access from the state highway system.

**BS. Radius return--** The access radius for an intersection or driveway opening, also referred to as curb return.

**BT. Recovery Area--** An unobstructed area provided beyond the edge of a traveled way for the recovery of errant vehicles.

**BU. Right-in/right-out driveway (RI/RO)--** A driveway located along a roadway prohibiting left-turn access into or out of the driveway.

**BV. Right-turn conflict overlap--** A conflict that occurs when a driver in a through travel lane must monitor more than one access connection at a time.

**BW. Setback--** The lateral distance between the highway right-of-way line and any development structure, obstacle or parking area along the highway roadside.

**BX. Shall--** A mandatory condition where the requirements must be met.

**BY. Should--** An advisory condition where the condition is recommended but not mandatory.

**BZ. Sight distance--** The length of roadway visible to the driver of a vehicle, as further defined in the AASHTO document, *a policy on geometric design of highways and streets*, latest edition.

**CA. Signal progression--** The timing of consecutive signalized intersections to provide for the progressive movement of traffic at a planned rate of speed.

**CB. Speed-change lane--** A separate lane for the purpose of enabling a vehicle entering or leaving a roadway to increase or decrease its speed to a rate at which it can more safely merge into or exit from through traffic.

**CC. State highway--** Any public highway that has been designated as a state highway by either the New Mexico state legislature or the state transportation commission.

**CD. Stopping sight distance--** The distance required by a driver of a vehicle to bring the vehicle to a stop after an object on the roadway becomes visible.

**CE. Storage lane length--** The length provided within a deceleration lane for the storage of queued vehicles, typically based on the vehicle queue expected during peak travel periods.

**CF. Subdivide--** To divide land into two or more smaller lots, tracts or parcels of land.

**CG. Subdivision--** A tract of land which has been subdivided in accordance with the laws of the state usually with appropriate streets, dedications and other facilities for the development or sale of industrial, commercial or residential land.

**CH. Traveled way--** That portion of a roadway containing the travel lanes and speed-change lanes, exclusive of pavement provided for shoulders.

**CI. Traversable median--** A median which, by its design, does not physically discourage or prevent vehicles from entering upon or crossing it.

**CJ. Trip--** A one way vehicle movement from one location to another.

**CK. Trip assignment--** Refers to the addition of trips generated by a proposed development to a transportation network. Involves the specific routing of traffic on the street system.

**CL. Trip distribution--** Refers to the geographic origin or destination of trips related to a project. Involves the general allocation of trips generated by a development over the transportation network.

**CM. Trip generation--** An estimate of the number of trips expected to be generated by specific type of land use.

**CN. Undivided roadway--** A highway without physical separation between traffic traveling in opposite directions.

**CO. Vertical alignment--** The vertical profile of a highway, intersection approach or driveway approach, typically measured along its centerline.

[18.31.6.7 NMAC - Rp, 18.31.6.7 NMAC, 6/27/2017]

18.31.6.8 REFERENCES: The reference documents listed in 18.31.6.9 NMAC are supplementary and should be used when additional detail is required to address issues that arise during the access permitting and design process. The most recent edition of each technical reference shall be used.

[18.31.6.8 NMAC - Rp, 18.31.6.8 NMAC, 6/27/2017]

#### **18.31.6.9 REFERENCE LIST:**

**A.** New Mexico state statutes and traffic laws, as amended.

**B.** The current editions, as amended, of the following NMDOT manuals, standards, and policies:

- (1) State access management manual.
- (2) Standard specifications for road and bridge construction.
- (3) State transportation commission policies.
- (4) Standard drawing serials and designated drawings.
- (5) Drainage manual, volume I - hydrology, volume II - sedimentation and erosion, and drainage design criteria (administrative memorandum 221), latest editions.
- (6) New Mexico state traffic monitoring standards.
- (7) Railroads and utilities manual.
- (8) Materials manual.
- (9) Construction manual.
- (10) Location study procedures, a guidebook for alignment and corridor studies.

**C.** A policy on geometric design of highways and streets, American association of state highway and transportation officials, latest edition.

**D.** Manual on uniform traffic control devices for streets and highways, U.S. department of transportation, federal highway administration, latest edition.

**E.** Highway capacity manual, transportation research board, national research council, latest edition.

**F.** Trip generation, institute of transportation engineers, latest edition.

**G.** Roadside design guide, American association of state highway and transportation officials, latest edition.

**H.** Manual of transportation engineering studies, institute of transportation engineers.

**I.** A guide for erecting mailboxes on highways, American association of state highway and transportation officials.

**J.** Americans with Disabilities Act, accessibility guidelines for buildings and facilities (PROWAG), architectural and transportation barriers compliance board, as amended; 36 CFR Part 1191.

**K.** Traffic engineering handbook, current edition, institute of transportation engineers.

**L.** Access management guidelines for activity centers, NCHRP 348.

**M.** Manual of traffic signal design, second edition, institute of transportation engineers.

**N.** Traffic access and impact studies for site development, institute of transportation engineers.

**O.** Guide for the development of bicycle facilities, American association of state highway and transportation officials, 3rd edition.

**P.** Transportation and land development, institute of transportation engineers.

**Q.** An informational guide for roadway lighting, American association of state highway and transportation officials.

**R.** Web sites (note: web addresses may change without notice):

**(1)** New Mexico department of transportation: [dot.state.nm.us](http://dot.state.nm.us).

- (2) Federal highway administration: [www.fhwa.dot.gov](http://www.fhwa.dot.gov).
- (3) Institute of transportation engineers: [www.ite.org](http://www.ite.org).
- (4) American association of state highway and transportation officials: [www.transportation.org](http://www.transportation.org).
- (5) Transportation research board: [www.nas.edu/trb](http://www.nas.edu/trb).
- (6) National cooperative highway research program: [www.trb.org/NCHRP/NCHRP.aspx](http://www.trb.org/NCHRP/NCHRP.aspx).

[18.31.6.9 NMAC - Rp, 18.31.6.9 NMAC, 6/27/2017]

**18.31.6.10 ACCESS CATEGORIZATION SYSTEM:** The regulation and management of vehicular access to and from the New Mexico state highway system shall be defined by an access categorization system. The access categorization system for state highways is described in Section 10 of the *state access management manual*. The access categorization system shall be based on the functional classified system for New Mexico roadways, which consists of interstates and freeways (INTS), principal arterials (PRAR), minor arterials (MNAR), major collectors (MJCL), minor collectors (MNCL), collectors (COLL), local roads (LOC), and other special road types. The functional classified system shall be further defined as urban and rural routes based on the location of a highway with respect to population centers. The current classification of a highway shall be obtained from the department and shall be used to determine the access category applicable to the highway under consideration. Access requirements for each access category are described in the *state access management manual*.

[18.31.6.10 NMAC - Rp, 18.31.6.10 NMAC, 6/27/2017]

#### **18.31.6.11 ACCESS MANAGEMENT PLANS:**

The department may develop an access management plan for a designated portion of state highway. An access management plan provides the department, and local authority, with a comprehensive roadway access design plan for a designated state highway segment or corridor for the purpose of bringing that portion of highway into conformance with its access category and its functional needs to the extent feasible given existing conditions. Access management plans should be developed as described in Section 11 of the *state access management manual*.

**A.** Access management plans for state highways are developed by the department in cooperation with the appropriate local authorities through a memorandum of understanding or a joint powers agreement. Access management plans shall be adopted by the department to become effective. The adoption of a plan shall be in the form of a formal written agreement prepared in accordance with 18.31.6.19 NMAC,

access control review procedures. When applicable, concurrence of the local authority should also be obtained in written form.

**B.** After an access management plan is adopted, modifications to the plan shall require department approval. Where an access management plan is in effect, all action taken in regard to access shall be in conformance with the plan and 18.31.6 NMAC unless the department approves exceptions to the plan in writing.

[18.31.6.11 NMAC - Rp, 18.31.6.11 NMAC, 6/27/2017]

**18.31.6.12 INTERCHANGE ACCESS MANAGEMENT PLANS:** An interchange access management plan shall be required for any new interchange or significant modification to an existing interchange. The interchange access management plan shall satisfy the requirements of 18.31.6.19 NMAC, access control review procedures, and applicable state transportation commission policies and department administrative directives. The interchange and the management plan shall receive the approval of the deputy secretary for highway operations. If located on a national or interstate highway facility, approval shall also be obtained from the federal highway administration. Section 12 of the *state access management manual* should be used to guide the development of interchange access management plans.

[18.31.6.12 NMAC - Rp, 18.31.6.12 NMAC, 6/27/2017]

#### **18.31.6.13 ACCESS CATEGORY STANDARDS:**

**A. Purpose:** Whereas the requirements for access requests along state highways are described in multiple Sections of 18.31.6 NMAC, summary information for each access category is provided in Section 13 of the *state access management manual* to assist users in locating and determining the requirements for a proposed access along a state highway. Practitioners shall reference specific sections of 18.31.6 NMAC when determining applicable requirements for their access request. The summary information contained in Section 13 of the manual is provided solely to ease use of the access management manual, with the exception below regarding interstate highways.

**B. Interstate highways:** The design of interstate highway facilities, requests for modifications to existing interstate access points, and new interstate access proposals shall satisfy the requirements of all pertinent sections of the code of federal regulations (CFR) and all interstate highway policies adopted by the federal highway administration. All decisions regarding interstate highway facilities shall require the approval of the federal highway administration and the New Mexico department of transportation.

[18.31.6.13 NMAC - Rp, 18.31.6.13 NMAC, 6/27/2017]

#### **18.31.6.14 PERMITTING PROCESS:**

**A. Purpose:** This section describes the application procedures for submitting an access permit request to the department, and the administrative procedures used by the department to approve or deny access permit requests on state highways.

**B. Types of access:** Following is a list of the types of access that may occur along the state highway system. Refer to Section 14 of the *state access management manual* for a description of each access type.

- (1) Existing lawful access, modification or transfer.
- (2) New private access (individual use).
- (3) New subdivision access.
- (4) New public access.
- (5) New commercial access.
- (6) Temporary construction access.
- (7) Temporary access.
- (8) Emergency access.
- (9) Field access.
- (10) Access breaks in established access control lines.
- (11) Illegal access.

**C. Access permit applications:** Applications for access permits shall be made by the property owner; the property owner's authorized representative; or, the local governmental agency requesting access from a state highway. Applications are required for all new access types, for modification or transfer of existing lawful access permits, and for upgrading an existing illegal access to a lawful access.

(1) Changes in property use: Where additional traffic is projected due to expansion or redevelopment of a property, the property owner shall contact the department to determine if a new permit application and modifications to existing access points will be required. If the department determines that the increased traffic generated by the property does not require modifications to the existing permitted access, according to the procedures of 18.31.6.16 NMAC, a new permit application will not be required. Failure to contact the department to determine the need for access modifications or to apply for such modifications prior to initiation of property improvements, land use changes or traffic flow alterations actions, may result in



notification to the property owner of intent to revoke or modify the existing permit and closure of the access to the property. (Also refer to Subsection O of 18.31.6.14 NMAC).

(2) Permit application form: All applications shall be made on the approved department permit application form, "application for permit to construct an access or median opening on public right-of-way."

(3) Department district offices: Persons wishing to submit an access permit application form should contact the appropriate department district office to obtain application forms. District offices are located in Deming, Roswell, Albuquerque, Las Vegas, Santa Fe, and Milan. The application form can also be found in the appendix of the *state access management manual*, and on the departments external web site, [dot.state.nm.us/content/dam/nmdot/Infrastructure/Access\\_management\\_Manual.pdf](http://dot.state.nm.us/content/dam/nmdot/Infrastructure/Access_management_Manual.pdf).

#### **D. Application submittal requirements:**

(1) Completed access permit forms shall be submitted to the appropriate district office with proof of ownership of the property to which access is requested. A plan or sketch of the property shall be attached to the permit application showing the length of the property frontage, the distance from the edge of the traveled roadway to the property line, edge clearances, corner clearances, the distance from the referenced mile marker to the centerline of the proposed driveway(s), and the location of any access drives along the state highway across from the proposed site. A traffic engineering evaluation shall be conducted for all access permit requests according to the requirements of 18.31.6.15 NMAC and 18.31.6.16 NMAC, with an exception. The traffic engineering evaluation may be waived for individual use access requests (see Subsection E, Paragraph 1 of 18.31.6.14 NMAC). In such cases, the department may conduct the evaluation required to determine if an individual use access will be permitted or denied. A construction traffic control plan shall also be submitted with the application for review and approval by the district traffic engineer. The department may require additional information relative to the evaluation of a permit application as further described in Section 14 of the *state access management manual*.

(2) A permit application may be deemed incomplete by the department when necessary and relevant information is missing, or when there is no written evidence of the ownership of the property surface rights provided in the application. If the application is deemed incomplete, the department shall notify the applicant within 15 working days of receipt of the application and shall indicate the reason or reasons for refusal. The department review period begins with the acceptance of an application.

#### **E. Access permit requests from private entities:**

(1) Individual use: Requests for a new private access shall be made on the department access permit application. Application requirements for individual use permits shall include a platted survey of the property, proof of ownership of the property, and details regarding the location of the proposed access and the proposed

development. A traffic engineering evaluation typically shall not be required. The department may conduct the evaluation required to determine if an individual use access will be permitted or denied.

(2) Subdivisions and commercial developments: Requests for new subdivision access, new commercial access or for modification to an existing lawful access for other than individual use shall be made on the access permit application. The applicant shall be required to satisfy all pertinent requirements of 18.31.6 NMAC.

#### **F. Access permit requests from governmental entities:**

(1) Local governments: Requests by local governmental agencies for new access or for the reconstruction of existing access to the state highway shall be administered by the department. The local governmental agency shall be considered the applicant. The department shall work with local governmental agencies realizing that the access will serve multiple property owners. Access to subdivisions and other developments shall not be considered public access until the access is constructed and accepted as a local public roadway.

(a) Local governmental agencies shall provide notice of all developments that will directly or indirectly impact the state highway, and shall request department participation in the administration of an access permit if it is determined by the department that an access facility will directly or indirectly impact the operation and function of a state highway. The local governmental agencies may also require sub-dividers to provide additional notice of all proposed developments that will directly or indirectly impact the state highway.

(b) Where a private development accessing the roadway of an appropriate local authority necessitates access improvements where the local roadway connects to a state highway, the permittee shall be the local jurisdiction.

(c) Local governmental agencies may be required to submit a traffic engineering evaluation with a permit application. The traffic engineering evaluation requirement shall be determined according to the procedures described in 18.31.6.15 NMAC and 18.31.6.16 NMAC. Local governmental agencies may require developers to assist in preparing and providing this information for submission to the state.

(2) Federal government: Requests for access from a state highway by the general services administration (GSA), United States postal service (USPS), department of defense (DOD), department of energy (DOE), or other divisions of the federal government shall be administered by the department in cooperation with the pertinent division of the federal government. The access location, spacing and design standards described in 18.31.6.18 NMAC and Section 18 of the *state access management manual* should be followed for such requests.

(3) Sovereign Nations: Access requests on state highway segments that traverse sovereign nation lands shall be administered by the department in cooperation with the pertinent sovereign nation. The access location, spacing and design standards described in 18.31.6.18 NMAC and Section 18 of the *state access management manual* should be followed for such requests.

#### **G. Administrative review process:**

(1) An administrative review period begins with the acceptance of a permit application by the appropriate district engineer or the district engineer's designee.

(2) Upon acceptance of the application permit and supplemental information, the department shall use 18.31.6 NMAC, the *state access management manual* and any other applicable state statutes for evaluating and acting on the application. Access requests that break existing access control lines or that are requested on a controlled-access facility shall be acted on by the access control review committee according to the procedures in 18.31.6.19 NMAC. The application will normally be processed within 45 days. The review period may be extended by the department when further action is required by the access control review committee or other government entities, the applicant will be notified. Transmittal of a completed permit, approved by the district engineer, or transmittal of a denied application constitutes action on the permit application.

(3) If the department approves an application permit, the permit shall be prepared and transmitted to the applicant along with any additional terms and conditions established by the department. The owner noted on the permit, normally the surface right owner, will become the permittee. If the permittee does not agree to all terms and conditions of the permit, the permit shall not be issued.

(4) In accepting the permit, the permittee agrees to all terms and conditions of the permit. Should the permittee or applicant choose to appeal a denied application, or the terms and conditions of a permit, the appeal shall be filed within 60 days of the date the denial notice or the approved permit is transmitted.

(5) The issue date of the permit is the date the department representative signs the permit.

(6) The granting of an access permit conveys no rights, title or interest in state highway rights-of-way to the permit holder or property served. A permit for direct access to a state highway does not entitle the permit holder to control or have any rights or interests in any portion of the design, specifications or operation of the highway or roadway, including those portions of the highway built pursuant to the terms and conditions of the permit.

(7) If the department denies an application, the department shall provide the applicant a copy of the application marked "denied" along with any attachments and a

written explanation for the decision. The applicant may request a hearing with the department district engineer or designee to discuss reasons for denial.

**(8)** Denial of an application request for physical modifications to an existing lawful access does not constitute revoking access authorization for the existing access.

**(9)** Requests for variance from the standards of 18.31.6 NMAC may be submitted to the district engineer and shall be considered an attachment to the permit application. The review of variance requests shall be in accordance with Subsection J of 18.31.6.14 NMAC. Variance procedures may be used when the standards established by 18.31.6 NMAC are not entirely applicable to the proposed request for access.

**(10)** If, at the sole discretion of the department, it is determined that a permittee is in violation of 18.31.6 NMAC or any conditions of a permit, the department may revoke the permit. The revocations process shall be as described in Subsection O of 18.31.6.14 NMAC.

**H. Permit fees:** The department may establish a reasonable schedule of fees for access permits issued pursuant to 18.31.6 NMAC. It is the responsibility of the applicant to determine if any local governmental fees are applicable.

**I. Appeals procedures:**

**(1)** If the permittee or applicant objects to the denial of a permit application by the Department or objects to any of the terms or conditions of the permit placed therein by the department, a written appeal shall be filed with the appropriate district engineer within 60 days of the transmittal of notice of denial or transmittal of the approved permit. The request shall include reasons for the appeal and may include recommendations by the permittee or applicant.

**(2)** The district engineer, or the district engineer's designee, will submit a written request for review to the department traffic technical support engineer along with the permit application, the written appeal, and all supporting information. The traffic technical support engineer will review the request and the appeal and offer an opinion to the district engineer regarding the merits of the appeal. It is the intent of this process that an agreement is reached between the traffic technical support engineer and the district engineer. If, however, agreement cannot be reached, a formal meeting shall be scheduled with the deputy secretary for highway operations to hear the appeal. This meeting should involve the applicant, the traffic technical support engineer, and the district engineer or designee. The traffic technical support engineer shall provide a summary presentation of the facts and issues of dispute along with a discussion of the consequences, safety assessment, risks and value associated with the permit application. If applicable, the appeal should include a report from the applicant's engineer. The deputy secretary for highway operations shall make the final decision. Final decisions that are exceptions to existing standards and regulations may be sent to the federal highway administration for approval if their involvement is deemed

appropriate by the deputy secretary for highway operations. At this final decision point, no other department employee will be authorized to approve the permit.

**J. Variance procedures:** If an applicant wishes to seek a variance from the standards of 18.31.6 NMAC, a written request shall be submitted as an attachment to the permit application form. The request for variance should include specific and documented reasons.

**K. Construction of access by owner:**

**(1)** An approved access permit shall be deemed expired and null and void if the access is not under construction within six months from the date of issue unless otherwise noted and approved by the department in writing. When the permittee is unable to commence construction within six months after the permit issue date, a six-month extension may be requested from the district engineer. Any request for an extension shall be in writing and submitted to the district engineer before the permit expires. Denial of an extension may occur when the district engineer ascertains and documents that unforeseen and significant changes in highway traffic operations, proposed access operation, or statutes and regulations that were not considered in the issuance of the permit have occurred. Any person wishing to reestablish an access permit that has expired shall be required to submit a new permit application and comply with all related requirements, as specified by the district traffic engineer.

**(2)** The permittee shall notify the district traffic engineer of pending access construction in state right-of-way at least 10 working days prior to any construction, unless other arrangements are made. Construction of the access shall not proceed until both the access permit and a construction traffic control plan are approved. The access shall be constructed and completed in an expeditious and safe manner and shall be finished within 45 days of initiation of construction within the highway right-of-way. Failure by the permittee to complete construction in the 45-day period shall be sufficient cause for the department to initiate action to suspend or revoke the permit or to close the access.

**(3)** The construction of the access and its appurtenances as required by the terms and conditions of the permit shall be completed at the expense of the permittee, unless other arrangements are made with the district engineer. The permittee should arrange for access construction to be completed by qualified contractors. Construction shall meet all department specifications and shall be subject to inspection by the department.

**(4)** Property required for highway access improvements shall be dedicated, without cost, to the department. All rights, titles and interests of dedicated property shall be conveyed to the department. All current title policies shall be disclosed and be acceptable to the department. The owner shall certify that the property is clean of contamination or indemnify the department from any remediation responsibilities prior to conveyance. The department may refuse to accept any property containing or

suspected of containing hazardous substances, toxic wastes or other contaminants until such substances are either removed or the property is certified clean by the appropriate governmental entity. The access is not considered complete until property is conveyed.

(5) All materials used in the construction of the access within the highway right-of-way or on permanent easements become public property. Any materials removed from the highway right-of-way shall be disposed of as directed by the department. All fencing, guard rail, traffic control devices and other equipment and materials removed in the course of access construction shall be given to the department unless otherwise instructed by the permit or the department inspector.

(6) The department, at its discretion, may complete the installation of permanent traffic control devices. The permittee shall pay for direct costs and labor provided by the department for the installation and relocation of all traffic control devices within public right-of-way directly related to the use or construction of the permitted access. Failure of the permittee to pay within a reasonable period may be considered grounds for permit suspension, which may lead to revocation and access removal.

(7) Where access construction requires the reconstruction of the existing state highway, the department may require the contractor or permittee to post a bond to ensure completion of the work.

(8) The permittee shall provide adequate advance warning at all times during access construction according to the construction traffic control plan accompanying the approved access permit. The traffic control plan shall conform with the *manual of uniform traffic control devices for streets and highways* (MUTCD). Construction traffic control may include the use of signs, flashers, barricades, and flaggers.

(9) The department may restrict work on or immediately adjacent to the highway, control lane closure periods, and require pre-approval of all aspects of construction phasing where access construction will affect traffic operations, roadway capacity or safety. Every effort shall be made to minimize the closure periods of any travel lanes. Work in the right-of-way may not be allowed on holidays, at night, during peak traffic hours, or during adverse weather conditions without written permission from the district. Work hours shall be approved by the district traffic engineer.

(10) A utility permit shall be obtained for any utility work within highway right-of-way. Where necessary to remove, relocate, or repair a traffic control device or public or private utilities for access construction, the relocation, removal or repair shall be accomplished by the permittee without cost to the department and at the direction of the department or utility company. Any damage to the state highway or other public right-of-way beyond that which is allowed in the permit shall be repaired immediately. The permittee is responsible for the repair of any utility damaged in the course of access construction, reconstruction, or repair.

**(11)** Prior to use of the access, the permittee is required to complete the construction according to the terms and conditions of the access permit. Failure by the permittee to abide by all permit terms and conditions shall be sufficient cause for the department to initiate action to suspend or revoke the permit or to close the access. If the permittee wishes to use the access prior to completion, arrangements shall be approved by the department and included in the permit. The department may order a halt to any unauthorized use of the access pursuant to statutory and regulatory powers. Reconstruction or improvement of the access may be required when the permittee has failed to meet required specifications of design or materials.

**(12)** If any construction element fails within two years due to improper construction or material specifications, the permittee shall be responsible for all repairs. Failure to make such repairs may result in suspension of the permit and closure of the access.

**L. Inspection of access:**

**(1)** The permittee shall employ a qualified construction inspector to ensure that the conditions of the access permit are met unless otherwise determined necessary by the district engineer's designee. The district engineer, or the district engineer's designee, may inspect the access during construction and upon completion of the access to ensure that all terms and conditions of the permit are met. Inspectors are authorized to enforce the conditions of the permit during construction and to halt any activities within state right-of-way that:

- (a)** do not comply with the provisions of the permit;
  - (b)** conflict with concurrent highway construction or maintenance work;
  - (c)** endanger highway property, natural or cultural resources protected by law;
- or
- (d)** endanger the health and safety of workers or the public.

**(2)** The permittee shall ensure that a copy of the permit is available for review at the construction site at all times. The permit may require the contractor to notify the district representative noted on the permit at any specified phases in construction to allow a field inspector to inspect various aspects of construction such as concrete forms, subbase, base course compaction, and materials specifications. Minor changes and additions may be ordered by the department field inspector to meet unanticipated site conditions. The department may require the permittee to hire a New Mexico registered professional civil engineer to affirm to the best of the engineer's knowledge that the construction is in compliance with the permit and department specifications. The department may require testing of materials. When required, test results shall be provided to the department.

(3) Each permittee understands and agrees as a condition of issuance of any permit, that if the department determines that any violation has or may result in the creation or existence of any safety or traffic hazard, the department may immediately take such action as the department deems necessary to correct, eliminate or mitigate such hazard, without the need for the completion of any review process.

**M. Maintenance of access:** The permittee, his or her heirs, successors-in-interest, assigns, and occupants of the property serviced by the access shall be responsible for meeting the terms and conditions of the permit. This shall consist of, but not be limited to, the repair and maintenance of the access beyond the edge of the roadway including any cattle guard and gate, and the removal of snow or ice upon the access even though deposited on the access in the course of department snow removal operations. Any significant repairs, such as culvert replacement, resurfacing, or changes in design or specifications, require authorization from the department. The department shall maintain the roadway including auxiliary lanes and shoulders, except in those cases where the access installation has failed due to improper access construction or failure to follow permit requirements and specifications (see Subsection K, Paragraph 12 of 18.31.6.14 NMAC). In this case, the permittee shall be responsible for such repair.

(1) Within unincorporated areas, the department shall keep access culverts clean as part of maintenance of the highway drainage system. However, the permittee shall be responsible for the repair and replacement of any access-related culverts within the right-of-way.

(2) Within incorporated areas, drainage responsibilities for municipalities shall be determined by statute and local ordinance.

**N. Indemnification:** The department and its duly appointed agents and employees shall be held harmless against any action for personal injury or property damage sustained by reason of the exercise of the permit.

**O. Revocations:**

(1) Where a change in property use occurs or a property's basic vehicular usage changes, so as to impact the highway, and the existing access points do not comply with 18.31.6 NMAC, the owner shall apply for a new access permit and reconstruct the driveways to comply with the rule.

(2) If, at the sole discretion of the department, it is determined that a permittee is in violation of 18.31.6 NMAC or any conditions of the access permit, the department, acting through the district engineer, or the district engineer's designee, for the district where the driveways are located, shall inform the permittee in writing of the violations and allow the permittee 30 days to correct the violations.

(3) If, after 30 days, the violations are not corrected, the district engineer, or the district engineer's designee, may issue a written notice of revocation of the permit.



(4) The permittee may request a hearing on the revocation of the permit by giving written notice to the district office within 10 days of the written notice of the revocation.

(5) The requested hearing shall be held no later than 30 days after receipt of the written notice of hearing. The department's representatives shall be the district engineer and the district traffic engineer, or their designees. After the hearing, the district engineer, or the district engineer's designee, shall issue a written decision.

(6) The permittee may appeal that decision to the deputy secretary for highway operations or designee by giving written notice of a request for an appeal to the district office within 10 days of the date of the district's written decision.

(7) The deputy secretary for highway operations, or the deputy's designee, shall hear the appeal within 30 days of receipt of the request for an appeal.

(8) The decision of the deputy secretary, or the deputy's designee, shall be final and this decision completes the administrative review process.

(9) After the review process, or at any stage if the conditions set out in Paragraph (10) of Subsection G of 18.31.6.14 NMAC occurs, the district engineer, or the district engineer's designee, may take whatever action is appropriate including, but not limited to, physically closing the driveway with barriers or signing, and the department may refuse to issue future permits to the permittee until the violations are corrected. The permittee shall be responsible for costs, labor and material provided by the department for such actions.

(10) Each permittee understands and agrees as a condition of issuance of any permit, that if the department determines that any violation has or may result in the creation or existence of any safety or traffic hazard, the department may immediately take such action as the department deems necessary to correct, eliminate or mitigate such hazard, without the need for the completion of any review process. The permittee shall be responsible for costs, labor and material provided by the department for such actions.

[18.31.6.14 NMAC - Rp, 18.31.6.14 NMAC, 6/27/2017]

#### **18.31.6.15 TRAFFIC ENGINEERING EVALUATION:**

**A. General:** A traffic engineering evaluation shall be required for all proposed access points that are requested along the state highway system, to be submitted with the access permit application (see Paragraph (1) of Subsection D of 18.31.6.14 NMAC). The extent of the traffic engineering evaluation is directly related the scope of the highway improvement under consideration, or to the size and type of land use for which access is requested. In this section, operational performance standards, traffic data requirements and traffic signal considerations are described. Additional information

regarding traffic engineering evaluation requisites are provided in Section 15 of the *state access management manual*. The specific traffic study process that shall be followed to address the traffic engineering evaluation requirement for a land development project are described in 18.31.6.16 NMAC. The criteria that shall be used to determine when speed-change lanes are required or should be considered at existing or proposed access points along the state highway system are defined in 18.31.6.17 NMAC. Design standards applicable to the traffic engineering evaluation are provided in 18.31.6.18 NMAC and are further described in section 18 of the *state access management manual*.

**B. Scope of evaluation:** A traffic engineering evaluation shall be required when new or modified access facilities are proposed along a state highway to ensure that the operational characteristics of all state highways are maintained at acceptable levels. The evaluation may include, but is not limited to, roadway and intersection level of service calculations, driveway and intersection location and spacing assessments, traffic signal warrant and systems analyses, roadway and intersection design, and safety analysis. The department shall require a traffic engineering evaluation of access issues for land development projects that request access to a state highway, directly or indirectly, and for highway improvement projects (see Subsection AV of 18.31.6.7 NMAC). The traffic engineering evaluation shall be performed by a registered engineer, authorized under New Mexico Engineering and Surveying Practice Act (Sections 61-23-12 NMSA 1978 through 61-23-13 NMSA 1978).

**C. Traffic operational performance:** The operational performance of a highway segment, intersection or access facility is described by level of service (LOS). Level of service is a quantitative measure of roadway or intersection operations and vehicle capacity. Level of service standards are defined by access category. level of service (LOS) F shall not be accepted for individual movements.

**D. Establishing existing traffic conditions:** Engineering evaluations of traffic and roadway conditions on state highways should be based on current traffic count information. The traffic data will be considered current if it is or has been collected within one year of the date that a scoping meeting is held between the permittee and the district traffic engineer, or if otherwise approved for use by the district traffic engineer.

(1) Defining the data collection period: The permittee should recommend the periods for traffic data collection at the traffic analysis scoping meeting held between the permittee and the department district traffic engineer. The periods for traffic data collection may include typical weekday conditions, special traffic conditions, or both.

(2) Typical weekday traffic conditions: Traffic data representing typical weekday conditions should be obtained on Tuesday, Wednesday or Thursday, and may be obtained on Monday or Friday.

(3) Special traffic conditions: Special traffic conditions typically occur from 1900 to 2400 hours and from 0000 to 0600 hours on weekdays, and throughout the day

on Saturday and Sunday. The duration of special traffic counts should be based on the activity or event and be sufficient to capture the peak travel condition.

**(4)** Traffic data for traffic signal warrant analysis: A minimum of 12 hours of traffic count data for a representative day shall be obtained when conducting a traffic signal warrant analysis. Manual intersection turn movement counts shall be conducted for at least eight of the 12 hours. The remaining four hours of data may be obtained using counting equipment on the intersection approaches, or by conducting a 12-hour intersection turn movement count. It is desirable to conduct an eight-hour manual turn movement count supplemented by 24-hour machine counts on each intersection approach when evaluating the need for traffic signal control on a state highway.

**E. Design hour volume:** Design hour volumes (DHV) should be calculated for the AM peak hour and the PM peak hour of a typical weekday, or for the design hour associated with special traffic conditions. Design hour volume is synonymous with the term peak-hour volume that is used for traffic operations analysis. For land development projects, the DHV should be based on the traffic data collected to establish existing traffic conditions combined with background traffic growth and traffic generated by pertinent site-specific land development. For highway improvement projects, appropriate future year traffic forecasts should be developed to represent the DHV for the facility.

**F. Traffic signals:** Traffic signals may be warranted at either public or private access locations due to new land development or the redevelopment of an existing property. The installation of traffic signal control shall be preceded by a traffic engineering evaluation that includes detailed analysis of the need for and an assessment of its impact upon the state highway. The engineering evaluation shall be conducted in accordance with the MUTCD, as clarified in sections of the *state access management manual*, and shall include a traffic signal warrant analysis.

**(1)** Installation: If the warrant analysis and traffic engineering evaluation indicates that a signal is warranted, the permittee shall be required to provide all of or a portion of the funding for the installation (see Subsection K of 18.31.6.14 NMAC). The funding requirements will be determined by the department.

**(2)** Traffic signal spacing: The number of traffic signals per mile has a significant influence on travel speed and vehicular delay along a roadway. Acceptable travel speeds and minimal delay occur when sufficient distance and relatively uniform spacing is provided between signals. Traffic signal spacing requirements shall be defined according to the highway functional classification where the intersection is located and shall be more restrictive for higher type roads.

**(3)** Operations and Maintenance: The electric power supply and maintenance for a signal installation shall be the responsibility of the local governmental agency. A signalization and lighting agreement stating the operation and maintenance responsibilities shall be executed between the department and the local agency prior to

installation of the signal. For land development projects, the signalization and lighting agreement shall be the responsibility of the permittee. For highway improvement projects, the signalization and lighting agreement shall be the responsibility of the departments project development engineer.

[18.31.6.15 NMAC - Rp, 18.31.6.15 NMAC, 6/27/2017]

#### **18.31.6.16 TRAFFIC STUDIES FOR LAND DEVELOPMENT:**

**A. Purpose:** As stated in 18.31.6.15 NMAC, a traffic engineering evaluation shall be required for all land development proposals that may directly or indirectly impact a state highway facility. This section describes the specific traffic study process that shall be followed to address the traffic engineering evaluation requirement for a land development project. The traffic engineering evaluation requirement may be waived by the department when considering a request for a new individual use access (see Paragraph (1) of Subsection E of 18.31.6.14 NMAC).

**B. Traffic study approach:** A two-tiered approach shall be utilized to satisfy the department's traffic study requirements for a proposed land development project. Traffic impact study requirements of local governments shall also be followed, where applicable. The departments two-tiered approach is as follows: First tier, site threshold analysis (STA); second tier, traffic impact analysis (TIA).

**C. Site threshold analysis:** A STA shall be required of all developing or redeveloping properties that directly or indirectly access a state highway. The STA should examine existing roadway volumes and trip generation estimates to determine if additional traffic analysis is required. The department STA form should be completed and should be reviewed by the district traffic engineer. If the site characteristics and the trip generation estimate for a proposed development do not satisfy the requirements for a traffic impact analysis as determined by the district traffic engineer, the STA should be approved and the traffic study requirement for the proposed development will be complete. A description of the subject matter that should be included in the site traffic analysis is provided in Section 16 of the *state access management manual*.

**D. Traffic impact analysis:** The purpose of a TIA is to conduct a comprehensive analysis of the transportation system that will provide access to a proposed development site, including proposed access points, to identify potential short-term and long-term impacts on the state highway system. The requirements for a TIA are described in the following subsections. All traffic impact analyses shall be sealed and signed by a registered New Mexico professional engineer prior to the issuance of an access permit by the department.

**(1)** When is a TIA required? A TIA shall be conducted for each new development or property redevelopment impacting a state highway when:

(a) The results of a STA indicate that the proposed development is expected to generate 100 or more peak-hour total trips; or,

(b) The results of a STA indicate that expected levels of service (LOS) will be below the applicable LOS standards, and a mitigation plan cannot be resolved between the department and the permittee to address identified deficiencies; or,

(c) There are safety concerns along the highway where the development is located that are verifiable by the district traffic engineer.

(2) When is a TIA Complete? A TIA is considered complete when a final traffic study report, signed and sealed by a New Mexico registered professional engineer, is submitted to the district traffic engineer, and

(a) The results of the TIA indicate that the levels of service for the proposed access points and the study area intersections satisfy or are better than the applicable LOS standards and the district traffic engineer concurs with those findings, or

(b) The results of the TIA indicate that improvements are required at the proposed access points and at the study area intersections, and a mitigation plan has been developed and approved by the district engineer.

(3) Requirements for conducting a TIA: A description of the subject matter that should be included in a traffic impact analyses is provided in Section 16 of the *state access management manual*.

(4) Documentation: All required traffic impact analyses shall include documentation in the form of a bound report or an electronic submittal, as directed by the district traffic engineer. A sample outline for TIA documentation is provided in the appendix of the *state access management manual*.

**E. Fair share cost analysis:** Based on the impact assessment completed for the STA or TIA, contributory costs of identified improvements should be identified. In addition to implementing the necessary improvements within the highway right-of-way at proposed site access points, the permittee shall be required to provide all or a portion of funding for mitigation of identified off-site impacts. The funding requirements shall be determined by the department through negotiations with the developer and the appropriate local government agency. Refer to Subsection J of 18.31.6.14 NMAC for the permittee's responsibilities when constructing the required improvements.

**F. Traffic study validity period:** Approved traffic studies should remain valid for a period of one-year following approval of the driveway permit application, or as determined by the district traffic engineer.

[18.31.6.16 NMAC - Rp, 18.31.6.16 NMAC, 6/27/2017]

#### **18.31.6.17 SPEED-CHANGE LANE REQUIREMENTS:**

**A. Purpose:** This section defines the criteria for determining where speed-change lanes are required along non-access controlled and controlled-access state highways that provide access via at-grade intersections. Application guidelines for speed-change lanes on controlled-access interstate highways and freeways, which provide access exclusively by grade-separated interchanges, are also provided; however, specific criteria for speed-change lanes on grade-separated highway facilities are not explicitly defined (see Subsection C of 18.31.6.17 NMAC).

**B. State highways with at-grade intersections:** At unsignalized at-grade intersections, four types of speed-change lanes are used including left-turn deceleration lanes, right-turn deceleration lanes, left-turn acceleration lanes, and right-turn acceleration lanes. At signalized at-grade intersections, three types of speed-change lanes are used including exclusive left-turn lanes, exclusive right-turn lanes, and right-turn acceleration lanes.

(1) Schematic illustrations: Illustrations of left-turn and right-turn speed-change lanes can be found in the appendix of the *state access management manual*.

(2) Design period: The need for speed-change lanes should be assessed using the hourly traffic volumes derived for the traffic study implementation year with the proposed development, or based on the future year traffic forecasts developed for a highway improvement project.

(3) General criteria:

(a) Speed-change lanes may be required by the department at unsignalized or signalized access points where specific public safety and traffic operation concerns are identified and documented.

(b) Left-turn acceleration and deceleration lanes should not overlap. Preference should be given to the left-turn deceleration lane. Alternative treatments to providing a left-turn acceleration lane may be considered when this situation arises such as providing traffic signal control or restricting the left-turn movement from the cross street. Alternative treatments require approval by the district traffic engineer.

(c) Where two access points have right-turn speed-change lanes that overlap, or are in close proximity but do not overlap, a continuous ingress/egress lane may be established between the access points to improve roadway consistency, safety, and to maintain roadway edge continuity.

(d) If the design of an access facility crosses two different speed zones, the speed-change lane design should be based upon the applicable speed limit. The applicable speed for a deceleration lane is the posted speed limit at the beginning of the

deceleration lane. The applicable speed for an acceleration lane is the posted speed limit at the end of the acceleration lane.

(e) Acceleration lanes should only be used where sufficient acceleration length can be provided.

(f) On multi-lane highways, the directional hourly traffic volume, or directional split, should be determined based on actual traffic count data. It may be assumed that traffic is equally divided among the mainline travel lanes when traffic count data are not available.

(4) Unsignalized Intersections: In addition to the location of the roadway (urban or rural), the three primary factors used to determine the need for a speed-change lane at an unsignalized at-grade access are highway travel speed, directional traffic volume per lane, and turning traffic volume. Sight distance conditions, level of service, and roadway geometry should also be examined when determining the need for speed-change lanes.

(a) Urban conditions: The need for left-turn and right-turn deceleration lanes on urban state highways should be determined based on the criteria in tables 17.B-1 and 17.B-2. right-turn acceleration lanes may be required on urban state highways with posted speed limits greater than 40 mph where an acceleration lane is necessary for public safety and traffic operations based upon site and roadway specific conditions. Left-turn acceleration lanes may be required on urban state highways with posted speed limits greater than 45 mph where an acceleration lane is necessary for public safety and traffic operations based upon site and roadway specific conditions.

(b) Rural conditions: The need for left-turn and right-turn deceleration lanes on rural state highways should be determined based on the criteria in tables 17.B-3 through 17.B-6. right-turn acceleration lanes may be required on rural state highways with posted speed limits greater than 40 mph where an acceleration lane is necessary for public safety and traffic operations based upon site and roadway specific conditions. Left-turn acceleration lanes may be required on rural state highways with posted speed limits greater than 45 mph where an acceleration lane is necessary for public safety and traffic operations based upon site and roadway specific conditions.

(5) Signalized intersections: The use of speed-change lanes at signalized intersections is generally consistent for all access categories, urban and rural. Guidelines for determining the need for speed-change lanes at signalized intersections can be found in Section 17 of the *state access management manual*.

**C. State and interstate highways with grade-separated interchanges:** Speed-change lanes are used on controlled-access state and interstate highways at or between grade-separated interchanges. The need for speed-change lanes on grade-separated highway facilities should be determined based on design principles contained in the AASHTO publication *a policy on geometric design of highways and streets*, and

based on detailed traffic operations analyses of the grade-separated facilities according to highway capacity manual methodologies. The need for and function of speed-change lanes should be documented in an interchange access management plan for the interchange (refer to 18.31.6.12 NMAC). Speed-change lanes on grade-separated highway facilities should enable a driver to make the necessary transition between the speed on a ramp and the speed of operation on the mainline highway in a safe and functional manner. Additional guidance is provided in Section 17 of the *state access management manual*.

**Table 17.B-1**

## **Criteria for Deceleration Lanes On Urban Two-lane Highways**

<b>Turning Volume (vph)</b>	<b>LEFT-TURN DECELERATION LANE</b>			<b>RIGHT-TURN DECELERATION LANE</b>		
	<b>Minimum Directional Volume in the Through Lane (vphpl) <sup>2</sup></b>			<b>Minimum Directional Volume in the Through Lane (vphpl) <sup>2</sup></b>		
	<b>≤ 30 mph</b>	<b>35 to 40 mph</b>	<b>45 to 55 mph</b>	<b>≤ 30 mph</b>	<b>35 to 40 mph</b>	<b>45 to 55 mph</b>
< 5	Not Required	Not Required	Not Required	Not Required	Not Required	Not Required
5	510	450	330	1,080	610	360
10	390	330	210	700	400	240
15	320	250	150	500	280	170
20	270	200	120	380	210	140
25	230	160	100	300	180	120
30	200	130	Required	250	160	110
35	170	110	Required	220	150	100
40	150	Required	Required	200	140	Required
45	130	Required	Required	190	Required	Required
≥ 46	Required	Required	Required	Required	Required	Required



	<p><b>Left-turn Deceleration Lanes are required on Urban Two-lane Highways for the following Left-turn Volumes:</b></p> <p>1. <math>\leq 30</math> mph : 46 vph or more</p> <p>2. 35 to 40 mph : 36 vph or more</p> <p>3. 45 to 55 mph : 26 vph or more</p>	<p><b>Right-turn Deceleration Lanes are required on Urban Two-lane Highways for the following Right-turn Volumes:</b></p> <p>4. <math>\leq 30</math> mph : 46 vph or more</p> <p>5. 35 to 40 mph : 41 vph or more</p> <p>6. 45 to 55 mph : 36 vph or more</p>
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*Notes:*

1. Use linear interpolation for turning volumes between 5 and 45 vph.
2. The directional volume in the through lane includes through vehicles and turning vehicles.

**Table 17.B-2**

## **Criteria for Deceleration Lanes on Urban Multi-lane Highways**

Turning Volume <sup>1</sup> (vph)	LEFT-TURN DECELERATION LANE			RIGHT-TURN DECELERATION LANE		
	Minimum Volume in the Adjacent Through Lane (vphpl) <sup>2</sup>			Minimum Volume in the Adjacent Through Lane (vphpl) <sup>2</sup>		
	$\leq 30$ mph	35 to 40 mph	45 to 55 mph	$\leq 30$ mph	35 to 40 mph	45 to 55 mph
< 5	Not Required	Not Required	Not Required	Not Required	Not Required	Not Required

5	Not Required	490	420	1,200	730	450
10	420	370	300	820	490	320
15	360	290	220	600	350	240
20	310	230	160	460	260	180
25	270	190	130	360	230	150
30	240	160	110	290	200	130
35	210	130	100	260	180	120
40	180	120	Required	240	170	110
45	160	110	Required	220	160	Required
50	140	Required	Required	200	Required	Required
55	120	Required	Required	190	Required	Required
≥ 56	Required	Required	Required	Required	Required	Required

	<p><b>Left-turn Deceleration Lanes are required on Urban Multi-lane Highways for the following Left-turn Volumes:</b></p> <p>3. <math>\leq 30</math> mph : 56 vph or more</p> <p>4. 35 to 40 mph : 46 vph or more</p> <p>5. 45 to 55 mph : 36 vph or more</p>	<p><b>Right-turn Deceleration Lanes are required on Urban Multi-lane Highways for the following Right-turn Volumes:</b></p> <p>6. <math>\leq 30</math> mph : 56 vph or more</p> <p>7. 35 to 40 mph : 46 vph or more</p> <p>8. 45 to 55 mph : 41 vph or more</p>
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*Notes:*

1. *Use linear interpolation for turning volumes between 5 and 55 vph.*
2. *The volume in the adjacent through lane includes through vehicles and turning vehicles.*

**Table 17.B-3**

## **Criteria for Left-Turn Deceleration Lanes on Rural Two-lane Highways**

<b>Left-Turn Volume <sup>1</sup> (vph)</b>	<b>LEFT-TURN DECELERATION LANE</b>			
	<b>Minimum Directional Volume in Through Lane (vphpl) <sup>2</sup></b>			
	<b>≤ 30 mph</b>	<b>35 to 40 mph</b>	<b>45 to 55 mph</b>	<b>&gt; 55 mph</b>
<b>&lt; 5</b>	Not Required	Not Required	Not Required	Not Required
<b>5</b>	400	220	120	60
<b>10</b>	240	140	80	40
<b>15</b>	160	100	60	Required
<b>20</b>	120	80	Required	Required
<b>25</b>	100	Required	Required	Required
<b>≥ 26</b>	Required	Required	Required	Required
	<b>Left-turn Deceleration Lanes are required on Rural Two-lane Highways for the following Left-turn Volumes:</b>  1. ≤ 30 mph : 26 vph or more  2. 35 to 40 mph : 21 vph or more  3. 45 to 55 mph : 16 vph or more  4. > 55 mph : 11 vph or more			

Notes:

*Use linear interpolation for left-turn volumes between 5 and 25 vph.*

*The directional volume in the through lane includes through vehicles and turning vehicles.*

**Table 17.B-4**

# **Criteria for Left-turn Deceleration Lanes on Rural Multi-lane Highways**

Left-Turn Volume <sup>1</sup> (vph)	LEFT-TURN DECELERATION LANE			
	Minimum Volume in Adjacent Through Lane (vphpl) <sup>2</sup>			
	≤ 30 mph	35 to 40 mph	45 to 55 mph	> 55 mph
< 5	Not Required	Not Required	Not Required	Not Required
5	450	310	210	130
10	310	220	130	90
15	240	160	100	70
20	190	130	80	Required
25	150	110	Required	Required
30	130	Required	Required	Required
35	110	Required	Required	Required
≥ 36	Required	Required	Required	Required
	<b>Left-turn Deceleration Lanes are required on Rural Multi-lane Highways for the following Left-turn Volumes:</b>			

	5. $\leq 30$ mph : 36 vph or more
	6. 35 to 40 mph : 26 vph or more
	7. 45 to 55 mph : 21 vph or more
	8. $> 55$ mph : 16 vph or more

*Notes:*

*1. Use linear interpolation for left-turn volumes between 5 and 35 vph.*

*2. The volume in the adjacent through lane includes through vehicles and turning vehicles.*

**Table 17.B-5**

## Criteria for Right-Turn Deceleration Lanes on Rural Two-lane Highways

Right-Turn Volume <sup>1</sup> (vph)	RIGHT-TURN DECELERATION LANE			
	Minimum Directional Volume in Through Lane (vphpl) <sup>2</sup>			
	$\leq 30$ mph	35 to 40 mph	45 to 55 mph	$> 55$ mph
$< 5$	Not Required	Not Required	Not Required	Not Required
5	800	460	270	160
10	430	280	170	110
15	290	180	110	80
20	200	140	90	70
25	170	120	80	Required
30	160	110	Required	Required
$\geq 31$	Required	Required	Required	Required

	<p><b><i>Right-turn Deceleration Lanes are required on Rural Two-lane Highways for the following Right-turn Volumes:</i></b></p> <p>3. <math>\leq 30</math> mph : 31 vph or more</p> <p>4. 35 to 40 mph : 31 vph or more</p> <p>5. 45 to 55 mph : 26 vph or more</p> <p>6. <math>&gt; 55</math> mph : 21 vph or more</p>
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*Notes:*

1. Use linear interpolation for left-turn volumes between 5 and 30 vph.

2. The directional volume in the through lane includes through vehicles and turning vehicles.

**Table 17.B-6**

## Criteria for Right-Turn Deceleration Lanes on Rural Multi-lane Highways

Right-Turn Volume <sup>1</sup> (vph)	RIGHT-TURN DECELERATION LANE			
	Minimum Volume in Adjacent Through Lane (vphpl) <sup>2</sup>			
	$\leq 30$ mph	35 to 40 mph	45 to 55 mph	$> 55$ mph
$< 5$	Not Required	Not Required	Not Required	Not Required
5	910	520	310	180
10	520	330	200	130
15	370	220	140	100
20	270	170	110	90

25	220	140	100	Required
30	200	130	90	Required
35	180	120	Required	Required
≥ 36	Required	Required	Required	Required
	<b><i>Right-turn Deceleration Lanes are required on Rural Multi-lane Highways for the following Right-turn Volumes:</i></b> 3. ≤ 30 mph : 36 vph or more  4. 35 to 40 mph : 36 vph or more  5. 45 to 55 mph : 31 vph or more  6. > 55 mph : 21 vph or more			
<i>Notes:</i>  1. Use linear interpolation for left-turn volumes between 5 and 35 vph.  2. The volume in the adjacent through lane includes through vehicles and turning vehicles.				

[18.31.6.17 NMAC - Rp, 18.31.6.17 NMAC, 6/27/2017]

#### **18.31.6.18 ACCESS LOCATION AND DESIGN STANDARDS:**

The location and design of access points along state highway facilities shall be in accordance with standards established by the department. These standards are defined below and are expounded on in Section 18 of the *state access management manual*. Where specific design criteria are not provided in 18.31.6.18 NMAC, the design approach should be based on nationally accepted standards and shall be consistent with department specifications.

**A. General:** The department has developed these standards to provide guidance for the location and design of access points along state highways, specifically for those highways in access categories (provided in Section 18.31.6.10 NMAC). These criteria are based upon established design standards meant to protect public safety, to maintain safe and smooth-flowing traffic operations, and to preserve the intended function of all state highway facilities.

**(1)** Local standards: Where a local jurisdiction has established more stringent design standards than the department, the local standards should be applied with the concurrence of the department.

(2) Material placed within state rights-of-way: Any materials used within state highway right-of-way shall be subject to approval by the department. Refer to 18.31.6.14 NMAC for additional requirements regarding construction within state highway right-of-way.

**B. Access location:** Access points should be located along state highways to minimize turning movement conflicts between adjacent access facilities, and to provide adequate separation of conflicts for oncoming motorists. Stopping sight distance and intersection area of influence should be considered in determining access point locations.

(1) Direct access: The number of access points should be limited to one per site unless frontage is adequate and design hour traffic volumes indicate that the operational level of service for a single access is expected to be below the minimum acceptable LOS standards.

(2) Proximity to speed-change lanes: Any part of an access including radius returns shall not be permitted within a speed-change lane, or within 50 feet of either the leading or trailing limits of a speed-change lane.

(3) Interchange proximity: Access shall not be permitted within the access control limits of an interchange, as established by the department's access control determination, or within 50 feet of the leading or trailing edge of the access control limits for the interchange.

(4) Corner clearance: Driveway access should be controlled on both the approach and departure sides of an intersection to maintain adequate corner clearances.

(5) Edge clearance: The location of access points relative to frontage property lines should be based on local requirements. When property frontage is not adequate to comply with local government's edge clearance requirements, shared access should be considered.

**C. Access spacing:**

(1) Non-developed and developing areas: The spacing of access points in non-developed and developing areas should be based on the access category, the posted speed limit, and the type of access requested (i.e., intersection or driveway). Desired access spacing standards are provided in Section 18 of the *state access management manual*. An applicant may request a variance to the spacing requirements when physical characteristics of a property preclude the desired spacing.

(2) Developed areas/business districts: In developed or redeveloping areas where existing driveway locations preclude access spacing based on desired standards, new access points should be located to minimize conflicts with existing access points.



Access points should be consolidated where possible to provide shared property access.

**D. Median openings:** New median openings on state highways with non-traversable medians should not be allowed unless a traffic engineering evaluation analyzing all related traffic and safety issues is prepared and approved by the department. Median openings at intersections or full-access driveways should be spaced with a minimum frequency based upon the access category and posted speed of the highway.

**E. Selection of design vehicle:** The design vehicle should be used to determine the geometric characteristics of a roadside access or median opening, and to define the required design components for the adjacent highway. This vehicle should be the largest vehicle that is expected to access the site on a daily basis. Selection of the design vehicle is subject to the approval of the district traffic engineer.

**F. Sight distance:** Sight distance at all access locations shall be adequate to provide safe operating conditions for the motoring public. An access permit should not be issued unless adequate stopping sight distances are provided for motorists passing the access, and adequate entering and crossing sight distances are provided for motorists using the access. The permittee shall maintain adequate, unobstructed sight distance in both directions from the access. Any potentially obstructing objects such as but not limited to advertising signs, structures, trees and bushes, shall be designed, placed and maintained at a height not to interfere with the sight distances needed by any vehicle using the access. Roadway reconstruction may be required to provide adequate sight distance.

**G. Access horizontal alignment:** The access centerline should be perpendicular to the state highway centerline and extend tangentially for a minimum distance of 40 feet beyond the near-side edge line. An acute angle between 75 degrees and 90 degrees may be permitted if significant physical constraints exist. Acute angles less than 75 degrees shall require special approval of the department.

**H. Access radius:** The access radius should be designed to accommodate the design vehicle expected to use the access on a daily basis. Access radii apply to driveways that are not urban section driveway cuts.

**I. Driveway width:** The width of a driveway should be measured exclusive of radii or tapers. Driveway widths should vary by design vehicle. All two-way driveways should accommodate a concurrent entering and exiting design vehicle, including the design vehicle's off-tracking.

**J. Access connection depth:** The access connection depth should be designed to facilitate the movement of vehicles off the highway to prevent the queuing of vehicles on the traveled way. An access shall not be approved for parking areas that require backing maneuvers within state highway right-of-way. All off-street parking areas must

include on-site maneuvering areas and aisles to permit vehicles to enter and exit the site in forward drive without hesitation.

**K. Speed change lanes:** Design specifications for speed change lanes are provided in Section 18 of the *state access management manual*. Schematic illustrations of speed-change lanes are included in the appendix of the *state access management manual*.

(1) Deceleration lanes: Deceleration lanes typically consist of three components: transition taper, deceleration distance, and queue storage. The length of the lane should allow a vehicle to come to a comfortable stop prior to reaching the end of the expected queue in the lane.

(2) Acceleration lanes: Acceleration lanes should consist of a full-width lane and a transition taper. Acceleration lanes should be designed so that a turning vehicle will reach a speed between seventy-five and eighty percent of the highway posted speed at the point where the full-width lane ends and the transition taper begins.

(3) Shoulders: Where shoulders are present along a roadway and speed change lanes are required, the shoulders should be continued along the speed change lanes. A minimum shoulder width of four feet should be provided adjacent to speed change lanes.

(4) Bicycle lane width: When a right-turn deceleration lane or acceleration lane is required on a roadway with designated bicycle lanes, a five foot lane width (seven foot desirable) should be provided between the outside travel lane and the speed-change lane.

(5) Grade adjustment: Adjustments should be made to the speed change lane lengths based on the roadway grade.

(6) Truck design: If a speed-change lane is designed for a site with five or more large trucks during the design hour, a combination truck design vehicle should be used as the design vehicle.

(7) Pavement: The speed change lane pavement section should be full depth and match the pavement section design of the adjacent roadway. All pavement designs require approval by the department.

**L. Median design for turn lane installation:** Medians should be designed to accommodate the largest design vehicle anticipated to use the access, and may provide either partial or full access to a site. Where a single left-turn lane is necessary along a state highway, a minimum median width of 16 feet should be provided. Positive channelization should be provided for all median openings. Median paving should be full depth and match the pavement section design of the existing roadway. The installation

of a median opening should not reduce the conveyance or storage capacity of the median, pertinent to its drainage function within the highway section.

**M. Setbacks:** Improvements on public or private property adjacent to the right-of-way should be located so that parking, stopping, and maneuvering of vehicles within the highway right-of-way will not occur.

**N. Access vertical alignment:** The vertical alignment of all access locations should be designed to minimize vehicle bounce and prevent high-centering of vehicles with a maximum clearance of four inches. The maximum grade for a driveway should be ten percent for a low volume residential driveway and eight percent for all other access locations. Steeper access drives require special department approval. A level area (maximum two percent grade) 20 feet in length should be provided at each access to ensure proper sight distance from the access.

**O. Roadside safety:** Careful consideration shall be given to the roadside clear zone. The permittee shall provide adequate clear zones. The roadside clear zone should be designed per the AASHTO *roadside design guide* and applicable department standards.

**P. Non-motorized considerations:** Access designs should provide for the safe movement of all right-of-way users, including but not limited to pedestrians, bicyclists, equestrian and the handicapped. Where non-motorized facilities cross an access point, such as bicycle trails, appropriate modifications should be made to maintain safe operations for both facilities.

**(1) Sidewalks:** Sidewalks should be constructed along urban arterial and collector state highways. Sidewalks are required where they exist on adjacent properties to maintain consistency along the highway facility. Sidewalk widths should match existing adjacent sidewalk widths, but in any case shall conform to all federal, state, and local regulations and ordinances.

**(2) Bicycle facilities:** Bicycle facilities along urban arterials and collectors should be constructed in accordance with the AASHTO *guide for the development of bicycle facilities*. Bicycle facilities should only be signed where designated by the state or local jurisdiction, with approval of the department.

**(3) ADA:** Non-motorized facilities shall be designed in accordance with the Americans with Disabilities Act and applicable department standards. Curb ramps shall be provided on urban sections where sidewalk and curb returns exist.

**Q. Lighting:** Where lighting is required at an access point, the lighting design shall comply with Department and AASHTO standards and the Night Sky Protection Act (Sections 74-12-1 NMSA 1978 through 74-12-11 NMSA 1978). The lighting design shall use full cut-off fixtures, and be consistent with AD 226, roadway lighting.

(1) Signalized access: Illumination shall be provided at all signalized intersections in accordance with AASHTO's *an informational guide to roadway lighting* or as otherwise approved by the department.

(2) Site illumination: Light beams from on-site lighting systems shall not be directed toward oncoming traffic along the adjacent roadway(s). All site illumination shall be constructed outside of the state highway right-of-way and outside of the roadside clear zone.

**R. Drainage:** Adequate drainage within state highway right-of-way shall be maintained at all access locations. Drainage of roadside ditches shall not be altered or impeded, and the applicant shall provide suitable and approved drainage structures as required by the department. All site drainage shall be collected prior to entering state highway right-of-way. Site drainage shall not be permitted to drain into state right-of-way without written approval of the department. Drainage mitigation design shall be in accordance with administrative memorandum 221, drainage design criteria, and the department drainage manual. Access permit applicants shall submit drainage analysis documentation to the department prior to changing site drainage conditions.

**S. Right-of-way fencing:** Driveways shall not be permitted through an existing right-of-way fence, the continuation of which is necessary for the safety of the traveling public, unless the applicant first agrees in writing to construct and maintain a gate or a cattle guard and additional fence in good repair and to keep the gate closed to livestock. The department shall determine whether a gate or cattle guard is required. All new fencing along a state highway shall be constructed so that clear sight triangles are provided for ingressing or egressing vehicles. This may require an offset from the right-of-way line to meet the minimum clear site triangles, on a case by case basis.

**T. Mailboxes:** Mailboxes installed within the state highway right-of-way shall be constructed in conformance with the rules and regulations of the U.S. Postal service and the design standards of the department. AASHTO's *a guide for erecting mailboxes on highways*, should also be used for the location and design of mailbox installations.

**U. Utilities:** All utilities located within the state highway right-of-way shall comply with the department's utility accommodations Policy and 17.4.2. NMAC.

**V. Environmental review:** As may be required by law.

[18.31.6.18 NMAC - Rp, 18.31.6.18 NMAC, 6/27/2017]

#### **18.31.6.19 ACCESS CONTROL REVIEW PROCEDURES:**

**A. Purpose:** The access control review procedures define the process that the department shall follow when considering requests for permanent breaks in existing access control lines, and for establishing or modifying access control limits on new or existing state, federal and interstate highways. Decisions regarding access control

matters on state highways shall be addressed by the access control review committee of the department. Review and approval of an access break in established access control lines shall be required by the access control review committee. Refer to the *state access management manual* for further clarification of the access control review procedures.

**B. Access control review committee:**

(1) Purpose: The purpose of access control review committee is to review all access control requests by department staff members who have the expertise to identify issues that need to be resolved before access control limits are established or modified, or access breaks are recommended for approval.

(2) Authority: The access control review committee has authority to deny requested access control breaks for existing access control facilities. Access control breaks denied by the committee may be appealed to the secretary of the New Mexico department of transportation or his/her designee.

(3) Quorum definition: It shall be required that a simple majority of voting members of the committee, or their alternates, be in attendance for a quorum.

**C. Operating procedures:**

(1) The two basic functions of the access control review committee are:

(a) To make recommendations to the secretary, or his/her designee, on requests for establishing access control on new or existing state, federal and interstate highways; and,

(b) To make recommendations to the secretary, or his/her designee, regarding requests for permanent breaks in existing access control lines on state, federal and interstate highways.

(2) The committee shall have the authority to deny access control breaks. A denial by the committee may be appealed to the secretary, or his/her designee. Any access control breaks permitted shall, as a minimum, be in conformance with criteria contained in the most current edition of this rule, the *interstate access control policy* (CP 65), and any other applicable statutes, policies or procedures.

**D. New or modified access control limits on state, federal or interstate highways:** Operating procedures of the access control review committee for requests to establish access control on new highways or existing non-access controlled highways and procedures for modifying access control limits which shall include but not limited to shifting, extending or reducing on access-controlled highways shall be as follows. Refer to the *state access management manual* for further clarification.

(1) A request for the establishment or modification of access control shall be received by the chairperson of the access control review committee from a department project development engineer or from other government agencies. It shall be the responsibility of the requestor, whether representing the department or other government agency, to provide a complete information/request package showing: Location, identified by stationing, distances and proposed right-of-way map; specific purpose, defined in a feasibility study or corridor study; and, source of funding, for all costs including engineering.

(2) The chairperson shall request the right of way bureau chief to review the right-of-way map(s) and request lands engineering to prepare a draft administrative determination prior to review and consideration by the committee. The draft administrative determination should be reviewed by the project development engineer, or requestor, and the traffic technical support engineer prior to review and consideration by the committee.

(3) The access control review committee shall either recommend approval of the draft administrative determination as presented or recommend approval based upon committee discussions and recommended modifications. The access control review committee may also recommend deferral of action on an administrative determination to a later meeting if additional information is required by the committee for evaluation. If the access control review committee votes to recommend disapproval of a draft administrative determination, they shall provide specific reasons to the requestor for their recommendation.

(4) After the administrative determination has been recommended for approval by the committee, it shall be sent to the secretary or his/her designee, for review and approval or disapproval. The request shall be sent to FHWA for approval if on a federal or interstate highway.

(5) If the request is disapproved by the secretary or FHWA, it shall be sent back to the chairperson of the committee to inform the requestor of the disapproval.

(6) Once all approvals are obtained, the chairperson shall send all documents to the office of record, which is the right of way bureau chief's office. The right of way bureau chief, or his/her designee, shall send a copy of the approved resolution to the owners of record of all affected properties.

**E. Requests for interstate access control breaks:** Requests for interstate access control breaks, which are requests for direct access to the interstate or requests that will have a major impact on the operation or function of the existing interchange, ramps, existing crossroad, etc., shall be handled as specified by applicable state and federal law, rules, regulations and procedures.

**F. Requests for access control breaks:** Operating procedures of the access control review committee for requests for permanent access control breaks within the

limits of existing access control rights-of-way on all federal or state highways (other than interstate) shall be as follows.

**(1)** A request for an access control break shall be received by the chairperson of the access control review committee from a department district office, a project development engineer, an access control study team, another governmental agency or from an individual from the public or a private firm. For requests that create major impacts (i.e. requires a new interchange or major modifications), it shall be the responsibility of the requestor to provide a complete feasibility study similar to that required for interstate access. For requests that may create intermediate impacts (i.e. require traffic signals, require intermediate geometric improvements, etc.), the requestor shall furnish a traffic engineering evaluation or other reports to determine if the requested access is feasible. For access requests that appear to be minor, the request shall be submitted to the access control review committee for processing.

**(2)** Once all pertinent information is received, the request shall be placed on the agenda for the next Access control review committee meeting. The access control review committee shall consider all pertinent data available concerning the request for a break in the existing access control line.

**(3)** The Access control review committee shall recommend approval of the access control break as presented; or, recommend approval based upon committee discussions and recommended modifications; or, recommend deferral if additional information is required; or deny the request. The committee may request that a specific report or feasibility study be conducted if after reviewing the request the committee considers it to have major or intermediate impacts. If the access control review committee votes to deny an access control break, specific reasons for the denial shall be provided and a copy shall be sent to the secretary or his/her designee. A denial by the committee may be appealed to the secretary, or his/her designee.

**(4)** After the access control break (administrative determination) has been recommended for approval by the committee, it shall be sent to the secretary or his/her designee, for review and approval or disapproval. The request shall be sent to FHWA for approval if on a federal or interstate highway.

**(5)** Once all approvals are obtained, the chairperson shall send all documents to the office of record, which is the right of way bureau chief's office. The right of way bureau chief shall request the appropriate appraisal difference be paid back to the department.

**(6)** Once all approvals have been obtained and the appraisal difference has been paid back to the department, the access-controlled right-of-way becomes non-access controlled right-of-way and the right of way bureau chief, or his/her designee, informs the requestor and the respective district that the requests for access may proceed contingent on all department requirements being met. The respective district shall be responsible for making sure all construction is completed in accordance with

the department's regulations and any requirements that were made by the department regarding the approval of the access control break.

**G. Temporary construction access breaks:** Any requests for temporary construction access breaks for department construction projects should be incorporated in roadway plans during their development. These requests should follow the format described in the access permit form C-196.

**H. Temporary access breaks:** Any request for a temporary access break, which is not related to a construction project, shall be submitted to the access control review committee for their review and approval. The temporary access break does not require an administrative determination or approval of the secretary, but shall have FHWA approval if for a federal or interstate highway. If the committee denies a temporary access break, it can be appealed to the secretary, or his/her designee. If an appeal is approved by the secretary, or his/her designee, the request must be forwarded to FHWA for their review and approval if for a federal or interstate highway.

**I. Access control recommendations by other government agencies:**

(1) All access control recommendations by other government agencies for federal or state highways shall be submitted to the departments access control review committee in compliance with 18.31.6.19 NMAC.

(2) Any and all access control actions/recommendations (made by other governmental agencies) on federal or state highways which have not been approved according to the access control review procedures shall not be effective until acted on as set forth herein.

[18.31.6.19 NMAC - Rp, 18.31.6.19 NMAC, 6/27/2017]

## **CHAPTER 32: REST AREAS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: NEWSPAPER VENDING PERMIT IN REST AREAS**

#### **18.32.2.1 ISSUING AGENCY:**

New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-5498.

[Recompiled 11/16/01]

#### **18.32.2.2 SCOPE:**

This rule covers all persons or entities desiring to vend newspapers in rest areas.



[Recompiled 11/16/01]

**18.32.2.3 STATUTORY AUTHORITY:**

NMSA 1978 Sections 67-3-11; 67-3-14; and 67-11-2. [Recompiled 11/16/01]

**18.32.2.4 DURATION:**

Permanent.

[Recompiled 11/16/01]

**18.32.2.5 EFFECTIVE DATE:**

October 31, 1998, unless a later date is cited at the end of a section or paragraph.

[Recompiled 11/16/01]

**18.32.2.6 OBJECTIVE:**

The purpose of this rule is to establish regulations to enable the Department to enter into written agreements with vendors to supply newspaper vending machines at rest areas. [10-31-98]

[Recompiled 11/16/01]

**18.32.2.7 DEFINITIONS:**

"Department" means the New Mexico State Highway and Transportation Department.

[Recompiled 11/16/01]

**18.32.2.8 GENERAL PROVISIONS:**

A. Installation, construction, operation, use and maintenance of newspaper vending machines at rest areas shall only be permitted in conformance with the requirements of this rule.

B. Newspaper vending machines shall only be permitted in designated rest areas having enclosed buildings on site. Rest areas with only covered picnic facilities will not qualify for the installation of newspaper vending machines.

C. The Department will assume no liability for any vandalism or other damage to newspaper vending machines placed in rest areas whether such damage results from the positioning, moving, maintaining or operating of the newspaper vending machines.

D. The loading and unloading of newspapers will be the sole responsibility of the vendor.

E. In no case will unsold newspapers be disposed of at the rest area site or within highway right-of-way.

F. In all cases the vendor will be responsible for the clean up of litter resulting from the operation of its newspaper vending machines.

G. Vendors are prohibited from requesting or receiving assistance from the Department employees in the positioning, moving, maintaining or operating of their newspaper vending machines.

H. The name, address and telephone number of the vendor shall be conspicuously posted by the vendor on its newspaper vending machine. The vendor shall keep this information current and is responsible for keeping the Department apprised of any changes.

I. Only one newspaper vending machine is allowed per vendor in each authorized rest area.

[Recompiled 11/16/01]

#### **18.32.2.9 PERMITS:**

A. No newspaper vending machines shall be placed in rest areas unless the Department has issued a written permit to the appropriate vendor.

B. A written permit will only be issued upon receipt of a written application in which the vendor has provided the following information:

- (1) the vendor's name;
- (2) the vendor's address;
- (3) the vendor's telephone number;
- (4) the name of a spokesperson or contact employed by the vendor;
- (5) the name of the newspaper or publication;
- (6) the particular rest area desired for the newspaper vending machine;
- (7) a description of the vending machine listing its dimensions, its weight, its material composition, and its manufacturer.

C. The Department shall have fifteen (15) days from receipt of an application to either issue a written permit or deny the application. The letter of denial shall contain specific reasons for denying the application. The fifteen (15) day period may be extended upon mutual agreement of the parties. The fifteen (15) day response period by the Department shall not begin to run until the application has been received by the appropriate maintenance engineer.

D. The permits shall be for one (1) year and must be renewed by the vendor by a timely application submitted prior to the expiration of the term.

E. The permit shall be effective as to each newspaper vending machine described in said permit until the expiration date of the permit, or the newspaper vending machine is permanently removed by the Department or by the vendor; except that a permit shall terminate if the newspaper vending machine is not installed within sixty (60) days of issuance of the permit.

F. A permit issued under this rule is non-transferable. All vendors must seek and obtain a written permit as described in this rule prior to placing any newspaper vending machines or making use of newspaper vending machines purchased from other vendors.

G. The permit issued by the Department shall designate the area authorized for placement of the approved newspaper vending machine. No other area may be used by the vendor except with the express written permission of the Department.

H. A vendor may appeal any adverse determination of the Department pursuant to the appeal process set forth in Section 12.

I. Applications for permits shall be directed by the vendors to the district engineer, or his designee, of the appropriate highway district having control over the rest area.

J. Except as specifically authorized by this rule, all communications relevant to the administration of this rule, including interpretation of provisions therein, shall occur between the vendor and the maintenance engineer or his designee in the highway district having control over the rest area affected.

K. No permit shall be issued for the dissemination of obscene materials or any other materials not protected by the First Amendment to the United States Constitution.

[Recompiled 11/16/01]

#### **18.32.2.10 NEWSPAPER VENDING MACHINE SPECIFICATIONS AND PLACEMENT:**

A. All newspaper vending machines placed in the Department rest areas must conform to industry standards.

B. If a permit is issued by the Department for placement of the newspaper vending machine inside a rest area building:

(1) The machine may only be placed where designated by the permit and in no case may it be placed in restrooms or any area not designated as a common area.

(2) The machine shall be placed so as not to interfere with rest area maintenance activities.

(3) The machine shall be placed so as not to interfere with access to restrooms, common areas, or any other rest area facility.

C. If a permit is issued by the Department for the placement of the newspaper vending machine in an area outside a building at a rest area: The machine shall be placed so as not to interfere with, or block access to, sidewalks, designated walkways, wheelchair ramps, parking spaces or any other rest area facilities.

[Recompiled 11/16/01]

#### **18.32.2.11 REMOVAL OF NEWSPAPER VENDING MACHINES:**

A. Each machine shall be maintained in a clean, neat and attractive condition and in good repair at all times. Machines that are damaged, in a state of disrepair due to wear and tear no longer are in a clean, neat and attractive condition or in good condition shall be replaced or repaired by the owner as soon as practicable after discovery or notification by the Department to do so.

B. Should the Department determine that a newspaper vending machine has been placed or is being maintained in violation of the provisions of these regulations, the following procedures shall be followed:

(1) A written notice (Notice of Violation) shall be given to the person or organization identified in the permit application. The Notice of Violation shall be posted to such person or organization to the address provided in the application or to such address as has otherwise been provided to the Department. The Notice of Violation shall describe the violation and shall advise that the newspaper vending machine may be required to be removed unless the violation is corrected within ten (10) days from the date of the Notice of Violation, and shall state the procedure for obtaining a hearing concerning the violation as provided herein.

(2) If within ten (10) days of the date of the Notice of Violation, the violation has not been corrected or otherwise resolved to the satisfaction of the Department or a hearing has not been requested per Section 12 [Section 12 of 18.32.2 NMAC], the Department may issue a "Request To Remove" the machine. The Request To Remove the machine shall notify the owner that if the machine is not removed within seven (7) days from the date of the removal notice, the Department may cause the machine to be

removed and impounded and the site returned to its original condition. A Notice of Removal and Impoundment shall be mailed to such person or organization within five (5) days after removal. The Notice of Removal and Impoundment shall state the date of removal, the reasons therefor, and the location and procedures for claiming the newspaper vending machine.

(3) The cost of removal and storage and the expense of restoring the site to its original condition shall be borne by the owner of the confiscated machine. Failure to claim the confiscated machine within a thirty-day (30) period will result, at the option of the Department, in either the destruction or sale of the machine. Proceeds from any sale, less the total moneys owed the Department for its costs and expenses will be returned to the owner. If a deficiency results, the Department shall have an action to recover its deficiency, attorneys fees and litigation expenses.

(4) If a hearing is requested within ten (10) days of the Notice of Violation per Section 12 or if otherwise specifically allowed by the Department, the machine in violation of the provisions of this section may remain until a hearing is held and a final administration decision is made as regards the violation.

C. Notwithstanding any other provision in this rule, the Department may summarily remove, without prior hearing, any newspaper vending machine which poses a threat to the health, safety or welfare of the public, or has been placed without having first filed a written application with the Department, or which contains obscene or scandalous material.

[Recompiled 11/16/01]

#### **18.32.2.12 APPELLATE RIGHTS:**

If the person or organization identified in the application wants to appeal the denial of a permit or the issuance of a Notice of Violation the following procedure shall apply:

A. Within ten (10) days after the date of denial of a permit or the issuance of a Notice of Violation, the person or organization notified may make a written request to the Secretary of the Department for a hearing.

B. An informal hearing shall be conducted not later than fifteen (15) days after receipt by the Secretary of the Department of the written request. The time, location and date of the hearing, as determined by the Secretary or his designee, may be given by telephone to the person or organization requesting the hearing. Written notification shall also be given.

C. Evidence may be written and oral. Either party may call and examine witnesses and introduce exhibits. If a reporter is requested by either party, the party making the request shall make the arrangement and payment therefor.

D. The findings and decision of the hearing officer or panel are administratively final. The decision shall be posted to the appellant not later than five (5) days after the hearing. If a permit is revoked or a vending machine must be removed, a Notice to Remove shall be included with the decision.

[Recompiled 11/16/01]

#### **18.32.2.13 PREFERENCE FOR BLIND PERSONS:**

NMSA 1978, Sections 22-14-24 through 22-14-29 grant a preference to blind persons with respect to vending permitted by this Rule. Such laws, together with the rules adopted by the Commission for the Blind pursuant to Section 12-14-28 shall apply. Unless inconsistent with such laws and rules, the provisions of this Rule shall also apply.

[Recompiled 11/16/01]

## **CHAPTER 33-49: [RESERVED]**

## **CHAPTER 50: REPORTING AND ANALYSIS OF TRANSPORTATION ACCIDENTS [RESERVED]**

## **CHAPTER 51-59: [RESERVED]**

## **CHAPTER 60: PIPELINE CONSTRUCTION AND MAINTENANCE**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: PIPELINE SAFETY GENERAL PROVISIONS**

#### **18.60.2.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.60.2.1 NMAC - N, 7-17-06]

#### **18.60.2.2 SCOPE:**

This rule applies to all owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.

[18.60.2.21 NMAC - N, 7-17-06]

**18.60.2.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 62-14-9.1, 62-14-10, and 70-3-13 NMSA 1978.

[18.60.2.3 NMAC - N, 7-17-06]

**18.60.2.4 DURATION:**

Permanent.

[18.60.2.4 NMAC - N, 7-17-06]

**18.60.2.5 EFFECTIVE DATE:**

July 17, 2006, unless a later date is cited at the end of a section.

[18.60.2.5 NMAC - N, 7-17-06]

**18.60.2.6 OBJECTIVE:**

The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978, and the Pipeline Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978.

[18.60.2.6 NMAC - N, 7-17-06]

**18.60.2.7 DEFINITIONS:**

In addition to the definitions in 49 CFR Parts 40, 190, 191, 192, 193, 194, 195 and 199, and Sections 62-14-2 and 70-3-12 NMSA 1978, as used in these rules:

**A. applicable laws** means the Hazardous Liquid Pipeline Safety Act, 49 USC Sections 2001 et seq; the Hazardous Materials Transportation Act, 49 USC Sections 1801 et seq; the Natural Gas Pipeline Safety Act, 49 USC Sections 60101 et seq; Chapter 62, Article 14 NMSA 1978; the Pipeline Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978; these rules, and commission orders issued pursuant to them;

**B. director** means the director of the transportation division of the New Mexico public regulation commission or his designee;

**C. staff** means the staff of the pipeline safety bureau of the transportation division of the public regulation commission; and

**D. these rules** means Title 18, Chapter 60.

[18.60.2.7 NMAC - Rp, 18.60.2.7 NMAC, 7-17-06; A, 8-15-12]

## **18.60.2.8 ADOPTION OF PORTIONS OF THE CODE OF FEDERAL REGULATIONS:**

**A. Adoption by reference.** Except for the variances set forth in Subsection B of this section, the commission adopts the following portions of the code of federal regulations, as such may be amended from time to time, pertaining to gas and hazardous liquid pipeline operators and facilities, and concerning the health, safety, and welfare of persons and property in New Mexico, as part of this rule:

- (1) pipeline safety programs and procedures. 49 CFR 190.5, 190.233(a) and (b), and 190.237;
- (2) annual, incident, and safety related condition reports. 49 CFR Part 191;
- (3) minimum federal safety standards. 49 CFR Part 192;
- (4) transportation of hazardous liquids by pipeline, 49 CFR Part 195;
- (5) drug and alcohol testing, 49 CFR Parts 40 and 199.

### **B. New Mexico variances to adopted federal regulations.**

- (1) The reporting threshold in New Mexico shall be \$5,000 instead of the \$50,000 reporting threshold established in 49 CFR 191.3.
- (2) Hazardous liquid pipeline operators must make telephonic notice to the pipeline safety bureau in accordance with 49 CFR Section 195.50.
- (3) Leakage surveys of transmission lines in New Mexico shall be conducted using leak detection equipment but shall otherwise be conducted in accordance with 49 CFR 192.706(b).
- (4) Intrastate gas and hazardous liquid pipeline operators must submit annual reports, written incident/accident reports and safety related condition reports as prescribed in 49 CFR 191.9, 191.11, 191.12, 191.15, 191.17, 191.23, 191.25, 195.49, 195.50, 195.54, 195.55 and 195.56 to the transportation division director or his designee at Post Office Box 1269, Santa Fe, New Mexico 87504-1269.
- (5) Regulated intrastate gathering operators in New Mexico shall:
  - (a) establish and follow written operating and maintenance procedures as prescribed in 49 CFR 192.605 for all applicable requirements of 49 CFR 192.9;



(b) establish and follow written emergency procedures as prescribed in 49 CFR 192.615;

(c) establish and follow written maintenance procedures as prescribed in 49 CFR 192.703(b) and (c);

(d) establish and follow written procedures for prevention of accidental ignition as prescribed in 49 CFR 192.751;

(e) establish and follow written valve maintenance procedures as prescribed in 49 CFR 192.745;

(f) keep records necessary to administer the procedures established under Subsection B of 18.60.2.8 NMAC; and

(g) conduct leakage surveys of its regulated gathering line(s) using leak detection equipment at intervals not exceeding fifteen (15) months but at least once each calendar year.

### **C. Interpretation of references and terms in federal regulations.**

(1) References in the code of federal regulations to "state agency" shall be deemed references to the transportation division of the New Mexico public regulation commission.

(2) References in 49 CFR 190.233(a) and (b) to the "associate administrator, OPS" shall be deemed references to the director of the transportation division of the New Mexico public regulation commission.

(3) References in 49 CFR 190.233(a) and (b) to 49 CFR 190.233(c), 49 CFR 190.233(c)(2), or 49 CFR 190.233(g) shall be deemed references to 18.60.4.9 NMAC through 18.60.4.15 NMAC.

(4) References in 49 CFR 192.723(b)(1) to "business district" shall have the meaning given by the United States department of transportation in correspondence interpreting the term.

(5) References in 49 CFR 192.383(a) to "replaced service line" includes piping within three (3) feet of the fitting that connects the service line to the main.

(6) References in 49 CFR 192.605(b), 192.615(a)(7) to "procedures for making safe any actual or potential hazard to life or property" shall include specific procedures for emergency response to excavation damage near buildings that adequately address the possibility of multiple leaks and gas migration into nearby buildings.

(7) References in 49 CFR 192.617 to "accidents and failures" shall include an unintentional release of gas.

[18.60.2.8 NMAC - Rp, 18.60.2.8 NMAC, 7-17-06; A, 8-15-12]

#### **18.60.2.9 NOTICE OF INTENT TO CONSTRUCT:**

Prior to the start of construction of any new or replacement intrastate natural gas or hazardous liquid pipeline with a total construction value of \$50,000 or more, the operator of such pipeline shall give written notice of its intent to construct to the Transportation Division Director, Post Office Box 1269, Santa Fe, New Mexico, 87504-1269. The notice of intent to construct shall state:

- A. the pipe material;
- B. the finished diameter, length, and approximate location of the pipeline;
- C. the size and capacity of any compressors or pumps;
- D. and the contemplated date construction will commence.

[18.60.2.9 NMAC - Rp, 18.60.2.18 NMAC, 7-17-06; A, 8-15-12]

#### **18.60.2.10 REPORTS OF MASTER METERS:**

Annually, by March 15, each owner or operator of a gas distribution or transmission system shall report to the director the name, address, and location of any master meter operator connected to its facilities.

[18.60.2.10 NMAC - Rp, 18.60.2.19 NMAC, 7-17-06]

#### **18.60.2.11 OPERATION AND MAINTENANCE MANUAL:**

Each owner or operator of gas or hazardous liquid pipeline facilities in New Mexico, whether above ground or underground, shall file with the director a manual prescribing its procedures for emergencies and for inspection and maintenance of each pipeline facility it owns or operates and a plan for classification and repair of leaks consistent with 18.60.2.12 NMAC. Any change to procedures set forth in the manual must be filed with the director within twenty (20) days after the change is made.

[18.60.2.11 NMAC - Rp, 18.60.2.21 NMAC, 7-17-06]

#### **18.60.2.12 CLASSIFICATION AND REPAIR OF LEAKS:**

Immediately upon discovery, and in accordance with generally accepted industry criteria, an owner or operator shall classify a leak as:

**A.** a hazardous leak, grade I or C, if it is a leak which, due to its location and/or magnitude, constitutes an immediate hazard to persons or property;

**B.** a potentially hazardous leak, grade II or B, if it is a leak that does not constitute an immediate hazard, but may become hazardous if not repaired within a reasonable time period; or

**C.** a non-hazardous leak, grade III or A, if it is a leak which does not constitute a hazard and shows no indication of becoming hazardous before routine scheduled repair could be accomplished.

[18.60.2.12 NMAC - Rp, 18.60.2.22 NMAC, 7-17-06]

#### **18.60.2.13 OIL PIPELINE TARIFFS:**

**A.** An owner or operator of an oil pipeline shall file with the commission at least ten (10) days prior to its effective date two (2) copies of its tariff covering intrastate movements within New Mexico.

**B.** An owner or operator of an oil pipeline shall file with the commission at least ten (10) days prior to its effective date two (2) copies of any changes to its tariff.

**C.** If an owner or operator of an oil pipeline assesses separate charges for the gathering of oil and for its transportation and delivery, the charges shall be separately specified in its tariff.

**D.** In determining whether an oil pipeline's rates for the transportation of oil are reasonable, the commission shall consider:

- (1)** the actual costs to transport;
- (2)** market factors;
- (3)** the range of rates being charged by other oil pipelines for similar services;
- (4)** any other factors the commission deems relevant.

[18.60.2.13 NMAC - N, 7-17-06]

### **PART 3: ANNUAL PIPELINE SAFETY FEES**

#### **18.60.3.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.60.3.1 NMAC - N, 10-15-04]

#### **18.60.3.2 SCOPE:**

This rule applies to all operators of gas, hazardous liquid, and carbon dioxide pipelines in New Mexico subject to the jurisdiction of the commission.

[18.60.3.2 NMAC - N, 10-15-04]

#### **18.60.3.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 8-8-4.

[18.60.3.3 NMAC - N, 10-15-04]

#### **18.60.3.4 DURATION:**

Permanent.

[18.60.3.4 NMAC - N, 10-15-04]

#### **18.60.3.5 EFFECTIVE DATE:**

October 15, 2004, unless a later date is cited at the end of a section.

[18.60.3.5 NMAC - N, 10-15-04]

#### **18.60.3.6 OBJECTIVE:**

The purpose of this rule is to implement NMSA 1978 Sections 70-3-21 and 70-3-22.

[18.60.3.6 NMAC - N, 10-15-04]

#### **18.60.3.7 DEFINITIONS:**

In addition to the definitions in NMSA 1978 Section 70-3-12, as used in this rule:

**A. carbon dioxide** has the meaning given in 49 CFR Section 195.2;

**B. fiscal year** means the period starting July 1 and ending June 30;

**C. gas** has the meaning given in 49 CFR Section 191.3 and 192.3;

**D. hazardous liquid** has the meaning given in 49 CFR Section 195.2;

**E. jurisdictional gathering** means the gathering of gas, hazardous liquid, or carbon dioxide by pipeline, or its storage, in New Mexico but does not include the gathering of gas, hazardous liquid, or carbon dioxide in those rural locations that lie

outside the limits of any municipality or unincorporated city, town, or village or any residential or commercial area such as a subdivision, a business or shopping center, a community development or any similar populated area that the commission may define by order as a non-rural area;

**F. operator** means a person who engages in the transportation of gas, hazardous liquid, or carbon dioxide and includes master meter operators.

[18.60.3.7 NMAC - N, 10-15-04]

### **18.60.3.8 INFORMATION REQUIRED FROM OPERATORS OF GAS PIPELINES:**

An operator of gas pipelines shall file with the pipeline safety bureau of the commission on or before March 15 of each year:

**A.** a copy of USDOT report form RSPA F 7100.2-1, *annual report for calendar year 20xx gas transmission or gathering systems* for the previous calendar year, and/or USDOT report form RSPA F 7100.1-1, *annual report for calendar year 20xx gas distribution system* for the previous calendar year, as may apply to the operator;

**B.** miles of jurisdictional gathering in New Mexico;

**C.** miles of intrastate transmission in New Mexico;

**D.** total number of customers in New Mexico not including off-system customers;

**E.** number of residential customers in New Mexico;

**F.** number of all other customers in New Mexico not including off-system customers;  
and

**G.** its electronic mail and mailing addresses and its principal place of business.

[18.60.3.8 NMAC - N, 10-15-04]

### **18.60.3.9 ESTIMATE OF DOMESTIC AND COMMERCIAL GAS SERVICES:**

For purposes of NMSA 1978 Section 70-3-21, the pipeline safety bureau will estimate the number of domestic and commercial services by applying the ratios derived from the information reported pursuant to Subsections D, E, and F of 18.60.3.8 NMAC to the number of services a gas pipeline operator reported in RSPA F 7100.1-1, *annual report for calendar year 20xx gas distribution system* for the previous calendar year.

[18.60.3.9 NMAC - N, 10-15-04]

#### **18.60.3.10 INFORMATION REQUIRED FROM OPERATORS OF HAZARDOUS LIQUID AND CARBON DIOXIDE PIPELINES:**

A hazardous liquid and carbon dioxide pipeline operator shall file with the pipeline safety bureau of the commission on or before:

**A.** March 15 of each year:

- (1)** miles of jurisdictional gathering in New Mexico;
- (2)** miles of intrastate transmission in New Mexico;
- (3)** its electronic mail and mailing addresses and its principal place of business.

**B.** June 15 of each year a copy of USDOT report form RSPA F 7000.1-1, *annual report for calendar year 20xx hazardous liquid or carbon dioxide systems* for the previous calendar year.

[18.60.3.10 NMAC - N, 10-15-04]

#### **18.60.3.11 COLLECTION PROCEDURE:**

**A.** By May 1 of each year, the pipeline safety bureau shall present to the commission a review of the fees collected and the payments made from the pipeline safety fund for the previous fiscal year.

**B.** By May 1 of each year, the pipeline safety bureau shall, in accordance with Subsection E of NMSA 1978 Section 70-3-21, present to the commission proposed rates for pipeline safety fees for the next fiscal year. The fees shall be based on the pipeline safety bureau's estimate of funding required for the next fiscal year, taking into consideration the estimated fund balance as of the end of the current fiscal year, the legislative appropriation provided to the commission for pipeline safety programs, the estimated federal grant-in-aid, the information provided pursuant to 18.60.3.8 and 18.60.3.10 NMAC, and any other factors deemed appropriate by the bureau.

**C.** Upon commission approval of the rates for pipeline safety fees, the pipeline safety bureau shall prepare a form for operators to use to calculate the total pipeline safety fee due. The pipeline safety bureau shall post the form on the commission's website and shall mail, email, or personally deliver the form to each operator. An operator shall be responsible for paying the fee due even if the operator does not receive a form from the bureau.

**D.** An operator shall pay the calculated fee by check made payable to the public regulation commission. An operator must send the fee by registered mail postmarked no later than June 1 or 15 days from the date of the commission order approving the

rates for pipeline safety fees, whichever is later, of each year to the Public Regulation Commission, Pipeline Safety Bureau, P.O. Box 1269, Santa Fe New Mexico 87504-1269.

[18.60.3.11 NMAC - N, 10-15-04; A, 04-15-10]

#### **18.60.3.12 RECOUPMENT OF PIPELINE SAFETY FEES FROM RATE PAYERS:**

A public utility seeking to recoup from its ratepayers the pipeline safety fee paid to the commission shall file with the utility division of the commission a compliance filing setting forth the imposition methodology and amount of the fee to be recouped from its ratepayers by the later of July 1 or 45 days from the date of the commission order approving the rates for pipeline safety fees. A public utility may begin recouping the pipeline safety fee from ratepayers in the first billing cycle following the compliance filing.

[18.60.3.12 NMAC - N, 10-15-04]

### **PART 4: PIPELINE SAFETY ENFORCEMENT PROCEDURES**

#### **18.60.4.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.60.4.1 NMAC - N, 7-17-06]

#### **18.60.4.2 SCOPE:**

This rule applies to all owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.

[18.60.4.2 NMAC - N, 7-17-06]

#### **18.60.4.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 62-14-9.1, 62-14-10, and 70-3-13 NMSA 1978.

[18.60.4.3 NMAC - N, 7-17-06]

#### **18.60.4.4 DURATION:**

Permanent.

[18.60.4.4 NMAC - N, 7-17-06]

#### **18.60.4.5 EFFECTIVE DATE:**

July 17, 2006, unless a later date is cited at the end of a section.

[18.60.4.5 NMAC - N, 7-17-06]

#### **18.60.4.6 OBJECTIVE:**

The purpose of this rule is to prescribe procedures to administer and enforce Chapter 62, Article 14 NMSA 1978, and the Pipeline Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978.

[18.60.4.6 NMAC - N, 7-17-06]

#### **18.60.4.7 DEFINITIONS:**

In addition to the definitions in 18.60.2.7 and 18.60.5.7 NMAC, as used in this rule, **respondent** means an owner or operator of gas and hazardous liquid pipelines or underground facilities, an excavator, or a one-call notification system.

[18.60.4.7 NMAC - Rp, 18.60.2.7 NMAC, 7-17-06]

#### **18.60.4.8 INSPECTIONS AND INVESTIGATIONS:**

##### **A. Pipelines.**

(1) Staff is authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, those records and pipeline facilities of an owner or operator relevant to determining whether the owner or operator is in compliance with applicable laws.

(2) Staff may conduct an inspection pursuant to:

- (a) scheduling by staff;
- (b) a written complaint received from a member of the public;
- (c) information obtained from a previous inspection;
- (d) an accident or incident; or
- (e) whenever the commission or the director deems it appropriate.

(3) If, after an inspection, staff believes that further information is needed to determine appropriate action, staff may send a request for specific information to the



owner or operator. The owner or operator shall answer the request within thirty (30) days of its receipt.

(4) The commission may, subject to applicable laws, require testing of portions of facilities that have been involved in, or affected by, an accident. The commission shall make every effort to negotiate with the owner or operator of the facility a mutually acceptable plan for performing the testing.

(5) When the information obtained from an inspection or from other appropriate sources indicates that further commission action is warranted, the director shall issue a notice of probable violation or notice of intent to issue a hazardous facility order, as appropriate.

**B. Excavation.** A one-call notification system, underground facility operator, excavator, or project owner, as appropriate, shall, upon reasonable notice and presentation of identification, grant staff access to:

(1) an excavation site for the purpose of previewing, observing, or examining an excavation activity;

(2) all records pertaining to an excavation activity that are in the possession of the one-call notification system, underground facility operator, excavator, or project owner.

[18.60.4.8 NMAC - Rp, 18.60.2.9 NMAC, 7-17-06]

#### **18.60.4.9 SERVICE OF PROCESS:**

Whenever this rule requires notice or other process to be served on a respondent, the notice or other process shall be served at the last known address of the respondent.

[18.60.4.9 NMAC - Rp, 18.60.2.10 NMAC, 7-17-06]

#### **18.60.4.10 NOTICE OF PROBABLE VIOLATION:**

**A.** Except as otherwise provided in Section 70-3-19 NMSA 1978, the director shall begin an enforcement proceeding by serving a notice of probable violation on the respondent.

**B.** The director may serve a notice of probable violation of applicable laws through staff on the respondent or the respondent's agent at an excavation site. In such case, the director shall also serve the notice of probable violation by mail on the respondent as prescribed in 18.60.4.9 NMAC.

**C.** A notice of probable violation shall include a statement of those provisions of applicable laws that the respondent is alleged to have violated, a statement of the

evidence upon which the allegations are based, a statement that the respondent may request a settlement conference within fifteen (15) days of receipt of the notice of probable violation, and instructions regarding how the respondent may request a settlement conference. A respondent shall respond to the allegations in writing within fifteen (15) days of receipt of the notice of probable violation. The director may, in his discretion and in accordance with applicable laws, grant or deny a request for a settlement conference.

**D.** If, in his discretion, the director determines that a settlement conference would be useful, the notice of probable violation shall also contain a date, time and location for a settlement conference, and a statement that if the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation.

**E.** The director may amend a notice of probable violation at any time prior to issuance of a final order.

[18.60.4.10 NMAC - Rp, 18.60.2.11 NMAC, 7-17-06]

#### **18.60.4.11 ATTORNEY REPRESENTATION:**

In settlement conferences, dispositional hearings, commission hearings conducted pursuant to this rule, and arbitrations and mediations conducted pursuant to 18.60.5 NMAC, respondents shall be represented as provided in this section.

**A.** An individual or sole proprietorship shall appear in person on his or her own behalf or may be represented by an attorney.

**B.** A partnership with fewer than ten (10 ) partners, whether limited or general, who are all natural persons, may appear and be represented by an attorney or by a general partner or manager who has been authorized by the general partnership to do so.

**C.** A limited liability company with fewer than ten (10) members, who are all natural persons, may appear and be represented by an attorney or by a manager or member who has been authorized by the limited liability company to do so.

**D.** A corporation whose voting shares are held by a single shareholder or closely knit group of shareholders who are all natural persons active in the operation of the business may appear and be represented by an attorney or by an officer or manager who has been authorized by the corporation to do so.

**E.** All other persons shall be represented by an attorney.

[18.60.4.11 NMAC - N, 7-17-06]

#### **18.60.4.12 SETTLEMENT CONFERENCES:**

The director may conduct a settlement conference with the respondent at the date, time and in the manner set forth in the notice of probable violation, or at such other time agreed to by the director and the respondent. At the settlement conference, the director shall explore with the respondent the facts of the probable violation and the possibility of reaching an agreed upon resolution, which may include dismissal or a voluntary settlement agreement with administrative or civil penalties or other sanctions.

**A. Voluntary dismissal.** If the director and respondent agree to dismiss the notice of probable violation, the director shall issue a letter dismissing the probable violation which shall resolve the matter.

**B. Voluntary settlement agreement.** If the director and respondent agree to settle, the director and respondent shall enter into and sign a written settlement agreement which shall resolve the matter. The written settlement agreement shall include any administrative or civil penalties or other sanctions and the respondent's knowing waiver of his right to a formal hearing.

**C. Failure to settle.** If the respondent appears at the settlement conference but does not agree to terms and conditions that are satisfactory to the director, the director may request a hearing before the commission pursuant to 18.60.4.14 NMAC or file a petition in district court for injunctive action.

**D. Failure to appear.** If the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation. Within ten (10) days, the director may serve on respondent a determination of violation. The determination shall include notice of the respondent's right to appeal pursuant to 18.60.4.14 NMAC and may include notice of a dispositional hearing pursuant to 18.60.4.13 NMAC.

**E. Alternative procedures.** The director may give notice of a dispositional hearing, request a hearing before the commission, or file a petition in district court for injunctive action without offering to hold a settlement conference.

[18.60.4.12 NMAC - Rp, 18.60.2.12 NMAC, 7-17-06]

#### **18.60.4.13 DISPOSITIONAL HEARINGS:**

**A. Notice.** Not less than twenty (20) days prior to the date of the dispositional hearing, the director shall serve on the respondent notice of the dispositional hearing and copies of the notice of probable violation, staff's inspection reports, and any third party complaints or damage reports by mail as prescribed by 18.60.4.9 NMAC. The notice shall state in boldface type that failure to appear at the dispositional hearing may result in the issuance of a default disposition and administrative or civil penalties or other sanctions.

#### **B. Procedures.**

(1) The director shall appoint a person or a panel to hear the case, or may hear the case himself or herself.

(2) The dispositional hearing shall be recorded by mechanical or electronic means and the director, or person or panel conducting the hearing, shall determine if the record shall be transcribed.

(3) If the director does not hear the case himself or herself, the person or panel conducting the dispositional hearing shall issue a recommended disposition to the director setting forth findings of fact, the amount of any administrative or civil penalties, and any other sanctions.

**C. Disposition.** The director shall promptly act on the recommended disposition. The director's disposition shall include:

(1) findings of fact;

(2) the amount of the penalty and the procedure for its payment, if an administrative or civil penalty is assessed;

(3) a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished; and

(4) a statement that the respondent may appeal the director's disposition by filing a request for a hearing before the commission pursuant to 18.60.4.14 NMAC.

**D. Failure to appear.** If the respondent fails to appear for the dispositional hearing, the director may issue a default disposition, which may include administrative or civil penalties or other sanctions.

[18.60.4.13 NMAC - N, 7-17-06]

#### **18.60.4.14 HEARINGS BEFORE THE COMMISSION:**

##### **A. Request for hearing.**

(1) **By the director.** At any time after the notice of probable violation has been served on the respondent, the director may request a hearing before the commission.

(2) **By the respondent.** A respondent may appeal a determination made by the director pursuant to Subsection D of 18.60.4.12 NMAC or a disposition made by the director pursuant to 18.60.4.13 NMAC by filing a request for hearing before the commission. The respondent shall file the appeal with the docket filing unit of the commission within thirty (30) days of the date the director's determination or disposition is mailed to the respondent. The appeal shall be in writing and signed by the respondent

and shall set forth the factual basis for the appeal and the nature of the relief requested. An appeal may request a stay of the director's determination or disposition pending a decision of the commission.

**B. Notice of hearing.** The commission shall:

- (1) fix a time and location for a public hearing on the alleged violations; and
- (2) serve notice of the hearing upon the respondent by mail as prescribed by 18.60.4.9 NMAC not less than ten (10) days prior to the date of the hearing with copies of the notice of probable violation, staff's inspection reports, and any third party complaints or damage reports. The notice shall state in boldface type that failure to appear at the hearing may result in a default judgment and the imposition of administrative or civil penalties or other sanctions.

**C. Hearing procedures.** The commission may appoint a hearing examiner or may hear the matter itself. The commission or hearing examiner shall conduct the hearing in accordance with the PRC rules of procedure. If a hearing examiner conducts the hearing, the hearing examiner shall submit to the commission a recommended decision with findings of fact and conclusions of law.

[18.60.4.14 NMAC - Rp, 18.60.2.13 and 18.60.2.14 NMAC, 7-17-06]

**18.60.4.15 STIPULATION:**

**A.** At any time before the issuance of a final order, the director and the respondent may agree to resolve a case by stipulation. The stipulation may include assessment or waiver of a civil or administrative penalty or other sanctions.

**B.** A stipulation shall include:

- (1) an admission by the respondent of all jurisdictional facts;
- (2) an express waiver of the right to pursue further procedural remedies before the commission and of the right to seek judicial review or otherwise challenge or contest the validity of the stipulation;
- (3) an acknowledgement that the notice of probable violation may be used to construe the terms of the stipulation;
- (4) an acknowledgement that the stipulation will be considered a violation for purposes of penalties for subsequent violations; and
- (5) a statement of the actions to be taken by the respondent and the time by which each action shall be accomplished.

**C.** If a case is resolved by stipulation, staff shall file a motion requesting approval of the stipulation and closing of the case.

[18.60.4.15 NMAC - Rp, 18.60.2.15 NMAC, 7-17-06]

#### **18.60.4.16 FINAL ORDER:**

After a hearing, and the consideration of any exceptions pursuant to the PRC rules of procedure, the commission shall issue a final order that includes:

**A.** findings of fact and conclusions of law;

**B.** the amount of the penalty and the procedure for its payment, if a civil or administrative penalty is assessed; and

**C.** a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished.

[18.60.4.16 NMAC - Rp, 18.60.2.16 NMAC, 7-17-06]

#### **18.60.4.17 PAYMENT OF PENALTY:**

**A.** A respondent shall pay an administrative or civil penalty agreed to in a voluntary settlement agreement or assessed in a director's disposition or commission final order by certified check or money order made payable to the New Mexico Public Regulation Commission and shall submit the payment to the address provided by the commission.

**B.** If a respondent fails to pay the full amount of an administrative or civil penalty within twenty (20) days of receipt of a director's disposition or commission final order, or other time frame specified in the disposition or order, the commission or director may file an action in district court to collect the assessed penalty.

[18.60.4.17 NMAC - Rp, 18.60.2.17 NMAC, 7-17-06]

#### **18.60.4.18 REFERRAL FOR PROSECUTION:**

If an employee of the transportation division of the New Mexico public regulation commission becomes aware of any actual or possible activity subject to criminal penalties under Section 70-3-19 NMSA 1978, the employee shall report such actual or possible activity to the office of the attorney general for the state of New Mexico.

[18.60.4.18 NMAC - Rp, 18.60.2.26 NMAC, 7-17-06]

### **PART 5: PIPELINE SAFETY EXCAVATION DAMAGE PREVENTION**

#### **18.60.5.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.60.5.1 NMAC - Rp, 18.60.5.1 NMAC, 1/15/19]

**18.60.5.2 SCOPE:**

This rule applies to all one-call notification systems, excavators, and owners and operators of pipelines and other underground facilities in New Mexico with the exemption of those preempted by federal law.

[18.60.5.2 NMAC - Rp, 18.60.5.2 NMAC, 1/15/19]

**18.60.5.3 STATUTORY AUTHORITY:**

Sections 8-8-4, 62-14-7.1, 62-14-10, 70-3-4, and 70-3-13 NMSA 1978.

[18.60.5.3 NMAC - Rp, 18.60.5.3 NMAC, 1/15/19]

**18.60.5.4 DURATION:**

Permanent.

[18.60.5.4 NMAC - Rp, 18.60.5.4 NMAC, 1/15/19]

**18.60.5.5 EFFECTIVE DATE:**

January 15, 2019, unless a later date is cited at the end of a section.

[18.60.5.5 NMAC - Rp, 18.60.5.5 NMAC, 1/15/19]

**18.60.5.6 OBJECTIVE:**

The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing damage to underground utilities and for dealing with damage when it occurs during excavation activities.

[18.60.5.6 NMAC - Rp, 18.60.5.6 NMAC, 1/15/19]

**18.60.5.7 DEFINITIONS:**

In addition to the definitions in Section 62-14-2 NMSA 1978, 18.60.2.7 NMAC and 18.60.4.7 NMAC, as used in this rule:

**A. Definitions beginning with "A": access information** means a telephone number, a facsimile number, an email address, and, if available, a web site address;

**B. Definitions beginning with "B":** **bid locate** means the marking of underground facilities at the request of a project owner or project engineer for the purpose of providing information to persons bidding on a project;

**C. Definitions beginning with "C": [RESERVED]**

**D. Definitions beginning with "D":** **design locate** means the marking of underground facilities at the request of a project owner or project engineer for the purpose of providing information to persons designing a project;

**E. Definitions beginning with "E":**

(1) **effective date** excludes the day that advance notice is provided as may be required in this rule, whereby the computed date shall begin at 12:01 a.m. after two full working days;

(2) **emergency locate** means the marking of underground facilities at the request of a person for an underground facility owner as soon as practical, ideally within 2 hours for the purpose of an emergency excavation;

(3) **excavation locate** means the marking of underground facilities for the purpose of providing information at the request of an excavator planning to commence excavation for the excavator's project;

**F. Definitions beginning with "F": [RESERVED]**

**G. Definitions beginning with "G": [RESERVED]**

**H. Definitions beginning with "H":** **holiday** means the day New Mexico state government observes New Year's Day, Martin Luther King, Jr's, Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, President's Day, and Christmas Day;

**I. Definitions beginning with "I": [RESERVED]**

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L": [RESERVED]**

**M. Definitions beginning with "M":** **mechanical vacuum excavation** is deemed an appropriate non-mechanical method of excavating safely around underground facilities provided that the equipment has been specifically designed and built for this purpose and is operated in accordance with practices that provide appropriate levels of worker and public safety and prevent damage to buried facilities;



**N. Definitions beginning with "N": non-member** UFO means a private underground facility owned by a homeowner and operated and located on a residential property or not subject to the jurisdiction of the commission;

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

(1) **project engineer** means the person designated by the owner to be in responsible charge of the project involving excavation, including the design thereof, and who is licensed in accordance with Section 61-23 NMSA;

(2) **project owner** means the owner of a project involving excavation;

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R": road maintenance** means routine grading and resurfacing of the earth and gravel surface, but not the subbase, of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch but does not include road construction or reconstruction and shall entail moving no more than four inches of earth; road maintenance does not include street sweeping or road milling and resurfacing as long as the subsurface is not disturbed;

**S. Definitions beginning with "S": [RESERVED]**

**T. Definitions beginning with "T": [RESERVED]**

**U. Definitions beginning with "U": underground facility operator (UFO)** means a person who operates an underground facility;

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": working day** means a full business day excluding weekends and holidays;

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[18.60.5.7 NMAC - Rp, 18.60.5.7 NMAC, 1/15/2019; A 8/9/2022]

**18.60.5.8 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS:**

A one-call notification system shall:

- A.** provide toll-free access;
- B.** provide to the commission quarterly the name, contact person, and access information for each member of the one-call notification system;
- C.** notify the commission of the service area in which the one-call notification system operates;
- D.** have a written coordination agreement with other one-call notification systems operating in New Mexico;
- E.** keep a record of all locate requests, tickets, and clears for five years and make such records available to the commission upon request;
- F.** provide monthly reports to the commission, no later than the tenth of each month, with the following information:
  - (1) average wait time for answered calls for the previous month;
  - (2) number of calls received for the previous month;
  - (3) number of tickets generated for the previous month;
  - (4) number of requests by type (regular, priority, emergency) for the previous month.
- G.** report any changes in access information to the commission on or before the date the information will change;
- H.** establish a registry of non-member UFOs that voluntarily provide their contact and underground facility information for excavation purposes;
- I.** establish a positive response registry system; and
- J.** inform any person who calls with a complaint that they may file a complaint with the commission's pipeline safety bureau, and provide the commission's pipeline safety bureau access information, if the one-call system is unable to satisfactorily resolve the matter.
- K.** processing locate requests;
  - (1) A one-call notification system may hold a locate request in suspension until it is complete. The one-call notification system shall contact an excavator, project owner, or project engineer within three hours to request any missing information that

prevents the one-call notification system or non-member UFO from processing the request.

(2) A one-call notification system shall process all complete locate requests within three hours of receipt. A one-call notification system shall deem locate requests received on a weekend or holiday, or after 4:00 p.m. on a working day, to have been received at 7:00 a.m. on the next working day and shall deem locate requests received before 7:00 a.m. on a working day to have been received at 7:00 a.m. on that working day.

(3) Upon receipt of a complete conference or locate request, a one-call notification system shall issue a ticket with a unique number to the requesting person as confirmation, and shall send a ticket to all members of the system that have underground facilities in the excavation area, or notify the members by telephone. A ticket shall become effective at the date and time a one-call notification system issues a ticket number; if the ticket is for a conference, the ticket shall be marked "wide area conference," "bid conference," or "design conference," as appropriate.

(4) Any person may contact the one-call notification system and request confirmation of damage reports, conferences, and locate requests.

[18.60.5.8 NMAC - Rp, 18.60.5.8 NMAC, 1/15/2019; A, 8/9/2022]

#### **18.60.5.9 RESPONSIBILITIES OF UFOs:**

**A.** A UFO shall report any changes to the information required by Subsection B of 18.60.5.8 NMAC to the one-call notification system(s) at least seven days prior to the effective date.

**B.** A UFO shall retain records of locate requests, excavation notices and underground facility damage information for a period of five years and make such records available to the commission upon request.

**C.** A UFO that utilizes contractors to perform locate and excavation activities or damage investigations on its behalf shall be responsible for compliance with Chapter 62, Article 14 NMSA 1978 and these rules.

[18.60.5.9 NMAC - Rp, 18.60.5.9 NMAC, 1/15/19]

#### **18.60.5.10 LOCATE REQUESTS:**

An excavator shall make an excavation locate request for all projects involving excavation, including road maintenance, with the exception of subsurface potholing or vacuum excavation activities conducted solely for the purpose of physically exposing or locating underground facilities. However, this exception does not preclude compliance with 18.60.5.18 NMAC. Although not required under the Excavation Damage to

Pipelines and Underground Utility Lines Law, Sections 62-14-1, *et seq.* NMSA 1978, or this rule, locate requests are encouraged for excavation projects involving purely non-mechanical means.

#### **A. Submittal.**

(1) An excavator shall submit an excavation locate request to each one-call notification system:

(a) by telephone or in person during normal business hours Monday to Friday, excluding holidays; or

(b) by facsimile or electronically via online web portal with appropriate one-call notification center twenty-four hours a day, seven days a week.

(2) An excavator shall also submit an excavation locate request to each non-member UFO.

#### **B. Size of locate requests.**

(1) An excavator shall determine the maximum area that the excavator can reasonably expect to excavate within a 15 working day period and shall request an excavation locate for that area only. The excavator shall pre-mark the actual intended excavation route or site(s) for any incorporated city, town, or village including extra-territorial zone(s) in accordance with American public works association (APWA) marking guidelines to communicate to facility owners where the actual excavation will take place for standard 15 working day ticket requests only. Outside these incorporated areas, excavators shall provide clear and accurate driving and marking instructions, and either GPS coordinates or pre-marks, as described above, which define the parameters of the proposed excavation. The pre-marked excavation shall encompass locations(s) where excavation equipment that may penetrate the surface will be setup, such as directional boring equipment. If the location markings have been removed, or are no longer visible, and there are no marking offsets, the person engaging in the excavation activity shall suspend excavation activities and reinitiate a locate request set forth in this section. Such relocate request shall be limited to the area yet to be excavated only.

(2) An excavator may request relocates for the same area only if justified by the circumstances and nature of the work; such justification shall be made part of the relocate request.

**C. Minimum information required.** When requesting an excavation locate or a locate conference, an excavator shall comply with the requirements of the one-call notification system or non-member UFO operating in the intended excavation area and shall provide accurate and truthful information. A locate request shall be deemed incomplete if it does not contain, at a minimum:

- (1) the name and contact information of the excavator personnel directly involved with or conducting the excavation at the actual excavation site;
- (2) if available, an alternate name and contact information of the excavator;
- (3) a description and the purpose of the type of work to be done;
- (4) the name of the person for whom the work is being done;
- (5) whether or not the excavation site is pre-marked in white;
- (6) an accurate physical description of the location and size of the excavation site; reference to a plat of a subdivision shall not by itself be sufficient description;
- (7) driving instructions to a rural excavation site;
- (8) spotting instructions;
- (9) any appropriate remarks regarding access to or hazards at the site;
- (10) if available, GPS coordinates which define the parameters or start and end points of the actual excavation.

[18.60.5.10 NMAC - Rp, 18.60.5.10 NMAC, 1/15/19]

#### **18.60.5.11 WIDE AREA LOCATE REQUESTS:**

An excavator who expects a project to take more than 15 working days to complete shall either request separate locates which meet the requirements of Subsection B of 18.60.5.10 NMAC or follow the conference procedure set forth in this section.

**A.** If an excavator expects that an excavation will take more than 15 working days to complete, the excavator shall contact the one-call notification system to request a wide area conference a minimum of two working days prior to the wide area conference and provide the proposed date, time, and location for the conference. The one-call notification system shall process the request as provided in Subsection K of 18.60.5.8 NMAC.

**B.** A UFO shall contact an excavator who requests a wide area conference within two working days of the issuance of the conference ticket and confirm proposed conference schedule. A UFO shall be physically represented at a scheduled wide area conference. If a UFO cannot attend the scheduled wide area conference, it shall make arrangements to meet with the excavator who requested the wide area conference not to exceed five working days of the scheduled wide area conference.

**C.** At the conference, the excavator shall develop a written work plan that includes the minimum information required under Subsection C of 18.60.5.10 NMAC in consensus with each UFO, which shall be signed by all parties. Updates or revisions to the work plan shall also be in writing and signed by all parties.

**D.** After the work plan has been signed by all parties, an excavator shall request a wide area excavation locate. The one-call notification system shall process the request as provided in Subsection K of 18.60.5.8 NMAC. The excavation ticket shall reference the wide area conference ticket number and cite the work plan as the description of the work to be performed.

**E.** An excavator working pursuant to a wide area excavation locate ticket shall request reaffirmation of the wide area locate ticket every 15 working days. For the purpose of reaffirmation, a working day begins on the date and time stamped on the ticket and ends 15 working days from such date and time. The excavator and UFO(s) shall continue to comply with the approved work plan established per Subsection C of 18.60.5.11 NMAC.

[18.60.5.11 NMAC - Rp, 18.60.5.11 NMAC, 1/15/19]

#### **18.60.5.12 DESIGN AND BID LOCATE REQUESTS:**

A project owner or project engineer shall request information regarding the location of underground facilities for design projects or bids in accordance with either Subsection A or B of this section, but may not switch methods once having made an election unless the existing utilities cannot be located by the UFO(s) in accordance with the requirements of applicable laws.

##### **A. Physical locates:**

(1) A project owner or project engineer may request a design or bid locate from one-call notification systems and non-member UFOs.

(2) The one-call notification system and non-member UFOs for the intended excavation area shall issue a ticket marked "bid locate" or "design locate" as appropriate.

(3) UFOs shall physically mark or clear the location of underground facilities on the site through a positive response system within two full working days from the date of the ticket.

(4) If one or more underground facilities have not been marked and positive response has not been provided, a project owner or project engineer shall call the one-call notification system for verification that advance notice was transmitted to the UFO and to provide notice that the underground facilities have not been located or cleared

via a warning locate request. UFOs shall promptly respond to warning locate requests, ideally within two hours.

(5) Designers or bidders, as appropriate, shall capture data from the site within 10 working days from the end of the two day marking period.

(6) A project owner or project engineer shall not request relocations or time extensions for a design or bid locate.

**B. Conferences:**

(1) A project owner or project engineer may request a design or bid conference a minimum of two working days prior to conference from the one-call notification system and non-member UFOs for the intended excavation area and provide the proposed date, time, and location for the conference.

(2) A UFO shall contact the project owner or project engineer within two working days of the issuance of the conference ticket and confirm the proposed conference schedule, and if necessary, make arrangements to reschedule the conference not to exceed five working days from the proposed conference schedule on the conference ticket. A UFO shall be physically represented at the scheduled design or bid conference.

(3) The one-call notification system for the intended excavation area shall process the request as provided in Subsection K of 18.60.5.8 NMAC.

(4) UFOs shall arrange to provide information to designers or bidders within a reasonable time following the conference, but not to exceed 10 working days.

(5) A project owner or project engineer and UFOs shall continue with utility coordination until the design is complete or bid for the project has been awarded and an excavator requests an excavation locate.

[18.60.5.12 NMAC - Rp, 18.60.5.12 NMAC, 1/15/2019; A, 8/9/2022]

**18.60.5.13 MARKING EXCAVATION SITES:**

**A. Excavators:** As provided under Subsection B of 18.60.5.10 NMAC, excavators shall mark all proposed excavation sites in accordance with American public works association (APWA) standards to improve communication between the excavator and UFO. In assessing administrative penalties for violation of the Excavation Damage to Pipelines and Underground Utility Lines Law, Section 62-14-1 *et seq.* NMSA 1978 and this rule, the commission may consider whether and how well an excavator marked a proposed excavation site. Pre-marking a site in white indicates the actual excavation site (not limits of construction) and, therefore, will supersede marking instructions provided on locate requests and be used to determine alleged violations during staff

investigations. When an excavator fails to pre-mark the actual excavation site, UFOs shall mark per the spotting instructions provided on the locate request and register a positive response indicating the site was not pre-marked.

**B. UFOs:**

(1) A UFO shall mark underground facilities for excavation purposes in accordance with the APWA standards.

(2) A UFO shall locate and mark its underground facilities within two full working days from the effective date of the ticket in accordance with Subsection A of 62-14-5 NMSA 1978.

(3) If a UFO determines it does not have underground facilities within the proposed limits of the excavation site, a UFO shall provide positive response to the one-call notification's positive response registry system and may write "clear" or "no underground facilities" and the UFO's name at the site in the appropriate color.

(4) The locate markings shall be valid for 15 working days from the end of the advance notice period. For the purpose of excavation, a working day begins on the work to begin date and time stamped on the ticket and ends 15 working days from such date and time.

(5) A UFO shall provide appropriate positive response to the one-call notification's positive response registry system for all advance notifications, including wide area, design, bid, standard, and road maintenance locate requests or conferences.

(6) If a UFO fails to mark its underground facility in accordance with the requirements of applicable laws, the UFO may be liable to the excavator, project owner, and project engineer in accordance with Subsection C of 62-14-5 NMSA 1978.

[18.60.5.13 NMAC - Rp, 18.60.5.13 NMAC, 1/15/2019; A, 8/9/2022]

**18.60.5.14 IDENTIFYING UNDERGROUND FACILITIES FOR ROAD MAINTENANCE:**

In response to an excavation locate request for road maintenance, a UFO shall physically mark or locate by marker its underground facilities that are parallel or cross the road, as provided in Subsection A.

**A. Underground facilities that parallel or cross the road.**

(1) **Physical locate.** A UFO may physically mark the location of all underground facilities that are parallel or cross the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the



UFO may "clear" the ticket with the excavator using the procedure for positive response set forth in 18.60.5.13 NMAC.

**(2) Locate by permanent marker.** Alternatively, a UFO may use a system of permanent markers to indicate the location of underground facilities that parallel or cross the road to be maintained. Such markers shall:

- (a)** only be used for the purposes of road maintenance;
- (b)** be durable enough to withstand normal weathering;
- (c)** be the same APWA color as is designated for marking the UFO's type of underground facility; and
- (d)** have a decal on the marker specifying the depth of the underground facility at the marker.

**B.** A UFO shall be deemed to have failed to correctly locate or mark its underground facility that is parallel or crosses a road to be maintained unless it:

- (1)** maintains a minimum 18 inches of coverage over the underground facility;
- (2)** ensures that the permanent markers are in place;
- (3)** verifies the depth of its underground facilities at the permanent marker locations at least annually; and
- (4)** ensures that the decal is visible and the information on it is readable.

[18.60.5.14 NMAC - Rp, 18.60.5.14 NMAC, 1/15/19]

#### **18.60.5.15 EXCAVATION PROCEDURES:**

**A.** Pre-excavation: Before excavating, an excavator shall determine whether all underground facilities have been marked.

- (1)** If all underground facilities have been marked or cleared through a positive response system and the advance notice marking period has expired, the excavator may begin excavating.
- (2)** If one or more underground facilities have not been marked and positive response has not been provided, an excavator shall, prior to commencing excavation, call the one-call notification system for verification that advance notice was transmitted to the UFO and to provide notice that the underground facilities have not been located or cleared via a warning locate request. UFOs shall promptly respond to warning locate requests ideally within two hours.

**B. Excavation:**

(1) If, while excavating, an excavator observes evidence that an unmarked underground facility may exist, the excavator shall, before excavating in the immediate area of such evidence:

(a) make a reasonable effort to identify and contact the UFO and wait until the UFO marks or clears the immediate area of the evidence; the UFO shall mark or clear the area within two hours of contact or as expeditiously as possible if the excavation site is in a rural area;

(b) expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(2) If excavation activity encroaches within 18 inches either side of a marking made by a UFO, an excavator shall, prior to excavating, expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(3) If the exact subsurface location of the underground facility or utility cannot be determined by non-mechanical means or mechanical vacuum excavation methods as required in Subparagraph (a) of Paragraph (1) and (2) of Subsection B of 18.60.5.15 NMAC, the excavator shall contact the UFO directly and UFO shall work with the excavator to locate and expose the actual subsurface location of the underground facility or utility. If the UFO must resort to performing excavation to locate the facility, the UFO shall perform such excavation within five working days of notice from the excavator. If requested, the local one-call notification center shall provide the excavator with the contact telephone number of the UFO.

(4) If excavation activity cannot proceed without obliterating all or some of the markings made by a UFO, an excavator shall provide temporary offset marks or stakes to retain the information regarding the location of each UFO's underground facilities.

(5) The requirement to provide positive response for a facility does not apply to the homeowner of a residential property.

(6) The commission encourages excavators to notify the UFO when excavation activity will be within twenty-five feet of the actual utility marking provided or as agreed upon by a right of way encroachment agreement or permit for infrastructure identified by the UFO as critical (i.e., transmission and trunk line pipelines, fiber optic, power, 911, etc.).

**C. Temporary suspension of excavation activity:** If staff determines that an excavation activity is not in compliance with the requirements of this rule, and that continued noncompliance may result in injury to persons or damage to property, staff may suspend the excavation activity until the excavation activity is brought into compliance with the requirements of this rule and excavation conditions are safe.

[18.60.5.15 NMAC - Rp, 18.60.5.15 NMAC, 1/15/2019; A, 8/9/2022]

#### **18.60.5.16 EMERGENCY EXCAVATION AND DAMAGE REPORTING PROCEDURE:**

This section applies whenever failure of or damage to underground facilities or public infrastructure requires emergency excavation as defined in Subsection E of Section 62-14-2 NMSA 1978 and excavation shall be promptly commenced, ideally within 24 hours.

**A. Excavators:** An excavator who damages an underground facility while excavating with mechanical or non-mechanical equipment shall exercise prudence and shall:

- (1) stop excavating immediately;
- (2) call 911 if appropriate and the operator of the damaged underground facility and 811 to report the damaged facility;
- (3) secure the site and direct people and traffic a safe distance away from the site of the damage;
- (4) not leave the scene until authorized by an emergency responder or the operator of the damaged underground facility; an excavator may leave the scene without such authorization only if the excavator has made reasonable, if unsuccessful, efforts to contact the affected UFOs and has safely secured the site;
- (5) not resume work within an unsafe distance of the damage until authorized by the operator of the damaged underground facility.

**B. Operators of failed or damaged underground facilities:** The operator of a failed or damaged underground facility shall exercise prudence and shall:

- (1) immediately respond to a report of damage or failure to its underground facilities and travel to the site;
- (2) prior to traveling to the site or upon arrival, call the one-call notification system for the excavation area to request an emergency locate;
- (3) make the site safe and get the emergency situation under control;
- (4) locate its own underground facilities as soon as practical, ideally within two hours;
- (5) begin remedial action to restore service as soon as practical, ideally within 24 hours; and

(6) obtain a standard excavation locate ticket for repair work beyond resolution of the emergency situation.

**C. Operators of failed or damaged public infrastructure:** The entity responsible for the failed or damaged public infrastructure shall:

(1) call the one-call notification system for the excavation area to request an emergency locate;

(2) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

**D. One-call notification system:** A one-call notification system shall upon request:

(1) issue an emergency excavation notice which shall be valid until the emergency is resolved, or for 48 hours, whichever is longer;

(2) issue a notice of a reported damage to each affected UFO.

[18.60.5.16 NMAC - Rp, 18.60.5.16 NMAC, 1/15/2019; A, 8/9/2022]

#### **18.60.5.17 ABUSE OF THE LAW:**

A person shall be deemed to have willfully failed to comply with this rule or Chapter 62, Article 14 NMSA 1978 and shall be subject to the penalties in Section 62-14-8 NMSA 1978 if the person:

**A.** requests a locate for an area that cannot reasonably be excavated in 15 working days;

**B.** provides misinformation or withholds information regarding the size of an excavation area;

**C.** requests locates that unduly burden a one-call notification system or UFO;

**D.** requests a locate for fraudulent reasons;

**E.** fails to process locate requests within the requisite timeframe;

**F.** fails to mark, or provide positive response for its underground facilities within the requisite timeframe;

**G.** fails to determine if all underground facilities have been marked or cleared;

**H.** commences excavation prior to the expiration of the advance notice period;

I. obliterates markings at an excavation site without providing temporary offset marks or stakes;

J. alters any record relating to excavation activity;

K. fails to pre-mark the actual intended excavation route or site(s) as required;

L. fails to report or file a report of damage within requisite time frame; or

M. commits any other act that the commission determines violates Chapter 62, Article 14 NMSA 1978 or this rule.

[18.60.5.17 NMAC - Rp, 18.60.5.17 NMAC, 1/15/2019; A, 8/9/2022]

#### **18.60.5.18 REPORTS OF THIRD PARTY DAMAGE:**

A. A UFO shall report to the director or pipeline safety bureau any incident in which the owner or operator's underground facility is damaged by excavation activities. Such report, where practicable, shall be submitted using the commission's website at: <http://nmprc.state.nm.us/transportation/pipeline-safety.html>. For purposes of this subsection, incident is to be taken in its general sense and is not to be restricted to the definition given in 49 CFR 191.3.

B. The report shall be filled out in its entirety and should include any and all information, such as pre-dig and post-damage photos, the UFO used to determine probable cause and support or justifies its position.

C. The report shall be submitted within 30 calendar days of occurrence. Any additional information provided after the 30 day deadline may be considered on a case by case basis.

D. The UFO shall make available to the director or staff, within a reasonable time, such other information or documentation as the director or staff may require regarding any damage reportable under this section.

[18.60.5.18 NMAC - Rp, 18.60.5.18 NMAC, 1/15/19]

#### **18.60.5.19 ALTERNATIVE DISPUTE RESOLUTION:**

A. The commission encourages owners and operators of underground facilities, project owners, project engineers, and excavators to privately negotiate and settle disputes arising from excavation damage to underground facilities and construction or design expenses related to improper underground facility location.

**B.** In the event the parties are unable to resolve such disputes privately, any owner or operator of underground facilities, project owner, project engineer, or excavator may request mediation or arbitration from the commission.

**C.** Staff may participate in mediation or arbitration proceedings.

**D.** In mediation and arbitration proceedings, persons shall be represented in accordance with the requirements of 18.60.4.11 NMAC.

[18.60.5.19 NMAC - Rp, 18.60.5.19 NMAC, 1/15/2019; A, 8/9/2022]

#### **18.60.5.20 MEDIATION OF EXCAVATION DAMAGE DISPUTES:**

**A. Designation of mediator.** If any of the parties request mediation, the commission shall designate a mediator. The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual acceptable to the parties. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services. The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time the mediator is assigned by the commission and all parties agree that the mediator may serve. The mediator shall not, subsequent to serving as a mediator in an excavation damage dispute, participate in any subsequent proceeding in the same cause as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

**B. Duties of mediator.** The mediator shall notify the parties by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties to send the mediator, but not other parties, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the damage. In addition, the mediator may require counsel to have their clients present at the mediation conference or accessible by telephone. The mediation conference shall be held within 20 days of the date of the notice unless good cause is shown for an extension. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file an action for civil liability for damages in district court.

**C. Inadmissibility of settlement offers.** Offers of settlement and statements in furtherance of settlement made in the course of mediation are privileged and, except by agreement among all parties, shall not be admissible as evidence in any formal hearing before the commission nor disclosed by the mediator voluntarily or through discovery or compulsory process.

**18.60.5.21 BINDING ARBITRATION OF EXCAVATION DAMAGE DISPUTES:**

**A. Request for arbitration.** Any party to a dispute arising from excavation damage to underground facilities may request binding arbitration of the dispute. The request shall be in writing to the commission and shall include a concise statement of the grounds for the dispute, the remedy sought, and an acknowledgment that the requesting party agrees to be bound by the decision of the arbitrator. The commission shall forward the request for arbitration to all other parties and require that they submit a written response within 10 days of receipt of the commission's letter forwarding the request.

(1) If the other parties agree to arbitration of the dispute, they shall include in their response to the commission a concise statement of their position with regard to the merits of the dispute and an acknowledgment that they agree to be bound by the decision of the arbitrator.

(2) If the other parties will not agree to arbitration, they shall so state in their response.

(3) If the other parties either fail to respond to a request for arbitration or do not agree to arbitration, the requesting party retains the right to proceed with an action for civil liability for damages in district court.

**B. Designation of arbitrator.** If all parties agree to arbitration, the commission shall designate an arbitrator. The arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the dispute. The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve. The parties shall be required to indicate their consent in writing to the designated arbitrator within ten days of the date of the commission's letter of designation. If the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the arbitrator's services. Any employee of the commission designated to arbitrate a dispute under these provisions shall not participate in any subsequent proceeding in the same cause regarding excavation damage to underground facilities as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

**C. Duties of arbitrator.**

(1) The arbitrator shall render a decision in the arbitration proceeding within 60 days of the date the parties approved the arbitrator, unless good cause exists to extend the time.

(2) The arbitrator shall fix a time and place for an arbitration and shall serve notice of arbitration on all parties at least ten days in advance of the arbitration. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. The parties may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall decide the relevancy and materiality of the evidence offered. The arbitrator shall give consideration to but shall not be bound by the New Mexico rules of evidence. No stenographic or electronic record will be made of the testimony at the hearing unless requested by a party, who shall bear the cost of the record.

(3) The arbitrator shall permit discovery only if it will not unduly complicate, burden, or impede the expeditious and informal nature of the proceeding.

(4) At the close of or soon after the hearing, the arbitrator will issue a brief written decision, which need not contain findings of fact and conclusions of law. The arbitrator's decision will be binding on the parties, but will not be deemed a decision of the commission and shall have no precedential effect.

**D. Inadmissibility of settlement offers.** Unless agreed to by all the parties, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them.

[18.60.5.21 NMAC - Rp, 18.60.5.21 NMAC, 1/15/19]

#### **18.60.5.22 WAIVER OR VARIANCE FROM RULE REQUIREMENTS:**

**A.** The commission may, in its discretion, waive or vary any requirement of this rule whenever the commission finds that such waiver or variance would be in the public interest.

**B.** An excavator, project owner, project engineer, one-call notification system, or UFO that cannot meet one or more of the requirements of this rule may petition the commission for a waiver or variance. The petition shall be in writing and shall include:

(1) a list of those requirements which the excavator, project owner, project engineer, one-call notification system, or UFO wishes to have waived or varied;



(2) an explanation and description of the specific conditions which prevent the requirement from being met; and,

(3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.

**C.** The commission may order a hearing on the merits of the petition.

**D.** An excavator, project owner, project engineer, one-call notification system, or UFO shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one of more of the requirements that are the subject of the petition.

[18.60.5.22 NMAC - Rp, 18.60.5.22 NMAC, 1/15/2019; A, 8/9/2022]

## **PART 6: ONE CALL NOTIFICATION SYSTEMS REQUIREMENTS FOR 811 SERVICES**

### **18.60.6.1 ISSUING AGENCY:**

New Mexico Public Regulation Commission.

[18.60.6.1 NMAC - N, 2-28-07; Rp, 18.60.6.1 NMAC, 12-30-14]

### **18.60.6.2 SCOPE:**

This rule applies to one-call notification systems subject to the jurisdiction of the commission pursuant to applicable laws.

[18.60.6.2 NMAC - N, 2-28-07; Rp, 18.60.6.2 NMAC, 12-30-14]

### **18.60.6.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 8-8-4 and 62-14-7.1.

[18.60.6.3 NMAC - N, 2-28-07; Rp, 18.60.6.3 NMAC, 12-30-14]

### **18.60.6.4 DURATION:**

Permanent.

[18.60.6.4 NMAC - N, 2-28-07; Rp, 18.60.6.4 NMAC, 12-30-14]

### **18.60.6.5 EFFECTIVE DATE:**

December 15, 2014, unless a later date is cited at the end of a section.

[18.60.6.5 NMAC - N, 2-28-07; Rp, 18.60.5.6.5 NMAC, 12-30-14]

#### **18.60.6.6 OBJECTIVE:**

The purpose of this rule is to impose requirements on one-call notification systems regarding the implementation of 811 as the toll-free, abbreviated dialing code to be used by the public to provide advance notice of excavation activities and report damages to one-call notification systems and thereby to underground facilities operators as required by federal law.

[18.60.6.6 NMAC - N, 2-28-07; Rp, 18.60.6.6 NMAC, 12-30-14]

#### **18.60.6.7 DEFINITIONS:**

In addition to the definitions in Section 62-14-2 NMSA 1978 and 18.60.4.7 NMAC, and 18.60.5.7 NMAC, as used in this rule, **non-jurisdictional entity** means an underground facility operator not subject to federal and state excavation laws. Generally, non - jurisdictional entities are operators specifically exempt in federal or state excavation law or exempt operators with facilities in geographical areas where state and federal excavation law does not apply as a matter of law.

[18.60.6.7 NMAC - N, 2-28-07]; Rp, 18.60.6.7 NMAC, 12-30-14

#### **18.60.6.8 RELATIONSHIP TO OTHER COMMISSION RULES:**

Unless otherwise specified, this rule is not intended to supersede any other rule of the commission but to supplement such rules. Nevertheless, if any provision of this rule is inconsistent with the provisions of any other commission rule, the provisions of this rule shall apply. The responsibilities of telecommunications carriers relating to 811 implementation are prescribed in 17.11.26 NMAC.

[18.60.6.8 NMAC - N, 2-28-07; Rp, 18.60.6.8 NMAC, 12-30-14]

#### **18.60.6.9 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS:**

During normal working hours, one-call notification systems shall follow the following procedures.

**A. Emergency calls.** One-call notification systems shall instruct callers that emergency calls should be made directly to 911, and when necessary, shall conference the caller directly into 911. One-call notification systems shall process emergency calls made by underground facility operators in accordance with Subsection B of 18.60.5.16 NMAC.

**B. Calls intended for other states.** One-call notification systems shall provide direct phone numbers for any calls intended for a one-call notification system located in an adjacent state to the appropriate state one-call notification system.

**C. Non Jurisdictional Entities.** One-call notification systems shall establish a registry of volunteer non-jurisdictional entities in accordance with 18.60.5.8 (H) NMAC. One-call notification systems shall provide the following procedures for excavation locate requests and reporting of damages.

(1) the one-call notification system shall forward free of charge a locate or damage ticket to the non-jurisdictional entity when incoming calls are related to excavation work intended for the geographical area of the non-jurisdictional entity;

(2) the one-call notification system shall instruct the caller that the locate or damage ticket will be sent to the appropriate non-jurisdictional entity;

(3) the one-call notification system shall instruct the caller that non-member underground facility operators may exist within the geographical area of the intended excavation and that the caller is required to directly contact and notify any non-member underground facility operators of the intended excavation; and (4) the one-call notification system shall issue tickets to any member underground facility operator operating within the geographical boundaries of the non-jurisdictional entity.

[18.60.6.9 NMAC - N, 2-28-07; Rp, 18.60.6.9 NMAC, 12-30-14]

#### **18.60.6.10 OPERATOR OR RECORDED MESSAGE REQUIRED:**

For 811 calls received after normal working hours, one-call notification systems shall process phone emergency or damage requests immediately. For all other 811 calls have either an operator or a recorded message that provides the following information to callers:

**A.** a statement the call is being received after normal working hours and that the caller should call back during specified normal working hours;

**B.** a statement that locate requests can be made by either a specified fax number or by a specified web address; and

**C.** a statement that locate requests made either via fax or via the specified web address will be considered received at 8:00 a.m. on the next working day.

[Rp, 18.60.6.10 NMAC, 12-30-14]

## **CHAPTER 61: SPACEPORTS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2: NON-AEROSPACE CUSTOMER, PARTNER AND MERCHANDISE SELECTION**

### **18.61.2.1 ISSUING AGENCY:**

New Mexico Spaceport Authority.

[18.61.2.1 NMAC - N, 11/15/2016]

### **18.61.2.2 SCOPE:**

This rule applies to potential non-aerospace customers, partners or merchandise providers and to the assessment and selection of non-aerospace customers, partners or merchandise by the New Mexico Spaceport Authority.

[18.61.2.2 NMAC - N, 11/15/2016]

### **18.61.2.3 STATUTORY AUTHORITY:**

This rule is adopted pursuant to Subsection (B)(3) of Section 58-31-5 NMSA 1978, which authorizes the New Mexico Spaceport Authority to adopt rules governing the manner in which its business is transacted and the manner in which the powers of the authority are exercised and its duties performed.

[18.61.2.3 NMAC - N, 11/15/2016]

### **18.61.2.4 DURATION:**

Permanent.

[18.61.2.4 NMAC - N, 11/15/2016]

### **18.61.2.5 EFFECTIVE DATE:**

November 15, 2016, unless a later date is cited at the end of a section.

[18.61.2.5 NMAC - N, 11/15/2016]

### **18.61.2.6 OBJECTIVE:**

The objective of this rule is to establish a procedure and criteria for assessing and selecting non-aerospace customers, partners and merchandise that are consistent with the spaceport America's business plan for attracting new non-aerospace customers and developing branding and co-branding partners while promoting educational involvement for the citizens of New Mexico and the general public. While spaceport America's primary business is aerospace with a focus on space, the spaceport America business

plan also provides for growing non-aerospace business to augment revenue from the emerging commercial space industry in order to become self-sustaining and contribute to economic development in the state. In order to grow non-aerospace business, particular attention must be given to selecting customers, branding and co-branding partners and merchandise that are compatible with the SPACEPORT AMERICA® brand which emphasizes innovation, inspiration and the positive future of commercial space travel. By establishing the procedures and criteria contained in this rule, the New Mexico spaceport authority seeks to define and describe its approach for determining if potential non-aerospace customers, partners or merchandise advance an appropriate brand and business strategy to grow brand equity value, preserve the integrity of the SPACEPORT AMERICA® brand and attract appropriate business opportunities to the state. As the SPACEPORT AMERICA® brand value/equity increases, it will be able to attract additional high value brands to engage with spaceport America and New Mexico across a number of diverse business segments, which translates into millions of dollars' worth of positive earned media value and brand equity for the state and its citizens. Not only does such a strategy result in immediate revenue, it also provides positive free advertising in markets that will attract more customers.

[18.61.2.6 NMAC - N, 11/15/2016]

#### **18.61.2.7 DEFINITIONS:**

As used in this rule, the following terms shall have the meanings set forth below:

**A. "brand"** means design, symbols, words or products that create an emotional bond with stakeholders (customers, employees, partners, competitors, press, constituents and third party opinion leaders) through a strategy that differentiates it from others in a similar product sector.

**B. "brand value" or "brand equity"** means the net present value of the estimated future cash flows attributable to the brand and is created through strategic investments in marketing communication and appreciates through economic growth in profit margins, market share, prestige value and critical associations (co-branding).

**C. "business development agent"** means the person responsible for responding to and seeking out revenue generating business opportunities in alignment with spaceport America business plan and brand commercialization strategy and reports to the director of business development.

**D. "earned media value"** means press, social and other media reporting related to a company or brand that is not directly generated by the company or its agents, but rather by other entities such as customers or journalists. The value is based on what it would cost to achieve the same results through paid advertising. Earned media value contributes significantly to brand value or brand equity.

**E. "Spaceport America chief executive officer ("CEO") or "NMSA executive director"** means the person responsible for leading, directing and achieving the spaceport America vision, mission and business plan objectives, including protecting and managing the SPACEPORT AMERICA® brand; leading, directing and operating spaceport America and hiring spaceport America staff.

**F. "New Mexico board of directors"** means the seven individuals appointed by the governor under the authority of the Spaceport Development Act to strategically oversee spaceport America operations and selects the executive director.

**G. "Spaceport America director of business development"** means the person responsible for successfully commercializing the SPACEPORT AMERICA® brand in order to meet business development revenue targets and reports to the CEO.

**H. "Spaceport America directors"** means the five key staff positions at spaceport America reporting to the executive director which include the chief financial officer; general counsel; director of site operations; director of aerospace operations and director of business development.

[18.61.2.7 NMAC - N, 11/15/2016]

#### **18.61.2.8 SPACEPORT AMERICA VISION, MISSION AND GOALS:**

The vision, mission and strategic goals of spaceport America shall be:

**A. Vision:** Spaceport America is your gateway to the new space age.

**B. Mission:** To preeminently serve space launch customers, and inspire and delight spaceport America visitors.

**C. Strategic goals:** Deliver effective and efficient service to all customers; drive local job creation and inject the economy with great demand for goods, services and skilled workforce; inspire spaceport America guests, particularly the next generation; and become self-sustaining.

[18.61.2.8 NMAC - N, 11/15/2016]

#### **18.61.2.9 SPACEPORT AMERICA® BRAND:**

Spaceport America is a unique launch facility for nurturing commercial aerospace innovation and achievement, and for inspiring the next generation.

[18.61.2.9 NMAC - N, 11/15/2016]

#### **18.61.2.10 BRAND CATEGORIES AND SELECTION GUIDELINES:**

**A.** Every new customer, sponsor, strategic partner, commercial shoot, motion picture, event, branded merchandise item, or product launch at spaceport America that is compatible with the SPACEPORT AMERICA® brand is a form of co-branding. Thus, to be compatible, the critical factors are that the partner or customer brand possesses all of the following characteristics to the extent or degree deemed appropriate by the NMSA executive director, subject to the selection process as provided in 18.61.2.11 NMAC:

- (1)** have a sound business reputation;
- (2)** represent values that are harmonious and not in conflict with the SPACEPORT AMERICA® brand and its vision, mission and goals; and
- (3)** have visionary, futuristic, innovative purposes and goals which may include, but are not necessarily limited to, contributing to breakthroughs in science and technology and supportive of science, technology, engineering and mathematics (STEM) education purposes.

**B.** Each customer, sponsor, partner brand or co-brander wishing to conduct photo shoots, commercial videography at spaceport America or engage in other types of sponsorships shall be subject to the following requirements so as to avoid brand value dilution:

- (1)** have a minimum of twenty percent global or U.S. earned media value of the current earned media value of the SPACEPORT AMERICA® brand and otherwise be deemed compatible with the SPACEPORT AMERICA® brand pursuant to Subsection A of 18.61.2.10 NMAC; or
- (2)** further the development of the SPACEPORT AMERICA® brand even though the customer, partner brand or sponsor may not have achieved twenty percent global or U.S. earned media value of the current earned media value of the SPACEPORT AMERICA® brand and is innovative, forward leaning, respected and is otherwise deemed compatible with the SPACEPORT AMERICA® brand pursuant to Subsection A of 18.61.2.10 NMAC.

**C.** Motion pictures to be filmed at spaceport America shall require script approval by the New Mexico board of directors, a briefing from the film's director and a clear review of the network or film studio funding the production and commercial distribution. Spaceport America images that are recognizable in the motion picture shall be presented in a manner that contributes positively to spaceport America's core brand values.

**D.** Musicians and other artists seeking to perform at spaceport America should submit demo audiotapes or a portfolio so that brand reputation and compatibility can be reviewed in a meaningful way. The music or other art form presented at spaceport America or the presentation of an art form which contains recognizable images of

spaceport America shall be presented in a manner that contributes positively to the spaceport America's core brand values.

**E.** All agreements or licenses authorizing any person or business entity to use spaceport America as an event venue shall require that the services and facilities provided at the event will at all times be:

(1) of the highest quality and standards;

(2) consistent with a family friendly environment, the educational mission of spaceport America and otherwise convey a positive image of spaceport America and the government of New Mexico;

(3) in conformity with the overall theme, concept, atmosphere and quality associated with the SPACEPORT AMERICA® brand.

**F.** All SPACEPORT AMERICA® branded merchandise shall be consistent with the family friendly image of spaceport America and the SPACEPORT AMERICA® brand and the educational mission of spaceport America, convey a positive image of spaceport America and the government of New Mexico and be produced in conformity with the overall theme, concept, atmosphere and quality associated with the SPACEPORT AMERICA® brand.

**G.** An unacceptable customer, partner brand, co-brander, sponsor or other person or entity wishing to use spaceport America facilities in a manner contemplated under this subsection would be one that is furthering the development of its own brand without enhancing the SPACEPORT AMERICA® brand, is incompatible with the SPACEPORT AMERICA® brand or possibly present a detriment to the SPACEPORT AMERICA® brand. For avoidance of doubt, photo shoots and videography strictly for private use and not for any commercial use are not subject to the requirements and guidelines of this Part.

[18.61.2.10 NMAC - N, 11/15/2016]

#### **18.61.2.11 SELECTION PROCESS:**

The spaceport America director of business development reviews new written requests to use spaceport America facilities in any manner contemplated by this Part and applies the applicable selection guidelines set forth in 18.61.2.10 NMAC. The spaceport America director of business development shall then brief the spaceport America directors on each request and make a recommendation as to each request presented. The NMSA executive director shall review all requests and approve or deny each request. If the NMSA executive director denies a request, the spaceport America director of business development shall notify the requester in writing of the denial and the rationale for the denial. If within 10 business days after the requester gives written notice to the spaceport America director of business development of its desire to appeal



the denial, the request will be placed on the agenda for the next NMSA board of directors meeting for consideration and the requester shall have the burden of establishing that the denial was inconsistent with the selection guidelines. The decision of the NMSA board of directors shall be final and may not be appealed, except as otherwise permitted by law.

[18.61.2.11 NMAC - N, 11/15/2016]

## **PART 3      SPACEPORT AUTHORITY BOARD OF DIRECTORS BYLAWS**

### **18.61.3.1      ISSUING AGENCY:**

New Mexico Spaceport Authority.

[18.61.3.1 NMAC - N, 7/31/2023]

### **18.61.3.2      SCOPE:**

This rule applies to the New Mexico spaceport authority and members of the board of directors of the New Mexico spaceport authority.

[18.61.3.2 NMAC - N, 7/31/2023]

### **18.61.3.3      STATUTORY AUTHORITY:**

Section 58-31-5 NMSA 1978.

[18.61.3.3 NMAC - N, 7/31/2023]

### **18.61.3.4      DURATION:**

Permanent.

[18.61.3.4 NMAC - N, 7/31/2023]

### **18.61.3.5      EFFECTIVE DATE:**

July 31, 2023.

[18.61.3.5 NMAC - N, 7/31/2023]

### **18.61.3.6      OBJECTIVE:**

The objective of this rule is to codify the bylaws that govern the conduct of the board of directors of the New Mexico spaceport authority.

[18.61.3.6 NMAC - N, 7/31/2023]

#### **18.61.3.7 DEFINITIONS:**

**A.** "The authority", or New Mexico spaceport authority, means a state agency created by the Spaceport Development Act and administratively attached to the economic development department in accordance with Section 9-1-7 NMSA 1978 and charged with the responsibility of carrying out the day-to-day business of the agency. The authority is also known as "the agency" in business relations with its partners, customers and other governmental entities as an executive agency of the state of New Mexico.

**B.** "The board" means the board of directors, the entity created by Section 58-31-4, NMSA 1978 comprised of nine members, among whom is the executive director who runs the agency. The board is responsible for making and implementing all rules and regulations necessary for the efficient administration of Spaceport America.

**C.** "Spaceport America" is the trademarked identity of a commercial spaceport business operated, managed and maintained by the authority in Sierra county, New Mexico, located on state trust land pursuant to Business Lease No. BL-1729, effective January 1, 2007.

**D.** "Spaceport" means the physical property in Sierra county New Mexico, comprising 18,461.45 acres and the facilities, infrastructure, access roads and other improvements located thereon.

[18.61.3.7 NMAC - N, 7/31/2023]

#### **18.61.3.8 TITLE:**

These rules shall be known as the "Bylaws of the Board of Directors of the New Mexico Spaceport Authority," hereinafter referred to as the "bylaws."

[18.61.3.8 NMAC - N, 7/31/2023]

#### **18.61.3.9 THE AUTHORITY:**

**A.** Spaceport Development Act. The New Mexico spaceport authority (the authority) is a New Mexico state agency organized under the provisions of the Spaceport Development Act, Sections 58-31-1, et seq. NMSA 1978.

**B.** Governance. The authority is governed by seven voting and two nonvoting members of the board of directors (the "board"). The board shall make all rules and regulations necessary for the administration of Spaceport America.

**C.** Purpose. The authority shall implement the purposes of the Spaceport Development Act:

(1) encourage and foster development of the state and its cities and counties by developing spaceport facilities in New Mexico;

(2) actively promote and assist public and private sector infrastructure development to attract new industries and businesses, thereby creating new job opportunities in the state;

(3) create the statutory framework that will enable the state to design, finance, construct, equip and operate spaceport facilities necessary to ensure the timely, planned and efficient development of a southwest regional spaceport; and

(4) promote educational involvement in spaceport activities and education and training of the workforce to develop the skills needed for spaceport operations.

[18.61.3.9 NMAC - N, 7/31/2023]

#### **18.61.3.10 BYLAWS AND POLICIES:**

These bylaws govern the conduct of the board and its implementation and compliance with the Spaceport Development Act. In addition to the bylaws, the board shall, from time to time, adopt policies and other resolutions governing specific matters to confirm and augment the bylaws, as well as govern use and operations at Spaceport America.

[18.61.3.10 NMAC - N, 7/31/2023]

#### **18.61.3.11 EFFECT OF BYLAWS ON PAST ACTIONS AND OBLIGATIONS:**

The adoption of these bylaws or the repeal of a resolution by the bylaws shall not affect:

**A.** Vested rights and obligations pertaining to any prior resolution; or

**B.** Other matters of record referring to resolutions and not included within the bylaws.

[18.61.3.11 NMAC - N, 7/31/2023]

#### **18.61.3.12 MAINTENANCE OF BYLAWS AND OTHER BOARD MATERIALS:**

**A.** Certified copies of the bylaws and all resolutions approved by the board, including those that adopt policies governing the Spaceport, shall be maintained on file in the Spaceport America offices and on the Spaceport America website.

**B.** Other materials used by the board shall also be maintained on file at the Spaceport America offices, including agendas, minutes, final reports, presentations and other materials used by the board to carry out official business.

[18.61.3.12 NMAC - N, 7/31/2023]

#### **18.61.3.13 MISSION OF BOARD OF DIRECTORS:**

The mission of the authority board of directors (the board) is to ensure operation of Spaceport America, as described in the Spaceport Development Act and in the best interests of the citizens of New Mexico; establish rules, regulations, and policies for the administration, governance, protection and maintenance of Spaceport America's facilities; establish standards of operation; and operate the authority as an economic development engine for the state of New Mexico.

[18.61.3.13 NMAC - N, 7/31/2023]

#### **18.61.3.14 MEMBERSHIP:**

**A.** Assuming office. A person may become a member of the board only by appointment or on an ex-officio basis. The board shall consist of seven voting and two nonvoting members, six of whom shall be appointed by the governor with the consent of the senate, provided that one of the appointed members shall be a resident of Sierra county. No more than three appointed members shall belong to the same political party. The seventh member shall be the secretary of economic development or the secretary's designee. The lieutenant governor shall serve as a nonvoting ex-officio member. The executive director of the authority shall serve as a nonvoting member.

**B.** Vacancies. If a vacancy occurs among the appointed voting members of the board, the governor shall appoint a replacement to serve out the term of the former member. If an appointed member's term expires, the member shall continue to serve until the member is reappointed or another person is appointed and confirmed by the senate to replace the member.

**C.** Qualification and term. The members appointed by the governor shall be residents of the state and shall serve for terms of four years, except for the initial appointees who shall be appointed so that the terms are staggered after initial appointment. Initial appointees shall serve terms as follows: two members for two years, two members for three years and two members for four years.

**D.** The secretary of economic development or the secretary's designee shall serve as the chairperson of the board (the chair).

**E.** The members of the board shall not be compensated for their services but may be reimbursed by the agency for reasonable and necessary expenses actually incurred for the benefit of the agency, upon presentation of proper documentation.

[18.61.3.14 NMAC - N, 7/31/2023]

#### **18.61.3.15 ETHICS AND CONFLICT OF INTEREST CODE:**

It is the intent of the board to act in the highest ethical standard in carrying out its duties to the public and in the operation of its facilities. It is also the intent of the board to protect the authority's interests when entering into a transaction or agreement, and not the private interests of any director, officer, or employee. Accordingly, all board members shall adhere to the requirements of the Governmental Conduct Act (Chapter 10, Article 16, NMSA 1978) and the Governor's Code of Conduct adopted thereunder, as well as any other applicable rules or laws governing their conduct as executive agency appointees, including but not limited to the Financial Disclosure Act (Chapter 10, Article 16A NMSA 1978), the Gift Act (Chapter 10, Article 16B NMSA 1978), the Lobbyist Regulation Act (Chapter 2, Article 11 NMSA 1978), the Personnel Act (Chapter 10, Article 9, NMSA 1978) and the Procurement Code (Chapter 13, Article 1 NMSA 1978).

[18.61.3.15 NMAC - N, 7/31/2023]

### **18.61.3.16 MEETINGS:**

**A.** Open meetings. Meetings of the board shall be open and public, except as allowed by law, and unless otherwise provided, shall be conducted in accordance with Robert's Rules of Order. All meetings of the board and its committees shall be conducted in accordance with the "Open Meetings Act," Sections 10-15-1, et seq. NMSA 1978. Members of the public shall be permitted to attend any portion of a meeting, except a closed session. A quorum is established when a simple majority of the membership is in attendance, physically, telephonically or by videoconference, as permitted by law. Board actions shall be approved on a majority vote of the quorum present at the meeting.

**B.** The board shall maintain written minutes of all meetings of the authority and maintain other appropriate records, including financial transaction records in compliance with law and adequate to provide an accurate record for audit purposes pursuant to the Audit Act.

**C.** Regular meetings. The board shall meet at the call of the chairperson in regular session at least once every three months. Such regular meetings shall comply with the procedural requirements of the Open Meetings Act, Subsections D and F of Sections 10-15-1 NMSA 1978, including reasonable advance notice of not less than 10 days that informs the public of the meeting time, place and date, published or posted in a place and manner accessible to the public (main office or on website) and a final agenda shall be posted 72 hours prior to the meeting (inclusive of any weekend or holidays) on the Governance page of Spaceport America's website at <https://www.spaceportamerica.com/governance/>. Notice requirements are met if notice of the date, time, place and agenda is provided by telephone to newspapers of general circulation in the state and posted in the offices of Spaceport America. Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

**D. Special meetings.** Special meetings may be called to discuss important topics that should not wait until a regular meeting, or for topics that, for good reason, could occupy an entire meeting. If the need for such a meeting arises outside a regularly scheduled meeting, the board chair may schedule a meeting on reasonable advance notice of not less than three days which shall include an agenda for the meeting, or information on how the public may obtain a copy of the agenda. Aside from the timeframe, the same notice procedures for regular meetings apply to special meetings.

**E. Emergency meetings.** Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the authority from substantial financial loss. The board will avoid emergency meetings whenever possible. Emergency meetings may be called by the chairperson or a majority of the board members with 24 hours prior notice, unless threat of personal injury or property damage requires less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Within 10 days after taking action on an emergency matter, the board chairperson will notify the attorney general's office. For the purposes of emergency meetings, notice requirements are met if notice of the date, time, place and agenda is provided by telephone to newspapers of general circulation in the state and posted in the offices of Spaceport America. Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

**F. Prohibited meetings.** A quorum of the board shall not discuss the business of the authority directly, serially, or through an intermediary, except at a properly noticed public meeting in compliance with the Open Meetings Act. Less than a quorum of the board (but not a standing committee) may discuss authority business, including the time, place, and agenda for a meeting, at any time.

**G. Closed meetings.** The board may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under Subsection H of Sections 10-15-1 NMSA 1978 of the Open Meetings Act.

(1) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the board taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close and the vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting.

(2) If a closed meeting is conducted when the board is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and to the general public.

(3) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

(4) Except as provided in Subsection H of Sections 10-15-1 NMSA 1978 of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the board in an open public meeting.

[18.61.3.16 NMAC - N, 7/31/2023]

### **18.61.3.17 POWERS COMPULSIVE:**

The authority shall:

**A.** hire, and be authorized to fire, an executive director, who shall employ the necessary professional, technical and clerical staff to enable the authority to function efficiently and shall direct the affairs and business of the authority, subject to the direction of the board;

**B.** advise the governor, the governor's staff and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives involving the Spaceport that may further stimulate space-related business and employment opportunities in New Mexico;

**C.** initiate, develop, acquire, own, construct, maintain and lease space-related projects;

**D.** make and execute all contracts and other instruments necessary or convenient to the exercise of its powers and duties;

**E.** create programs to expand high-technology economic opportunities within New Mexico;

**F.** create avenues of communication among federal government agencies, the space industry, users of space launch services and academia concerning space business;

**G.** promote legislation that will further the goals of the authority and development of space business;

**H.** oversee and fund production of promotional literature related to the authority's goals;

**I.** identify science and technology trends that are significant to space enterprise and the state and act as a clearinghouse for space enterprise issues and information;

**J.** coordinate and expedite the involvement of the state executive branch's space-related development efforts;

**K.** perform environmental, transportation, communication, land use and other technical studies necessary or advisable for projects and programs or to secure licensing by appropriate United States agencies; and

**L.** review summary scopes of work and approve of all purchases above \$60,000, pursuant to procurement guidelines issued under Procurement Code Section 13-1-125 NMSA 1978, developed by the general services department and the department of finance, provided to the authority and retained by the authority's chief procurement officer for inspection by any board member at any time.

[18.61.3.17 NMAC - N, 7/31/2023]

### **18.61.3.18 POWERS PERMISSIVE:**

The authority may:

**A.** advise and cooperate with municipalities, counties, state agencies and organizations, appropriate federal agencies and organizations and other interested persons and groups;

**B.** solicit and accept federal, state, local and private grants of funds or property and financial or other aid for the purpose of carrying out the provisions of the Spaceport Development Act;

**C.** adopt rules governing the manner in which its business is transacted and the manner in which the powers of the authority are exercised and its duties performed;

**D.** operate spaceport facilities, including acquisition of real property necessary for spaceport facilities and the filing of necessary documents with appropriate agencies;

**E.** construct, purchase, accept donations of or lease projects located within the state;

**F.** sell, lease or otherwise dispose of a project upon terms and conditions acceptable to the authority and in the best interests of the state;

**G.** issue revenue bonds pursuant to the requirements of Sections 58-31-6 thru 58-31-10 NMSA 1978 and borrow money for the purpose of defraying the cost of acquiring a project by purchase or construction and of securing the payment of the bonds or repayment of a loan;

**H.** enter into contracts with regional spaceport districts and issue bonds on behalf of regional spaceport districts for the purpose of financing the purchase, construction,



renovation, equipping or furnishing of a regional spaceport or a spaceport-related project;

**I.** refinance a project;

**J.** contract with any competent private or public organization or individual to assist in the fulfillment of its duties;

**K.** fix, alter, charge and collect tolls, fees or rentals and impose any other charges for the use of or for services rendered by any authority facility, program or service; and

**L.** contract with regional spaceport districts to receive municipal spaceport gross receipts tax and county regional spaceport gross receipts tax revenues.

[18.61.3.18 NMAC - N, 7/31/2023]

#### **18.61.3.19 POWERS PROSCRIPTIVE:**

The authority shall not:

**A.** incur debt as a general obligation of the state or pledge the full faith and credit of the state to repay debt; or

**B.** expend funds or incur debt for the improvement, maintenance, repair or addition to property unless it is owned by the authority, the state or a political subdivision of the state.

[18.61.3.19 NMAC - N, 7/31/2023]

#### **18.61.3.20 STANDING COMMITTEES:**

Committees of the board shall be standing or ad hoc. Upon the creation of a standing committee, the chair shall appoint, in consultation with the board, members of the committee, including two board members and, as appropriate, members of staff or the community appointed by the chair. One of the board members shall act as the committee chair. A majority of members of a committee shall count as a quorum for holding a meeting. All committees shall be advisory to the board, except as otherwise expressly specified by the board chair.

[18.61.3.20 NMAC - N, 7/31/2023]

#### **18.61.3.21 AD HOC COMMITTEES:**

Ad hoc committees may be established by the chair, subject to approval of the board, for defined tasks of a limited duration (for instance, not to exceed six months). An ad hoc committee shall only perform those duties assigned by the chair, and upon their

completion be discharged. The chair, in consultation with the board, shall appoint the members of the committee and the chair of the committee.

[18.61.3.21 NMAC - N, 7/31/2023]

#### **18.61.3.22 EXECUTIVE COMMITTEE:**

The chair, four other voting board members appointed by the chair and the executive director of the authority shall constitute the spaceport authority executive committee. The committee shall have powers and duties as delegated to it by the authority.

[18.61.3.22 NMAC - N, 7/31/2023]

#### **18.61.3.23 EXECUTIVE DIRECTOR:**

**A.** The executive director shall be appointed by and hold office at the pleasure of the board. The executive director shall receive such annual compensation as set by the board. In addition, the executive director shall be reimbursed for actual, reasonable, and necessary expenses incurred in the performance of official duties and in accordance with 2.42.2 NMAC. The performance of the executive director shall be reviewed annually by the board.

**B.** Executive director authority. The executive director shall be the administrative head of the authority under the direction of the board. The executive director shall be responsible for the efficient administration of affairs of the authority with the authority to:

(1) enforce rules and regulations and ensure that contracts, permits, leases and any other privileges are enforced;

(2) control, order, and give directions and guidance to subordinate employees;

(3) hire, remove, promote, demote and establish the proper classification of employees, subject to all applicable resolutions, rules, and regulations;

(4) direct, supervise and monitor daily business and aerospace operations;

(5) ensure the agency complies with all local, state and federal laws, ordinances and regulations required to maintain an active spaceport launch and/or reentry license, as applicable;

(6) lead, manage, operate and grow a sales, marketing, and business development team capable of attracting spaceport customers and projects, programs and undertakings suitable for Spaceport America;

(7) work with customers and other federal and state agencies on aerospace operations with an understanding of scheduling issues, range instrumentation

requirements (radar, weather, telemetry), and radiofrequency spectrum usage and deconfliction

(8) plan, develop, operate, maintain and manage spaceport infrastructure and utilities facilities in an efficient and effective manner;

(9) establish and manage operational and capital investment budgets;

(10) attend board meetings, unless excused by the chair, and recommend to the board measures and resolutions;

(11) keep the board fully advised as to the financial condition and needs of the authority;

(12) ensure all materials used by the board for the execution of official business, including agendas, minutes, resolutions, and other materials presented to the board are preserved, filed, organized and accessible as Spaceport America records and, where appropriate, published on the Spaceport America website.

(13) take any other action consistent with the Spaceport Development Act, Sections 58-31-1, et seq., NMSA 1978 the statutes governing the relationship between executive departments and administratively attached agencies, Sections 10-9-1, et seq. NMSA 1978, the State Personnel Act, Sections 10-9-1 to 10-9-25 NMSA 1978 and the rules and regulations contained in 1.7.1 NMAC.

**C.** The board and its members shall deal with the administrative services of the authority only through the executive director. Except for the purpose of inquiry, board members shall not give orders or instructions to any subordinate of the executive director. The executive director shall take orders and instructions from the board only when sitting in a duly convened meeting of the board, and no individual board member shall give any orders or instructions to the executive director.

**D.** The board shall assist the executive director in administering the affairs of the authority efficiently and harmoniously.

[18.61.3.23 NMAC - N, 7/31/2023]

#### **18.61.3.24 PERSONNEL SYSTEM:**

The executive director shall:

**A.** Prepare an organizational structure for board approval, make final determinations of the classified status of each employee and implement those decisions in accordance with the procedures of the state personnel office;

**B.** Provide for publication of employment openings in accordance with state personnel office procedures, conduct interviews of candidates and make determinations for hiring the selected candidate;

**C.** Annually evaluate the performance of each employee either directly or as delegated to a manager; and

**D.** Recommend promotions.

[18.61.3.24 NMAC - N, 7/31/2023]

**18.61.3.25 AUDITOR:**

The authority shall annually hire an independent auditor to audit the books and records of the authority and to certify as to the accuracy of the same. The independent auditor shall not be a director, officer, or employee of the authority.

[18.61.3.25 NMAC - N, 7/31/2023]

**18.61.3.26 DIRECT BOARD SUPERVISION:**

The executive director shall be appointed by the board, report to the board and serve at the pleasure of the board.

[18.61.3.26 NMAC - N, 7/31/2023]

**18.61.3.27 REVIEW OF BYLAWS:**

At least once every five years the board shall review these bylaws to ensure they comply with the Spaceport Development Act and all other applicable federal and state laws and regulations in keeping with the functions of the board.

[18.61.3.27 NMAC - N, 7/31/2023]

**18.61.3.28 AMENDMENT OF BYLAWS:**

These bylaws may be altered, amended or repealed by two-thirds majority vote of the members of the board present at any meeting called specifically for the purpose, among other things, of amending these bylaws.

[18.61.3.28 NMAC - N, 7/31/2023]