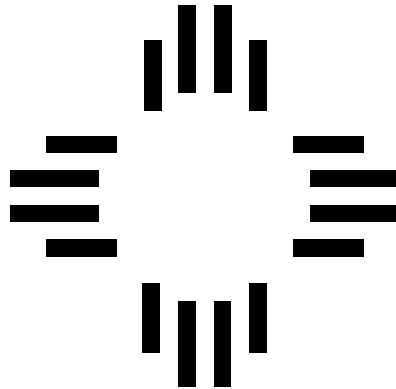


New Mexico Register

Volume XII, Issue Number 19
October 15, 2001



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

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Administrative Law Division
2001

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New Mexico Register

Volume XII, Number 19

October 15, 2001

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

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The New Mexico Register has a new web address

The New Mexico Register is now available at
<http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

Notice of Public Hearing

The Office of the Secretary of the Children, Youth and Families Department will hold a public hearing on November 19, 2001 at 9:00 AM, at 300 San Mateo NE, 8th fl. Kachina Rm., Albuquerque, NM 87108, to consider the proposed policy and procedures for conducting administrative appeals.

The proposed policy and procedures may be reviewed, or a copy obtained, during regular business hours of the Office of the Secretary, 1120 Paseo de Peralta, 5th fl., Santa Fe, NM 87501 or the Administrative Hearing Office, 300 San Mateo NE, Suite 800., Albuquerque, NM 87108. The phone is 505-827-7613 in Santa Fe and 505-841-6337 in Albuquerque,

Interested persons may testify at the hearing or submit written comments to the Administrative Hearing Office at the address above no later than 5:00 PM, November 19, 2001. Written comments will be given the same consideration as oral testimony given at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodation to participate in the public hearing, please contact the Department at either of the numbers above. The Department requests at least 10 days advance notice to provide requested alternative and special accommodations.

NEW MEXICO DEPARTMENT OF HEALTH PUBLIC HEALTH DIVISION HEALTH SYSTEMS BUREAU

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the reissue of 7.29.4 NMAC "PRIMARY CARE CAPITAL FUND PROGRAM". The hearing will be held at 1:30 PM on November 15, 2001 in the auditorium of the Runnels Building at 1190 St. Francis Drive, Santa Fe, New Mexico.

The current version of the regulation for the Primary Care Capital Fund is proposed to be repealed and new requirements adopted

which will comply with recent Legislative changes. The statutory authority for this reissuance is Primary Care Capital Funding Act, Sections 24-1C-1. *et seq.*, NMSA 1978 (being Laws of 1994, Chapter 62, as amended).

A draft of the proposed " PRIMARY CARE CAPITAL FUND PROGRAM " rules can be obtained from:

Gabriel D. Chavez, Jr.
Primary Care Program , Health Systems Bureau, PHD, NMDOH
625 Silver SW, Suite 201
Albuquerque, New Mexico 87102
(505) 841-5866

Please submit any written comments regarding the proposed 7.29.4 NMAC " PRIMARY CARE CAPITAL FUND PROGRAM " to the attention of:

Gabriel D. Chavez, Jr.
Primary Care Program , Health Systems Bureau, PHD, NMDOH
625 Silver SW, Suite 201
Albuquerque, New Mexico 87102
(505) 841-5866

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aide or service to attend or participate in the hearing, please contact Gabriel at his address or telephone number listed above. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO RACING COMMISSION

NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN

that a rulemaking and public hearing will be held in the Jockey Club, SunRay Park and Casino, #39 Road 5568, Farmington, New Mexico commencing at 8:30 o'clock a.m. on Wednesday, October 10, 2001. The Commission will consider adoption of proposed new/amended rules for incorporation into the Rules Governing Horse Racing in New Mexico Nos. Subsection A of 15.2.3.8 NMAC regarding officials, Subsections B & C of 15.2.5.8 NMAC regarding entries; Subsection O of 16.47.1.8 NMAC regarding temporary licenses and Subsection C of 16.47.1.10 regarding trainer responsibility,

and other matters of general business.

Copies of these proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, P.O. Box 8576, 300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87198, (505) 841-6400. Interested persons may submit their views on the proposed rules to the Commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

Kim Ahlbom
Deputy Agency Director

Dated: September 19, 2001

STATE OF NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

NOTICE OF PUBLIC HEARING

Public Meetings to receive comments regarding the adoption of the 1997 Uniform Building Conservation Code and the 2002 National Electrical Code (NFPA-70) will be held as follows:

- Santa Fe, NM – November 20, 2001, 9:00 a.m. – 12:00 Noon
At CID Conference Room, 725 St. Michael's Drive
- Albuquerque, NM – November 20, 2001, 9:00 a.m. – 12:00 Noon
At CID Conference Room, 2nd Floor, 1650 University Blvd. N.E.
- Las Cruces, NM – November 20, 2001, 9:00 a.m. – 12:00 Noon,
In the Upstairs Board Room, Thomas Branigan Memorial Library, 200 E. Picacho Avenue.
- Roswell, NM – November 20, 2001, 9:00 a.m. – 12:00 Noon
At City Council Chambers, 425 N. Richardson

You are invited to attend and express your opinion of the adoption of the above referenced code. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau or Electrical Bureau, Construction Industries Division, 725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 827-7030. FAX (505) 827-7045. All comments must be received no later than 5:00 p.m., November 20, 2001.

Copies of the 1997 Uniform Building Conservation Code and the 2002 NEC are available at the Construction Industries Division Office at the above address.

If you require special accommodations, please notify the Division of such needs no later than November 10, 2001.

**End of Notices and
Proposed Rules Section**

Adopted Rules and Regulations

NEW MEXICO BOARD OF EDUCATION

**TITLE 6 PRIMARY AND
SECONDARY EDUCATION
CHAPTER 43 TRANSPORTATION
– OPERATIONS AND FUNDING
PART 4 REQUIREMENTS
FOR SCHOOL BUS SERVICE
NEGOTIATIONS WITH CHARTER
SCHOOLS**

6.43.4.1 ISSUING AGENCY: State Board of Education
[6.43.4.1 NMAC - N, 10-15-01]

6.43.4.2 SCOPE: Provisions of this rule apply to public school districts and charter schools where to-and-from school bus services are negotiated.
[6.43.4.2 NMAC - N, 10-15-01]

6.43.4.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-16-2, 22-16-4 and 22-8B-4, NMSA 1978.
[6.43.4.3 NMAC - N, 10-15-01]

6.43.4.4 DURATION: Permanent
[6.43.4.4 NMAC - N, 10-15-01]

6.43.4.5 EFFECTIVE DATE: October 15, 2001, unless a later date is cited at the end of a section.
[6.43.4.5 NMAC - N, 10-15-01]

6.43.4.6 OBJECTIVE: To establish the parameters of school bus service negotiations between school districts and charter schools.
[6.43.4.6 NMAC - N, 10-15-01]

6.43.4.7 DEFINITIONS: [Reserved]

6.43.4.8 LOCAL SCHOOL DISTRICT AND CHARTER SCHOOL RESPONSIBILITIES: A local school district shall negotiate with a charter school to provide transportation to eligible students. Transportation services are confined within the limits established by the public school district, in conjunction with the charter school. The transportation limits shall be within the school district boundary or as adjusted in accordance with an approved school district transportation boundary agreement.

A. Charter schools shall negotiate to-and-from transportation services for eligible students by means of a school bus and/or a per capita feeder agreement only. The charter school may elect not to provide transportation services.

B. If the to-and-from transportation for the charter school can be provided by utilizing the existing to-and-from services and/or resources, the cost to the charter school shall not exceed the amount generated by the eligible student allocation. Additional cost for to-and-from services beyond that level shall be paid by the charter school as negotiated with the school district, unless the services can be provided at no additional cost to the school district or the school district chooses to cover the additional cost from the transportation allocation.

C. Should a school district establish a separate to-and-from transportation system, where such services are exclusively for charter school students, the costs associated are not considered additional to the charter school. The charter school would not generate any additional allocation for the separate to-and-from services and the school district shall be responsible for those costs from the transportation allocation.

D. A copy of the negotiated to-and-from school transportation service agreement between the school district and charter school shall be maintained on file with the school district and the charter school.

E. A separate transportation budget for the charter school shall be submitted to the state department of public education for review or approval.

F. The school district shall determine the routes and stops in accordance with section 22-16-4 NMSA 1978. A request may be made to the State Transportation Director for new equipment based upon need identified by the school district.

G. The charter school shall provide information required by the school district to meet the reporting requirements of the State Transportation Director. The school district is responsible for reporting to the State Transportation Director the information collected on transportation from the charter school.
[6.43.4.8 NMAC - N, 10-15-01]

6.43.4.9 STATE DEPARTMENT OF PUBLIC EDUCATION RESPONSIBILITY: The State Transportation Director shall calculate and provide the operational amounts generated by formula for the charter school and the school district.
[6.43.4.9 NMAC - N, 10-15-01]

HISTORY OF 6.43.4 NMAC [RESERVED]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.43.2 NMAC, Sections 5, 13, 14 and 15. This rule was renumbered and reformatted from 6 NMAC 9.4.1 to comply with current NMAC requirements. The amendments to 6.43.2.13 NMAC update the references to dates in the Fleet Service Contract (Form) by changing "19__" to "20__." The amendments to 6.43.2.14 NMAC update the references to dates in the Individual Owner Operator Equipment Contract (Form) by changing "19__" to "20__" and deleting the reference in Appendix A (Subsection M) to Purchase Allowance (Pur. Allow.)

6.43.2.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section.
[12-31-98; 6.43.2.5 NMAC - Rn, 6 NMAC 9.4.1.5 & A, 10-15-01]

6.43.2.13 FLEET SERVICE CONTRACT (FORM): THIS AGREEMENT is made and entered into as this _____ day of _____, [~~19~~] 20____, by and between _____ (local board of education) hereinafter called "BOARD" and _____ (contractor) herein after referred to as "CONTRACTOR." WITNESETH: WHEREAS, BOARD has engaged CONTRACTOR to provide the pupil transportation services described herein; and WHEREAS, CONTRACTOR desires to provide such transportation services; NOW, THEREFORE, in consideration of the covenants hereinafter contained, the parties agree as follows:

A. TERM: The term of this agreement shall commence _____, [~~19~~] 20____ and shall continue through _____, [~~19~~] 20____. This contract may be renewed annually thereafter on the same terms and conditions at the option of the BOARD.

C. COMPENSATION
(1) The BOARD shall pay CONTRACTOR all sums due and calculated in accordance with the conditions of this contract. The BOARD agrees to pay the CONTRACTOR \$_____ for purchase allowance/rental fees, and \$_____ for services herein for a total of \$_____ to be paid in consecutive monthly installments as follows: _____ equal installments of \$_____ each, and a final installment of \$_____, commencing on the _____ day of _____, [~~19~~] 20____.
[12-31-98; 6.43.2.13 NMAC - Rn, 6 NMAC

9.4.1.13 & A, 10-15-01]

6.43.2.14 INDIVIDUAL OWNER OPERATOR EQUIPMENT CONTRACT (Form): THIS AGREEMENT is made and entered into as this ____ day of ____ [49] 20 ____, by and between ____ (local board of education) hereinafter called "BOARD" and ____ (owner/operator) herein after referred to as "OWNER/OPERATOR." WHEREAS, OWNER/OPERATOR desires to provide such transportation equipment, fuel, and operation and maintenance associated with the use of the equipment under the terms of this contract; NOW, THEREFORE, in consideration of the covenants hereinafter contained, the parties agree as follows:

A. TERM: The term of this agreement shall commence ____, [49] 20 ____ and shall continue through ____, [49] 20 ____; This contract may be renewed annually thereafter on the same terms and conditions at the option of the BOARD.

C. COMPENSATION

(1) The BOARD shall pay to OWNER/OPERATOR all sums due and calculated in accordance with the conditions of this contract. The BOARD agrees to pay the OWNER/OPERATOR \$ ____ for purchase allowance/rental fees, and \$ ____ for fuel, operation and maintenance for a total of \$ ____ to be paid in consecutive monthly installments as follows: ____ equal installments of \$ ____ each, and a final installment of \$ ____, commencing on the ____ day of ____, [49] 20 ____.

M. Appendix A (Part I), INDIVIDUAL OWNER OPERATOR EQUIPMENT CONTRACT

Table with 9 columns: Bus #, Owner Code, Year, Model, Seating, Lift, Vehicle Identification, License Plate, Rental Fee/[Par. Allow.].

O. APPENDIX B INDIVIDUAL OWNER OPERATOR EQUIPMENT CONTRACT [49] 20 ____ [49] 20 ____ SCHOOL YEAR This contract approved by the ____ (BOARD) on ____/____/____ for ____ (OWNER/OPERATOR) to operate ____ buses/routes set forth in Appendix A to provide school transportation services includes the following amounts deemed necessary for OWNER/OPERATOR to carry out the terms of the contract safely, efficiently, and economically: [12-31-98; 6.43.2.14 NMAC -Rn, 6 NMAC 9.4.1.14 & A, 10-15-01]

6.43.2.15 PER CAPITA FEEDER REQUIREMENTS:

A. The local board may provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation [is] services are not available or impractical because of distance, road conditions or sparseness of population or in cases where the local board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone.

B. When per capita feeder services are utilized, the local board must approve an agreement with the parent or guardian, which defines the terms of the agreement for service, the contract amount, and the responsibilities of the parent.

C. The parent or guardian must provide proof of insurance and shall maintain the insurance for the term of the agreement.

D. The local board shall establish the mileage reimbursement rate.

E. The local board is responsible for developing a system of accountability to ensure that services are rendered according to the terms of the agreement. The local board shall ensure that payment is not made until services have been rendered.

F. The local board shall approve a per capita feeder policy which sets forth the terms and conditions under which per capita feeder agreements shall operate.

G. The mileage reimbursement rate for charter schools shall be at least equal to the amount established by the local board. This reimbursement will apply where regular school bus transportation services are not available or impractical because of distance, road conditions, sparseness of population or other conditions negotiated by the school district and charter school. When per capita feeder services are utilized, the governing body of the charter school must approve an agreement with the parent or guardian, which defines the terms of the agreement for service, the contract amount, and the responsibilities of the parent. The parent or guardian must provide proof of insurance and shall maintain the insurance for the term of the agreement.

H. The governing body of the charter school is responsible for developing a system of accountability to ensure that services are rendered according to the terms of the agreement. The governing body shall ensure that payment is not made until services have been rendered.

[12-31-98; 6.43.2.15 NMAC - Rn, 6 NMAC 9.4.1.15 & A, 10-15-01]

NEW MEXICO DEPARTMENT OF GAME AND FISH TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 35 CAPTIVE WILDLIFE USES

PART 9 CLASS A PARK AND LAKES 19.35.9.1 ISSUING AGENCY: New Mexico Department of Game and Fish. [19.35.9.1 NMAC - N, 9-28-01] 19.35.9.2 SCOPE: Persons who desire to hold wildlife species in the State of New

Mexico. This will include holders of Class "A" Park and Lake Licenses. [19.35.9.2 NMAC - N, 9-28-01] 19.35.9.3 STATUTORY AUTHORITY: 17-1-14, 17-1-26, 17-2-3, 17-2-7, 17-2-10, 17-4-8, 17-4-9, 17-4-10, 17-4-11, 17-4-12, 17-4-13, 17-4-14, 17-4-15, 17-4-16, 17-4-17, 17-4-18, 17-4-19, 17-4-20, 17-4-21, 17-

4-22, 17-4-23, 17-4-24, 17-4-25, 17-4-26, 17-4-27, 17-4-28.

[19.35.9.3 NMAC - N, 9-28-01]

19.35.9.4 DURATION: Permanent.

[19.35.9.4 NMAC - N, 9-28-01]

19.35.9.5 EFFECTIVE DATE: September 28, 2001, unless a later date is cited at the end of a section.

[19.35.9.5 NMAC - N, 9-28-01]

19.35.9.6 OBJECTIVE: To provide consistent criteria for the possession and sale of privately owned wildlife held in New Mexico. To provide disease testing and general requirements in order to protect native wildlife and address human health and safety issues.

[19.35.9.6 NMAC - N, 9-28-01]

19.35.9.7 DEFINITIONS:

A. Facility: the area of a Class A Park surrounded by a fence, and all buildings, isolation pens, loading chutes, gates, waters, and other structures used in the Class A Park operation.

B. Feed: all forage grown outside the facility and transported in, all forages compounded and packaged for commercial distribution, and all dietary supplements.

C. Water: The system for delivering water to animals in a Class A Park including but not limited to wells, streams, ponds, troughs, and water catchments.

D. Animal health emergency: A situation in which people or animals are at risk of exposure to infectious or contagious diseases.

E. Quarantine: A status declared for any park in which an animal health emergency has occurred. No animal ingress or egress shall be permitted until the animal health emergency has ended.

F. Record: include all vital documents and computer data kept for each animal. These documents include but are not limited to breed registries, importation permits, bills of sale, health certificates, veterinary diagnoses, scheduled and unscheduled health management actions, reproductive outcomes, etc.

G. Permit owner: That person or persons to whom the Class A Park or Lake permit is issued. This person(s) may be a lessee on the land designated for the Class A Park or Lake.

H. CWD: Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervids.

I. Positive herd: A herd in which a CWD positive animal resided at the time it was diagnosed and which has not

been released from quarantine.

J. Suspect herd: A herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

K. Exposed herd: A herd in which a CWD positive or exposed animal has resided 60 months prior to the diagnosis.

L. Trace-back-herd: An exposed herd in which a CWD positive animal resided in any of the 60 months prior to the diagnosis

M. Trace-forward herd: An exposed herd that has received exposed animals from a positive herd within 60 months prior to the diagnosis of CWD in the positive herd.

N. Shooter animals: Animals designated by an owner or his designee for hunting or harvesting in the park.

O. Single fence: A park surrounded by one continuous fence.

P. Double fence: A park surrounded by two (2) fences, each continuous with one fence surrounding the other and sufficient to prevent no nose to nose contact with similar species.

Q. Quarantine fence: A fence, inside or out of a park that is constructed in an animal health emergency.

R. CWD profile: a deer or elk that is at least 16 months of age (adult) that is emaciated and exhibits some combination of clinical signs including abnormal behavior, increased salivation, tremors, stumbling, incoordination, difficulty in swallowing, excessive thirst, and excessive urination.

[19.35.9.7 NMAC - N, 9-28-01]

19.35.9.8 POSSESSION AND RETENTION OF PROTECTED SPECIES LIVE ANIMALS, BIRDS AND FISH:

It shall be unlawful to possess protected species of live animals, birds or fish, as defined in 17-2-3 NMSA 1978, in New Mexico without first obtaining appropriate permits issued by the Director of the Department of Game and Fish. Such permits will be issued only for those purposes named in Subsection A of 19.31.10.10 NMAC as described herein. New permits will not be issued until all conditions and/or appeal processes listed herein have been satisfied. A violation of the provisions herein shall subject the permittee or licensee to denial or revocation as described under authority of 17-1-14, 17-3-34 NMSA 1978 and 19.31.2 NMAC.

A. Only members of the following families of fish (except as noted in Subsections D, and E of 19.35.7.8

NMAC) will be considered for retention in New Mexico Class A lakes:

- (1) Salmonidae
- (2) Esocidae
- (3) Percichthyidae
- (4) Ictaluridae
- (5) Centrarchidae
- (6) Percidae

B. Only members of the following families of mammals and birds will be considered for retention in New Mexico Class A parks: Protected mammals and birds under 17-2-3 NMSA 1978.

C. Permission may be granted by the State Game Commission to retain prohibited species into New Mexico upon demonstration by the applicant that no possible conflict with native animals, human health or livestock will occur, upon showing of good cause, and/or upon requiring that certain additional conditions are met by the applicant, and does not conflict with any other law, rule or ordinance.

[19.35.9.8 NMAC - N, 9-28-01]

19.35.9.9 POSSESSION CONDITIONS AND HEALTH CERTIFICATION:

All live protected species of the families Bovidae, Antilocapridae, and Cervidae retained in the State of New Mexico shall meet the following criteria:

A. All Class A parks with cervids must participate in a CWD monitoring program. Herd status will be assigned by the Department according to the CWD program entered and the length of time the herd is monitored and remains free of CWD. These programs will be developed cooperatively with the New Mexico Department of Game and Fish, the Livestock Board and Class A Park representatives.

(1) Testing must be done at the expense of the park owner.

(2) Testing may be done only at a lab certified for CWD testing by the National Veterinary Services Laboratory, Ames, IA.

(3) Official statements of CWD testing results from the laboratory must be retained by owners and presented to the Department annually.

B. Any live cervid leaving the park must be accompanied by a health certificate by an accredited veterinarian.

C. Any protected wildlife leaving a park or lake must also be accompanied by a bill of sale or invoice.

D. Owners must maintain records of animals handled inside the park. Records must be available to the Department for inspection annually. These records shall include but not be limited to:

(1) Each animal must have one form of permanent identification.

(2) Each animal must have records of its origin and the records must be kept current and available for the lifetime of the animal:

(a) bill of sale if the animal was purchased or donation receipt

(b) importation permit if the animal was imported into New Mexico

(c) health certifications of the herd of origin

(d) birth date and parentage if know and born on the park

(e) registration records if applicable

(3) Each animal must have reproductive records if known:

(a) number of offspring produced

(b) dates of birth

(c) abortions detected

(d) failures to conceive

(4) Records must be kept of all deaths if known:

(a) date of death

(b) result of CWD testing. CWD testing is mandatory for all animals showing CWD profile in addition to any testing required for a CWD monitoring program.

(c) reason of death including records of veterinary treatment

(d) results of necropsy if applicable

(e) name and address of successful hunters for all shooter animals killed.

(5) Health Records must be kept and maintained if tested or treated:

(a) vaccinations received and dates

(b) sickness or disease, treatments, amounts of medications administered, and dates

(c) non-disease related treatments and dates, such as wormings or supplements

(6) Records of cut antler harvested:

(a) amounts and dates of harvest.

(b) lists of buyers and dates of sales

(7) Records of live animal sales

(a) bills of sales.

(b) names and addresses of buyers.

(c) destinations, dates, and modes of live animal transport away from the park.

E. Feed containing animal products or by-products shall not be administered to cervids.

F. Any positive test for CWD shall constitute an animal health emergency. The Department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to the Department's Game and Fish dispatch at 1-505-827-9376.

(1) The park shall be under imme-

diately indefinite quarantine. All gates shall remain closed, and all existing fences shall remain standing and maintained at the owner's expense.

(2) A committee shall be convened by the Director to determine what actions will be taken to contain, control, and prevent the spread of the animal health emergency. The committee will also determine the future status of the park and declare the degree of contamination. This committee shall be comprised of those listed in 19.35.9.10 NMAC.

(3) Owners shall submit all herd records to the Department within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back herds of the positive CWD diagnosis within 72 hour of the diagnosis.

G. All live protected species of the family Salmmonidae retained for propagation and sale outside of the Class A Lake shall meet the following criteria:

(1) Test annually meeting the same requirements as specified as 19.35.7 NMAC.

(2) Any positive test for any of the pathogens listed in 19.35.7 NMAC shall constitute an animal health emergency. The Department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to a department person either by phone or in-person.

(a) The lake shall be under immediate indefinite quarantine.

(b) Owners shall submit factual copies of all records to the Department within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back lots of fish of the positive diagnosis within 72 hours of the diagnosis.

[19.35.9.9 NMAC - N, 9-28-01]

19.35.9.10 ANIMAL HEALTH EMERGENCIES: Upon identification of an animal health emergency a committee will be convened by the Director to determine what actions will be taken to contain, control, and prevent spread of the animal health emergency. The committee will also determine the future status of the park and declare the degree of contamination. The committee should consist of at least:

A. The park owner or land management agency representative and/or their legal counsel

B. The Department of Game and Fish Director or the Director's designee

C. The Department's Assistant Attorney General representative

D. The State Veterinarian

E. The USDA Area

Veterinarian in Charge

F. However, if in the opinion of the director, any escaped animal poses a health emergency it shall be captured by the Department of Game and Fish and if necessary destroyed.

[19.35.9.10 NMAC - N, 9-28-01]

19.35.9.11 INTRASTATE TRANSPORTATION:

A. All live cervids transported within the State of New Mexico shall:

(1) be permanently identified with any 2 of the following, implanted with an electronic identification device, tagged with a tamper proof ear tag, and/or tagged with USDA metal ear tags. All numbers shall be registered with the Department of Game and Fish;

(2) be legally possessed;

(3) can only be transferred to other Class A park facilities; unless sold for immediate consumption; or

(4) shipped following all applicable laws.

B. Any individual(s) transporting live fish from a Class A lake shall:

(1) be required to seek importation and release permits through the process outlined in 19.35.7 NMAC;

(2) legally possess the fish;

(3) ship following all applicable laws.

[19.35.9.11 NMAC - N, 9-28-01]

19.35.9.12 CLASS A PARK AND LAKE APPLICATION AND PERMITTING OF NEW PARKS:

New Class A Park and Lake applications will be accepted anytime during the license year. All Park and Lake licenses will expire March 31st and must be renewed. Applicants or designee shall provide completely factual information on all application and supplemental material requested, included but not limited to:

A. Name of owner, address, telephone number, name of contact person;

B. Complete legal description of park or lake, including location (township, range, section); county; size of park or lake (surface acres-lake or water; major use of water. A map of sufficient size and detail to allow the park or water to be located by someone unfamiliar with the area shall be included;

C. Species, size, pounds, and number of wildlife to be retained will be specified;

D. Purpose of park or lake will be specified;

E. That each park or lake facility shall meet all the specifications list-

ed on the application prior to final approval and no permit will be approved until all conditions and inspections have been completed by a Department of Game and Fish designee.

F. Inclusion of annual fee for processing of application as per 19.30.9 NMAC.
[19.35.9.12 NMAC - N, 9-28-01]

19.35.9.13 RENEWAL OF CLASS A PARKS AND LAKES: All applicants renewing their Class A license shall apply to the Department by May 1st of each year and must be received by the close of the business day. Any renewal application received after May 1st will be assessed an administrative fee of \$250.00 in addition to the normal application fee. Any Class A Park or Lake failing to send in or renew their application by June 1st will be deemed delinquent and revocation action may commence following 19.31.2 NMAC.
[19.35.9.13 NMAC - N, 9-28-01]

19.35.9.14 CLASS A PARK AND LAKE FACILITY DESIGN, INSPECTION AND RECORDS:

A. Park Enclosure: Each Class A Park facility shall, at a minimum, conform to all rules listed below and on the application:

(1) No park shall exceed 3200 acres. Any additional acres will result in another Class A park and will be considered as a separate park. All conditions of application and renewal shall be adhered to.

(2) Fence height shall be at least seven and one-half feet (7 1/2') from ground level to the top wire or fence top. Fence shall be continuous from bottom to top, even if multiple layers must be used.

(3) Fence wire must be a woven wire mesh, consisting of a top and bottom wire at least 12 gauge or its equivalent. Mesh measures shall not exceed six inch by seven (6"X7") openings.

(4) Fence wire shall be taught enough to not allow bottom or top wire mesh to be pushed or maneuvered up or out of the way by force. If this occurs wire must either be re-stretched or bolstered in some other permanent fashion.

(5) Fence wire must be maintained securely 4 inches (4") or less to the ground. Any fencing that is found to be greater than 4 inches above the ground shall not constitute a proper fence and shall be aproned with permanent material.

(6) All fences must be securely fastened to the posts.

(7) Barbwire may be used on the bottom or top horizontal wires at the owner's discretion.

(8) Posts shall be metal "T" posts,

pipe or wooden (at least three and one-half inches (3.5") in diameter; and must be pressure treated with a preservative).

(9) Posts shall be set firmly in the ground and not subject to dislodging.

(10) Posts shall be spaced at intervals not to exceed 18 feet (18') with T-posts or wood; or not to exceed 20 feet (20') on metal pipe.

(11) Parimeter gates shall be constructed to at least the same specification as fence; mesh and height with no more than 4 inches from ground to gate bottom.

(12) All water gaps and arroyos shall be constructed to withstand normal flooding and maintain enclosure.

(13) All fence right-of-ways shall be cleared for a distance of seven and one-half feet (7 1/2') on each side of the fence and all dead timber with a height greater than the distance of the fence shall be felled.

(14) Class A park fences shall be constantly maintained as described above, if found contrary, the owner or his designee shall immediately repair any substandard material or specifications. It is the intent of this section that all fences shall be maintained in a game-proof condition at all times and prevent the passing of the game held therein.

(15) All working pens, corrals and holding pens used for processing or temporarily holding animals shall be located inside the park.

(16) If the park fence is to border any other property (private or public) then a signed affidavit must be executed by the park owner to ensure correct placement of fence and verify ownership of property.

B. Park Design:

(1) All feeding or baiting sources shall be at least 100 feet from any exterior fence, except holding pens or working facilities.

(2) No placement of feed or bait shall be allowed until the park license has been completely issued and the gates to park closed.

(3) Gates shall remain open until the final inspection and approval by a Department designee.

C. Lake Enclosure: Each Class A Lake facility shall conform to all rules listed below and on the application:

(1) All bodies of water and channels connecting a series or group of lakes under one license shall be identified upon each application.

(2) List and describe all screens and/or other appliances that prevent ingress and egress of fish into and out the bodies of water.

(3) A map of the lake facility and surrounding watershed shall be provided by the applicant upon application.

D. Facility Inspections of Parks and Lakes: Once application is made to the Department, the proposed site shall be subject to inspections by a department representative at any reasonable time. Inspections shall also occur at least once per year, upon receipt of renewal of application to inspect the facility and fence integrity. All inspections will be limited to the facility and the animals held therein.

E. Natural Disasters: Every owner or his designee shall immediately notify the Department of any natural disasters that threaten or compromise the integrity of the facility. The owner or designee must make every effort to maintain animal(s) inside the facility. It shall be unlawful for any owner or designee to intentionally release animals endangered by a natural disaster.

F. Animal Escapes: Every owner or his designee shall immediately notify the Department of any animal(s) that escapes from a park or lake. It shall be reported when, where, how many and what kind and if possible, sex of escaped animals. Any owner or designee shall immediately attempt to recapture escaped animals after the department has been notified and make every reasonable effort to capture escaped animals and return them to their facility.

G. Park and Lake Closure or Termination: Any park or lake failing to renew by May 1 or each license year will be considered as failing to properly renew and subject its license to revocation according to 19.31.2 NMAC if this should be necessary. Any park, enclosure or lake maintained after May 1st without a license shall be considered in violation of 17-4-9 NMAC this section. No animal shall be released into the wild, but held until certified with disease free status by that testing required by the director. Nothing in this section shall prevent the owner from legally disposing of his property provided that the number of game animals or fish shall not be lessened by disposition from his or her initial application survey or information filed with the Department. However disposition must occur immediately as required by all applicable laws.

H. Records:

(1) Any animal disposed or sold from a park or lake must be accompanied by an invoice signed by the owner or his designee and state the following:

(a) Park or Lake name and license number

(b) Date of disposition or sale

(c) Kind, number and sex of game animals included in disposition or sale, or if fish, the approximate weight and number.

(2) Each owner shall submit a year-end report to the director by May 1st

and state the following: total kind, number and sex of game animals disposed or sold, or if fish, the approximate weight and number for the previous license year.

(3) Owners or his designee shall maintain all health records obtained or created of each animal handled, tested or treated by a certified veterinarian at least for 2 years after the animal has been disposed of. These records shall also include all births, vaccinations (date and type), official lab results and final disposition including death, harvest, etc.

(4) Final disposition if known, shall be documented of every class a park or lake animal.

(5) All such records listed in this section shall be made available for immediate inspection upon request by the director. Any owner or designee that knowingly provides inaccurate or false records will be deemed in violation of this section and subject to revocation proceeding's pursuant to 19.31.2 NMAC

I. Existing parks: Parks permitted prior to August 23, 2001 of this regulation will have five (5) years to bring their park into compliance with this regulation. However, all possession conditions and health certification are mandatory and must begin immediately, even for existing Class A parks and lakes.

[19.35.9.14 NMAC - N, 9-28-01]

19.35.9.15 DENIAL AND REVOCATION: Each Class A Park and Lake shall be subject to permit denial or revocation if found to be in violation of this rule or Chapter 17 NMSA 1978. No park or lake application will be approved if fencing or other barrier materials were purchased and/or installed by the department until all costs associated the fencing have been reimbursed back to the department through the appropriate fund.

[19.35.9.15 NMAC - N, 9-28-01]

HISTORY OF 19.35.9 NMAC:
[RESERVED]

NEW MEXICO STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

18 NMAC 31.6, "Requirements for Driveways and Median Openings on Non-Access Controlled Highways," filed 12/14/1998, is hereby repealed.

NEW MEXICO STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 31 CLASSIFICATION AND DESIGN STANDARDS FOR HIGHWAYS PART 6 STATE HIGHWAY ACCESS MANAGEMENT REQUIRE- MENTS

18.31.6.1 ISSUING AGENCY:
New Mexico State Highway and
Transportation Department, 1120 Cerrillos
Road, Post Office Box 1149, Santa Fe, New
Mexico 87504-1149.
[18.31.6.1 NMAC - Rp, 18 NMAC 31.6.1,
10/15/2001]

18.31.6.2 SCOPE: NMSHTD
Districts and Divisions, all other state agen-
cies, local governments, land owners,
developers, and general public.
[18.31.6.2 NMAC - Rp, 18 NMAC 31.6.2,
10/15/2001]

18.31.6.3 S T A T U T O R Y AUTHORITY:

**A. State Highway
Commission:** The basic enabling legisla-
tion for the management of access on state
highways is NMSA 1978, Section 67-11-2,
which states: "The State Highway
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 fed-
erally designated highway as a freeway or
controlled-access highway or to make any
existing state or federally designated high-
way a freeway or a controlled-access high-
way."

**B. State Highway and
Transportation Department:** Pursuant to
NMSA 1978, Section 67-3-6, the State
Highway and Transportation Department
shall exercise the power, authority, and duty
granted to the State Highway Commission.
Therefore, the Department may prescribe
rules and regulations for providing access to
state highways pursuant to NMSA 1978,
Chapter 67. In addition, the following State
Highway Commission policy and
NMSHTD Administrative Directive supple-
ment New Mexico State Statutes and shall
be followed when determining the type and
extent of access to be provided along state
highways.

(1) State Highway Commission
Policy CP 65, Interstate Access

(2) NMSHTD Administrative

Directive AD 222, Highway Access Control
[18.31.6.3 NMAC - Rp, 18 NMAC 31.6.3,
10/15/2001]

18.31.6.4 D U R A T I O N :
Permanent.
[18.31.6.4 NMAC - Rp, 18 NMAC 31.6.4,
10/15/2001]

18.31.6.5 EFFECTIVE DATE: October
15, 2001 unless a later date is cited in the
history note at the end of a section.
[18.31.6.5 NMAC - Rp, 18 NMAC 31.6.5,
10/15/2001]

18.31.6.6 OBJECTIVE:

A. By 18.31.6 NMAC, the
NMSHTD establishes access management
requirements which will protect the func-
tional integrity of the state highway system
and the public and private investment in that
system. Rule 18.31.6 NMAC, and its asso-
ciated *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 func-
tional level of state highways while consid-
ering state, regional, local, and private
transportation needs and interests. The
access management requirements also con-
sider other Department regulations, policies
and procedures related to highway rights-
of-way such as drainage, archeology, haz-
ardous materials and other environmental
aspects.

B. Through the adminis-
tration of 18.31.6 NMAC, it is the intent of
the NMSHTD to work with property own-
ers and local governments to provide rea-
sonable 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 rea-
sonable 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 pur-
pose of protecting the health, safety and
welfare of the traveling public.

D. Rule 18.31.6 NMAC
addresses the design and location of drive-
ways, medians, median openings, intersec-
tions, traffic signals, interchanges and other
points of access to public highways under
the jurisdiction of the New Mexico
Highway Commission. It is based upon the
authority granted to the State Highway and
Transportation Department.

E. As of June 9, 1989, no
person shall construct or modify any perma-

nent 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 State Highway and Transportation Department. 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. In no event shall an access permit be issued or authorized if it is detrimental to the public health, safety and welfare.

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 NMAC 31.6.6, 10/15/2001]

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. Business District— A 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. CHDB— Consolidated Highway DataBase maintained by the New Mexico State Highway and Transportation Department..

N. 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.

O. 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 25 percent (either peak hour or daily) and greater than 100 vehicles per day more than the existing use.

P. Channelized Intersection— An "at grade" intersection with painted islands, raised islands, or other devices for directing traffic along definite paths.

Q. 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.

R. Commission— The New Mexico State Highway Commission.

S. 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.

T. 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..

U. 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..

V. Cross Street— The lower function roadway that crosses a higher function facility, also referred to as Minor Street..

W. 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..

X. Curb Return— The access radius for an intersection or driveway opening, also referred to as Radius Return.

Y. 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..

Z. 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.

AA. Department— The New Mexico State Highway and Transportation Department.

AB. Design Vehicle— A

selected motor vehicle with the weight, dimensions, and operating characteristics used to establish highway design controls.

AC. Developer— A person or persons representing a proposed land development project.

AD. 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.

AE. 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..

AF. Driveway— For the purposes of NMSHTD 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.

AG. Driveway Angle— The angle of 90 degrees or less between the driveway centerline and the edge of the traveled way.

AH. 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..

AI. Driveway Throat Width— The narrowest width of a driveway measured parallel with the edge of the traveled way exclusive of radii, ramps or tapers.

AJ. 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.

AK. Egress— To exit an abutting property or intersecting roadway to gain access to a state highway..

AL. Freeway— A multi-lane divided highway having a minimum of two lanes in each travel direction, with access provided by grade-separated interchanges..

AM. 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.

AN. 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.

AO. 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..

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 private and/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. NMSHTD— The New Mexico State Highway and Transportation Department.

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. Setback— The lateral distance between the highway right-of-way line and any development structure, obstacle or parking area along the highway roadside.

BW. Shall— A mandatory condition where the requirements must be met.

BX. Should— An advisory condition where the condition is recommended but not mandatory.

BY. 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.

BZ. Signal Progression— The timing of consecutive signalized intersections to provide for the progressive movement of traffic at a planned rate of speed..

CA. 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.

CB. State Highway— Any public highway that has been designated as a state highway by either the New Mexico State Legislature or the State Highway Commission.

CC. 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.

CD. 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.

CE. Subdivide— To divide land into two or more smaller lots, tracts or parcels of land..

CF. 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..

CG. Traveled Way— That portion of a roadway containing the travel lanes and speed-change lanes, exclusive of pavement provided for shoulders.

CH. Traversable Median— A median which, by its design, does not physically discourage or prevent vehicles from entering upon or crossing it.

CI. Trip— A one way vehicle movement from one location to another.

CJ. 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..

CK. 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.

CL. Trip Generation— An estimate of the number of trips expected to be generated by specific type of land use.

CM. Undivided Roadway— A highway without physical separation between traffic traveling in opposite directions.

CN. 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 NMAC 31.6.7, 10/15/2001]

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 NMAC 31.6.8, 10/15/2001]

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 NMSHTD manuals, standards, and policies:

(1) State Access Management Manual

(2) Standard Specifications for Road and Bridge Construction

(3) Highway 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, 1994.

I. A Guide for Erecting Mailboxes on Highways, American Association of State Highway and Transportation Officials, 1994.

J. Americans with Disabilities Act, Accessibility Guidelines for Buildings and Facilities (ADAAG), Architectural and Transportation Barriers Compliance Board, as amended; Federal Register, 36 CFR Part 1191, June 20, 1994.

K. Traffic Engineering Handbook, Fourth Edition, Institute of Transportation Engineers, 1992.

L. Access Management Guidelines for Activity Centers, NCHRP 348, 1992.

M. Manual of Traffic Signal Design, Second Edition, Institute of Transportation Engineers, 1991.

N. Traffic Access and Impact Studies for Site Development, Institute of Transportation Engineers, 1991.

O. Guide for the Development of Bicycle Facilities, American Association of State Highway and Transportation Officials, 3rd Edition, 1999.

P. Transportation and Land Development, Institute of Transportation Engineers, 1988.

Q. An Informational Guide for Roadway Lighting, American Association of State Highway and Transportation Officials, 1984.

R. Web Sites (note: web addresses may change without notice)

(1) New Mexico State Highway and Transportation Department: www.nmshtd.state.nm.us

(2) Federal Highway Administration: www.fhwa.dot.gov

(3) Institute of Transportation Engineers: www.ite.org

(4) American Association of State Highway and Transportation Officials: www.transportation.org

(5) Transportation Research Board: www.nas.edu/trb

(6) National Cooperative Highway Research Program: www4.nationalacademies.org/trb/crp.nsf

[18.31.6.9 NMAC - Rp, 18 NMAC 31.6.9, 10/15/2001]

18.31.6.10 ACCESS CATEGORY STANDARDS:

ACCESS CATEGORY STANDARDS: 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 NMAC 31.6.11.1 through 18 NMAC 31.6.11.3, 10/15/2001]

18.31.6.11 ACCESS MANAGEMENT PLANS:

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 - N, 10/15/2001]

18.31.6.12 INTERCHANGE ACCESS MANAGEMENT PLANS:

INTERCHANGE ACCESS MANAGEMENT PLANS: An interchange access management plan shall be required for any new interchange or sig-

nificant 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 Highway Commission policies and Department administrative directives. The interchange and the management plan shall receive the approval of the Deputy Secretary for Planning and Design. 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 - N, 10/15/2001]

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 NMSHTD. [18.31.6.13 NMAC - N, 10/15/2001]

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 18.31.6.7 NMAC.)

(2) **Permit Application Form:** All applications shall be made on the approved NMSHTD permit application form, "Application for Permit to Construct Driveway or Median Opening on Public Right-of-Way."

(3) **NMSHTD District Offices:** Persons wishing to submit an access permit application form should contact the appropriate NMSHTD 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 NMSHTD Access Management web site.

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 refused 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 refused, the Department shall notify the applicant within ten (10) 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.

(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.

E. Access Permit Requests from Private Entities:

(1) **Individual Use:** Requests for a new private access shall be made on the NMSHTD 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 subdividers 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 NMSHTD 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 forty-five (45) days. The review period may be extended by the Department when action is required by the Access Control Review Committee. 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 sixty (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 Department or the applicant may request a meeting with the Department 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 I 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 N 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 and Variance 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 sixty (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 NMSHTD 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 Planning and Design 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 Planning and Design 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 Planning and Design. At this final decision point, no other Department employee will be authorized to approve the permit.

(3) 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.

(4) Review of the request for variance shall follow the procedure described in Subsection I, Paragraph 2 of 18.31.6.14 NMAC.

J. 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 (6) 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 (6) 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 Engineer, or the District Engineer's designee, of pending access construction at least three (3) working days prior to any construction in state highway right-of-way. 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 forty-five (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 removed and/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 and/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 condi-

tions 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.

K. Inspection of Access:

(1) The permittee should employ a construction inspector to ensure that the conditions of the access permit are met. 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 (1) do not comply with the provisions of the permit, (2) conflict with concurrent highway construction or maintenance work, (3) endanger highway property, natural or cultural resources protected by law, or (4) 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.

L. Maintenance of

Access: The permittee, his or her heirs, suc-

cessors-in-interest, assigns, and occupants of the property serviced by the access shall be responsible for meeting the terms and conditions of the permit, 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 and/or failure to follow permit requirements and specifications (see Subsection J, 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.

M. 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.

N. 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 thirty (30) days to correct the violations.

(3) If, after thirty (30) days, the violations are not corrected, the District Engineer, or the District Engineer's designee, may revoke the permit.

(4) The permittee may request a hearing on the revocation of the permit by

giving written notice to the District office within ten (10) days of the notice of the revocation.

(5) The requested hearing shall be held no later than thirty (30) days after receipt of the 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 Planning and Design at the General Office in Santa Fe by giving written notice of a request for an appeal to the District Office within ten (10) days of the date of the District's written decision.

(7) The Deputy Secretary for Planning and Design, or the Deputy's designee, shall hear the appeal within thirty (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 Subsection N, Paragraph 10 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.

(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.

[18.31.6.14 NMAC - Rp, 18 NMAC 31.6.10, 10/15/2001]

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 Subsection D, Paragraph 1 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 request-

ed. 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 (NMSA 1978, Sections 61-23-12 through 61-23-13).

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 NMSHTD 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 8 of the 12 hours. The remaining 4 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 8-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 J 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 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 agreement shall be the responsibility of the permittee. For highway improvement projects, the signalization agreement shall be the responsibility of the NMSHTD project development engineer. [18.31.6.15 NMAC - Rp, 18 NMAC 31.6.12.4 & 18 NMAC 31.6.12.5, 10/15/2001]

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 Subsection D, Paragraph 1 of 18.31.6.14 NMAC).

B. Traffic Study Approach: A three-tiered approach shall be utilized to satisfy the NMSHTD traffic study requirement for a proposed land development project. Traffic impact study requirements of local governments shall

also be followed, where applicable. The NMSHTD three-tiered approach is as follows: First Tier, **Site Threshold Assessment (STH)**; Second Tier, **Site Traffic Analysis (STA)**; and, Third Tier, **Traffic Impact Analysis (TIA)**. Additional requirements and guidelines for conducting the three-tiered traffic study are defined in Section 16 of the *State Access Management Manual*.

C. Site Threshold Assessment: A STH shall be required of all developing or redeveloping properties that directly or indirectly access a state highway. The STH should examine existing roadway volumes and trip generation estimates to determine if additional traffic analysis is required. The NMSHTD STH 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 site traffic analysis or a traffic impact analysis as determined by the District Traffic Engineer, the STH should be approved and the traffic study requirement for the proposed development will be complete. If additional analysis is required based on the results of the STH, the District Traffic Engineer should indicate to the applicant the level of analysis that is required.

D. Site Traffic Analysis: The purpose of a STA is to evaluate localized impacts of a proposed development. In general, localized impacts include the proposed access drive or drives and the first adjacent major intersection, signalized or unsignalized, in each direction along the state highway where the proposed access is located. The requirements for a STA are described in the following subsections. All site traffic 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 STA Required?** A STA shall be conducted for each new development or property redevelopment along a state highway when:

(a) The results of a STH indicate that the proposed development is expected to generate between 25 and 100 peak-hour total trips, and the adjacent roadway currently has a daily traffic volume greater than an average of 1,000 vehicles per day per lane (vpdpl), or

(b) There are safety concerns along the highway where the development is located that are verifiable by the District Traffic Engineer.

(c) For smaller developments, the requirement to perform a STA may be waived if site-specific improvements identified by the District Traffic Engineer are implemented by the applicant as a condition

of the access permit. The improvements shall be implemented prior to permanent use of the access.

(2) When is a STA Complete? A STA 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 STA indicate that the levels of service for the proposed access points and the adjacent 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 STA indicate that improvements are required at the proposed access points and/or at the adjacent intersections, and a mitigation plan has been developed and approved by the District Engineer.

(3) Requirements for Conducting a STA: A description of the subject matter that should be included in a site traffic analyses is provided in Section 16 of the *State Access Management Manual*.

E. 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 along a state highway when:

(a) The results of a STH 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 NMSHTD 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/or 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. A sample outline for TIA documentation is provided in the appendix of the *State Access Management Manual*.

F. 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.

G. 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 NMAC 31.6.12.4, 10/15/2001]

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 NMSHTD at unsignalized or signalized access points where specific public safety and traffic operations 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 Department.

(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 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 comfortable manner. Additional guidance is provided in Section 17 of the *State Access Management Manual*.

<p align="center">Table 17.B-1 Criteria For Deceleration Lanes On URBAN TWO-LANE HIGHWAYS</p>						
<p align="center">Turning Volume¹ (vph)</p>	<p align="center">LEFT-TURN DECELERATION LANE</p>			<p align="center">RIGHT-TURN DECELERATION LANE</p>		
	<p align="center">Minimum Directional Volume in the Through Lane (vphpl)²</p>			<p align="center">Minimum Directional Volume in the Through Lane (vphpl)²</p>		
	≤ 30 mph	35 to 45 mph	45 to 55 mph	≤ 30 mph	35 to 40 mph	45 to 55 mph
< 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><i>Left-turn Deceleration Lanes are Required on Urban Two-lane Highways for the following Left-turn Volumes:</i></p> <ul style="list-style-type: none"> • ≤ 30 mph : 46 vph or more • 35 to 40 mph : 36 vph or more • 45 to 55 mph : 26 vph or more 			<p><i>Right-turn Deceleration Lanes are Required on Urban Two-lane Highways for the following Right-turn Volumes:</i></p> <ul style="list-style-type: none"> • ≤ 30 mph : 46 vph or more • 35 to 40 mph : 41 vph or more • 45 to 55 mph : 36 vph or more 		
<p><i>Notes:</i></p> <p>1. Use linear interpolation for turning volumes between 5 and 45 vph.</p> <p>2. The directional volume in the through lane includes through vehicles and turning vehicles.</p>						

**Table 17.B-2
Criteria for Deceleration Lanes on
URBAN MULTI-LANE HIGHWAYS**

Turning Volume ¹ (vph)	LEFT-TURN DECELERATION LANE			RIGHT-TURN DECELERATION LANE		
	Minimum Volume in the Adjacent Through Lane (vphpl) ²			Minimum Volume in the Adjacent Through Lane (vphpl) ²		
	≤ 30 mph	35 to 40 mph	45 to 55 mph	≤ 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><i>Left-turn Deceleration Lanes are Required on Urban Multi-lane Highways for the following Left-turn Volumes:</i></p> <ul style="list-style-type: none"> • ≤ 30 mph : 56 vph or more • 35 to 40 mph : 46 vph or more • 45 to 55 mph : 36 vph or more 			<p><i>Right-turn Deceleration Lanes are Required on Urban Multi-lane Highways for the following Right-turn Volumes:</i></p> <ul style="list-style-type: none"> • ≤ 30 mph : 56 vph or more • 35 to 40 mph : 46 vph or more • 45 to 55 mph : 41 vph or more 		
<p><i>Notes:</i></p> <p>1. Use linear interpolation for turning volumes between 5 and 55 vph.</p> <p>2. The volume in the adjacent through lane includes through vehicles and turning vehicles.</p>						

Table 17.B-3 Criteria for Left-Turn Deceleration Lanes on RURAL TWO-LANE HIGHWAYS				
Left-Turn Volume ¹ (vph)	LEFT-TURN DECELERATION LANE			
	Minimum Directional Volume in Through Lane (vphpl) ²			
	≤ 30 mph	35 to 40 mph	45 to 55 mph	> 55 mph
< 5	Not Required	Not Required	Not Required	Not Required
5	400	220	120	60
10	240	140	80	40
15	160	100	60	Required
20	120	80	Required	Required
25	100	Required	Required	Required
≥ 26	Required	Required	Required	Required
<p>Left-turn Deceleration Lanes are Required on Rural Two-lane Highways for the following Left-turn Volumes:</p> <ul style="list-style-type: none"> • ≤ 30 mph : 26 vph or more • 35 to 40 mph : 21 vph or more • 45 to 55 mph : 16 vph or more • > 55 mph : 11 vph or more 				
<p><i>Notes:</i></p> <p>1. Use linear interpolation for left-turn volumes between 5 and 25 vph.</p> <p>2. The directional volume in the through lane includes through vehicles and turning vehicles.</p>				

Table 17.B-4 Criteria for Left-turn Deceleration Lanes on RURAL MULTI-LANE HIGHWAYS				
Left-Turn Volume ¹ (vph)	LEFT-TURN DECELERATION LANE			
	Minimum Volume in Adjacent Through Lane (vphpl) ²			
	≤ 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
<p>Left-turn Deceleration Lanes are Required on Rural Multi-lane Highways for the following Left-turn Volumes:</p> <ul style="list-style-type: none"> • ≤ 30 mph : 36 vph or more • 35 to 40 mph : 26 vph or more • 45 to 55 mph : 21 vph or more • > 55 mph : 16 vph or more 				
<p><i>Notes:</i></p> <p>1. Use linear interpolation for left-turn volumes between 5 and 35 vph.</p> <p>2. The volume in the adjacent through lane includes through vehicles and turning vehicles.</p>				

Table 17.B-5 Criteria for Right-Turn Deceleration Lanes on RURAL TWO-LANE HIGHWAYS				
Right-Turn Volume¹ (vph)	RIGHT-TURN DECELERATION LANE			
	Minimum Directional Volume in Through Lane (vphpl)²			
	≤ 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
≥ 31	Required	Required	Required	Required
<p><i>Right-turn Deceleration Lanes are Required on Rural Two-lane Highways for the following Right-turn Volumes:</i></p> <ul style="list-style-type: none"> • ≤ 30 mph : 31 vph or more • 35 to 40 mph : 31 vph or more • 45 to 55 mph : 26 vph or more • > 55 mph : 21 vph or more 				
<p><i>Notes:</i></p> <p>1. Use linear interpolation for left-turn volumes between 5 and 30 vph.</p> <p>2. The directional volume in the through lane includes through vehicles and turning vehicles.</p>				

Table 17.B-6 Criteria for Right-Turn Deceleration Lanes on RURAL MULTI-LANE HIGHWAYS				
Right-Turn Volume¹ (vph)	RIGHT-TURN DECELERATION LANE			
	Minimum Volume in Adjacent Through Lane (vphpl)²			
	≤ 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
<p><i>Right-turn Deceleration Lanes are Required on Rural Multi-lane Highways for the following Right-turn Volumes:</i></p> <ul style="list-style-type: none"> • ≤ 30 mph : 36 vph or more • 35 to 40 mph : 36 vph or more • 45 to 55 mph : 31 vph or more • > 55 mph : 21 vph or more 				
<p><i>Notes:</i></p> <p>1. Use linear interpolation for left-turn volumes between 5 and 35 vph.</p> <p>2. The volume in the adjacent through lane includes through vehicles and turning vehicles.</p>				

[18.31.6.17 NMAC - Rp, 18 NMAC 31.6.12.7.1 through 18 NMAC 31.6.12.7.6, 10/15/2001]

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 NMSHTD. 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 UPA, RPA, UMA, RMA, UCOL, and RCOL (see 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 NMSHTD. 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 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:** Access should 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:** 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.

(3) **Business Districts:** The spacing of access points within business districts on urban or rural highways may be adjusted based on site-specific conditions consistent with the requirements for the access category of the highway.

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. Driveway Angle: 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 75 and 80 percent of the highway posted speed at the point where the full-width lane ends and the transition taper begins.

(3) **Channelization:** Standard roadway signing and marking should be installed for all speed change lanes.

(4) **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 4 feet should be provided adjacent to speed change lanes.

(5) **Bicycle Lane Buffers:** When a right-turn deceleration lane or acceleration lane is required on a roadway with designated bicycle lanes, a minimum buffer of 4 feet (5 feet desirable) should be provided between the outside travel lane and the speed-change lane.

(6) **Grade Adjustment:** Adjustments should be made to the speed change lane lengths based on the roadway grade.

(7) **Truck Design:** If a speed-change lane is designed for a site with 5 or more large trucks during the design hour, a combination truck design vehicle should be used as the design vehicle.

(8) **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 maneuver-

ing 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 4 inches. The maximum grade for a driveway should be 10 percent for a low volume residential driveway and 8 percent for all other access locations. Steeper access drives require special Department approval. A level area (maximum 2 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 NMSHTD 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, 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 with 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 NMSHTD 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 NMSHTD and AASHTO standards and the Night Sky Protection Act (House Bill 39). The lighting design shall use full cut-off fixtures, and be consistent with AD 226, *Roadway Lighting*.

(1) **Signalized Access:** Illumination should 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. Theater screens, lights, signs, billboards, signals or other illuminated structures should not be located adjacent to state highways, or in the vicinity thereof, which distract the attention of and impair the safety of the traveling public.

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 NMSHTD *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 setback standards.

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 NMSHTD. AASHTO's *A Guide for Erecting Mailboxes on Highways*, should also be used for the location and design of mailbox installations.

U. Right-of-Way: Improvements adjacent to state highway right-of-way shall conform to the pertinent

State Highway Commission Policy regarding right-of-way.

V. Utilities: All utilities located within the state highway right-of-way shall comply with the utility accommodation policies defined in the NMSHTD's Railroads and Utilities Manual.

[18.31.6.18 NMAC - Rp, 18 NMAC 31.6.11.3 through 18 NMAC 31.6.11.5; 18 NMAC 31.6.12.1 through 18 NMAC 31.6.12.3; 18 NMAC 31.6.12.6; 18 NMAC 31.6.12.7.7 through 18 NMAC 31.6.12.7.11; 18 NMAC 31.6.12.9; 18 NMAC 31.6.12.10; 18 NMAC 31.6.12.12; 18 NMAC 31.6.12.13; 18 NMAC 31.6.12.14.2 through 18 NMAC 31.6.12.14.4; 18 NMAC 31.6.12.14.6; 18 NMAC 31.6.12.14.7; 18 NMAC 31.6.12.14.10; 18 NMAC 31.6.12.15, 10/15/2001]

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/or 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 departmental 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 Highways 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 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 from a NMSHTD Project Development Engineer or from other government agencies. It shall be the responsibility of the requestor, whether representing the NMSHTD 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 Manager 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/or 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 in Commission Policies and Administrative Memorandums.

F. Requests For Non-Interstate 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 from a 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, 4) 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. After the Secretary, or his/her designee, approves an Administrative Determination for interstate access, the Secretary, or his/her designee, shall prepare a resolution amending the original access control for presentation to the Highway Commission. Highway Commission approval is only needed for requested breaks in interstate access controlled rights of way. The Chairperson shall send a request for approval to FHWA for all interstate or federal highways.

(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 Commission, the Department, or FHWA regarding the approval of the access control break.

G. Temporary Construction Access Breaks: Any requests for temporary construction access breaks for projects should be incorporated in roadway plans during their development.

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/or 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 NMSHTD's 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 - N, 10/15/2001]

HISTORY OF 18.31.6 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the State Records and Archives under:

SHTD Rule No. 89-1(L), Regulations for Driveways and Median Openings on Non-Access Controlled Highways, 6/9/1989.

History of Repealed Material:

18 NMAC 31.6, Requirements for Driveways and Median Openings on Non-Access Controlled Highways, 12/14/1998.

Other History:

Effective 10/15/2001, 18.31.6 NMAC, State Highway Access Management Requirements, replaced 18 NMAC 31.6, Requirements for Driveways and Median

Openings on Non-Access Controlled Highways.

NEW MEXICO BOARD OF NURSING

This is an amendment to Sections 16.12.1.7, 16.12.1.8 and 16.12.1.9 NMAC. This action amends these Sections by removing unnecessary language and adding new language due to changes in the rule in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

16.12.1.7 DEFINITIONS:

A. "board": the New Mexico board of nursing.

B. "certificate": a legal document granting permission to an unlicensed person to perform specific functions generally considered the practice of nursing.

~~**C. "[sworn] complaint":**~~ to declare ~~in writing [on oath the truth of a complaint.]~~ an allegation of a violation of the Nursing Practice Act and/or Rules.

~~**D. "license":**~~ legal document granting an individual the privilege and authority to engage in practice of an occupation/profession.

~~**E. "notice of contemplated action":**~~ a written notice indicating the board's intent to take disciplinary action against the license/certificate of an individual within its jurisdiction.

~~**F. "notice of hearing":**~~ a written notice indicating the date, time and place for an appearance before the board.

~~**G. "nursing practice act":**~~ NM statute which governs the regulations and licensing of nurses or certification of hemodialysis technicians/medication aides and training programs thereof.

~~**H. "probation":**~~ subjecting a licensee/certificate holder to specific conditions for a stated period of time to determine fitness.

~~**I. "reinstatement":**~~ the process whereby a license/certificate, which has been subject to disciplinary action by the board, is returned to its former status.

~~**J. "reprimand":**~~ a written censure.

~~**K. "revocation":**~~ to prohibit the conduct authorized by a license or certificate.

~~**L. "stipulation and agreement":**~~ an agreement made by the attorneys on opposite sides of a cause or the prosecuting attorney and licensee, concerning disposition of relevant issues to eliminate the need for a formal hearing.

~~**M. "suspension":**~~ to prohibit, for a stated period of time, the conduct

authorized by a license or certificate.

N. "uniform licensing act": NM statute which provides procedures to be utilized in disciplinary proceedings.

[1-1-98; 16.12.1.7 NMAC — Rn, 16 NMAC 12.1.7, 7-30-01; A, 11-16-01]

16.12.1.8 ADMINISTRATION:

A. Members of the board are appointed by the governor and are accountable to the governor for the enforcement of the Nursing Practice Act, Section 61-3-1 et seq., NMSA, 1978.

(1) Rules are adopted by the board to further define the Nursing Practice Act and the functions of the board.

(a) Request for exceptions to the rules may be made, in writing to the board. All requests will be considered by the board at its next regularly scheduled meeting following receipt of the request.

(b) Board staff shall not make exceptions to the rules.

(2) A code of conduct shall be adopted by the board, and shall be reviewed annually at a regularly scheduled meeting of the board.

(3) The board shall meet at least once every three months.

(a) A meeting notice resolution, consistent with the Open Meetings Act, Section 10-15-1 et seq., NMSA, 1978, shall be adopted by the board and shall be reviewed annually at a regularly scheduled board meeting.

(b) A schedule of regular meeting dates shall be approved by the board at a regular meeting prior to the beginning of the next calendar year, and shall be published in the board's fall/winter newsletter.

(4) The board may appoint advisory committees consisting of at least one member who is a board member and at least two members expert in the pertinent field of health care to assist it in the performance of its duties, Section 61-3-10, M. NMSA, 1978.

(a) Exception: no current board members shall be appointed to an advisory committee for the diversion program, Section 61-3-29, B. NMSA, 1978.

(b) Members of advisory committees who fail to attend three consecutive committee meetings shall automatically be removed as a member of the committee.

(c) Advisory committee members may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-8 NMSA, 1978 for travel to a committee meeting and/or function.

(i) Mileage may be paid when there is a total of sixty (60) miles or more traveled,

(ii) Per diem may be paid for

overnight stays only upon prior approval of the executive director or assistant director.

(5) The board shall elect a chairman, vice-chairman and secretary annually. The term of office begins with the meeting subsequent to the election. Any member of the board may serve as an officer of the board.

(6) Board members shall not be involved with the administration and/or management of the board office.

(7) Board may appoint site visitors who have expertise in the pertinent field of education/health care to accompany board staff on visits to educational programs, health care institutions/facilities, etc. to assist it in the performance of its duties and responsibilities. Site visitors may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8 NMSA, 1978, for travel to a committee meeting and/or function.

(a) Mileage may be paid when there is a total of sixty (60) miles or more traveled, and

(b) Per diem may be paid for overnight stays only upon prior approval of the executive director or assistant director.

B. The board shall hire an executive director who is accountable to the board for the administration and management of the board office, including but not limited to the fiscal operation, records, hiring and firing of personnel. The operation of the board office shall be in accordance with the state of New Mexico statutes and rules.

(1) The executive director shall not have the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold any license authorized by the NPA.

(2) The executive director, or designee, shall represent the board to the public.

C. Honorarium: members of the board and board staff, when speaking on behalf of the board of nursing, may accept an honorarium. The honorarium shall be made in the name of the NM board of nursing and deposited in the nursing fund with the state of NM.

D. Verification of license/certificate

(1) Employers and other interested persons may request verification of the status of a license/certificate.

(2) Verification of relicensure/recertification status is available the third (3rd) working day after approval of the licensure/recertification application in the board office.

(3) All requests for verification of licensure/certification to other boards of nursing shall be processed weekly, and shall

be sent directly to the board of nursing in question.

E. Reimbursement for disciplinary witnesses and experts on behalf of the state.

(1) Individuals subpoenaed as a disciplinary witness for the state may be reimbursed for mileage as provided for in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8 NMSA, 1978, when sixty (60) miles or more are traveled to a disciplinary hearing.

(2) Individuals who serve as an expert witness for the state in a disciplinary matter may be reimbursed by the board in an amount not to exceed: [~~(1) one hundred dollars (\$100.00)~~] two hundred dollars (\$200.00) for reviewing the file, research and advisement in the matter, and [~~(2) one hundred and fifty dollars (\$150.00)~~] three hundred dollars (\$300.00) for testifying at a disciplinary hearing.

(3) The executive director may approve additional reimbursement for the review of files and testimony of expert witnesses when such reimbursement is essential to the prosecution of the case.

F. Telephonic attendance at board meetings by board members

(1) Pursuant to the provisions of the Open Meetings Act, Section 10-15-1 C NMSA, 1978, as amended, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment.

(2) Board members participation in meeting telephonically shall constitute presence in person at the meeting. Telephonic participation may only occur when it is difficult or impossible for the person to be physically present. That is, there are circumstances beyond the member's control which make attendance in person extremely burdensome.

(3) Each board member participating telephonically must be identified when speaking and all participants must be able to hear all other participants.

(4) Members of the public attending the meeting must be able to hear all members of the board and members of the public who speak during the meeting.

G. Use of fax: The board of nursing may accept and send facsimile of documents with the exception of documents in which a fee must be included or in which an official seal is required and communications related to participants of the diversion program.

[1-1-98; 16.12.1.8 NMAC — Rn & A, 16 NMAC 12.1.8, 7-30-01; A, 11-16-01]

16.12.1.9 DISCIPLINARY ACTION:

A. Authority of board of nursing: The board may deny, revoke, or

suspend any license or certificate held or applied for under the NPA, or reprimand or place a license or certificate on probation on the grounds stated in Section 61-3-28 NMSA, 1978.

B. Disciplinary philosophy: the board of nursing accepts its mandate to regulate nursing, medication aides and hemodialysis technicians for the protection of the citizens of New Mexico. In its role as a regulatory body, the board recognizes that it is responsible for conducting hearings upon charges related to violations of the Nursing Practice Act, Section 61-3-1 through 61-3-30 NMSA, 1978 and/or its rules, and to take disciplinary actions against licensees or certificate holders who violate the statute or rules. The board considers all alleged violations based on the merits of each case and the potential danger to the public. The board will consider remedial measures of corrective action rather than denial, suspension or revocation of a license or certificate except in cases where there is a real or potential danger to the public. The board will deny, suspend or revoke a license or certificate when it has evidence that the public's health, safety and welfare may be in danger. The board is responsible for promoting, preserving and protecting the public health, safety and welfare through the adoption of rules that allow licensees and certificate holders to function safely and competently within the parameters of their license/certificate. The board is also responsible for ensuring that licensees and certificate holders have access to the laws and rules governing nursing in order that they may function within the legal boundaries of the nursing practice act and its rules.

C. Grounds for action

(1) For purposes of Section 61-3-28 (A) (3) NMSA 1978, supra, "incompetence" is defined as follows: In performing nursing functions, a nurse is under a legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other nurses of the same licensure status and required by the generally accepted standards, of the profession including those standards set forth in 16.12.2.12 NMAC of these rules. The failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct

is of such a character that harm could have resulted to the patient/client or to the public from the act or omission or series of acts or omissions.

(2) For the purpose of Section 61-3-28 (A) (6) NMSA, 1978, supra, "unprofessional conduct" includes, but is not limited to, the following:

(a) Dissemination of a patient/client's health information and/or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law and/or hospital/agency policy from disclosure.

(b) Falsifying or altering patient/client records or personnel records for the purpose of reflecting incorrect or incomplete information.

(c) Misappropriation of money, drugs or property.

(d) Obtaining or attempting to obtain any fee for patient/client services for one's self or for another through fraud, misrepresentation, or deceit.

(e) Aiding, abetting, assisting or hiring an individual to violate the nursing practice act or duly promulgated rules of the board of nursing.

(f) Obtaining, and/or attempting to obtain possessing, administering or furnishing prescription drugs to any person, including but not limited to one's self, except as directed by a person authorized by law to prescribe.

(g) Failure to follow established procedure and documentation regarding controlled substances.

(h) Failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of nursing.

(i) Obtaining or attempting to obtain a license to practice nursing for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or relicensure process.

(j) Practicing nursing in New Mexico without a valid, current NM license or permit, or aiding, abetting or assisting another to practice nursing without a valid, current NM license.

(k) Failure to report a nurse(s) who is suspected of violating the NM Nursing Practice Act and/or rules.

(l) Intentionally engaging in sexual contact with and/or toward a patient/client in a manner that is commonly recognized as outside the scope of the individual nurse's practice.

(m) Abandoning a patient(s)/client(s) when the abandonment results or may result in potential or actual

harm or danger to the patient(s)/client(s).

(n) Engaging in the practice of nursing when judgment or physical ability is impaired by alcohol or drugs or controlled substances.

(o) Committing acts which constitute grounds for disciplinary action pursuant to Section 61-3-28 (A) (1), (2) NMSA, 1978—where the conviction arises from employment as a nurse, (3),(4)—where the intemperance, addiction, incompetence or unfitness has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provision of good health care, (5)—where the mental incompetence has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provisions of good health care, and (7).7).

(p) Failure to follow state and federal laws, policies and procedures for the prescription and distribution of dangerous drugs including controlled substances.

(q) Practice which is beyond the scope of licensure.

(r) Delegation of medication administration, evaluation and nursing judgment to non-licensed persons.

(s) Verbally and/or physically abusing a patient/client.

(t) Failure to maintain appropriate professional boundaries which may cause harm to the patient.

D. Grounds for disciplinary action against hemodialysis technicians and medication aides listed under 16.12.4.11 NMAC and 16.12.5.11 NMAC.

E. Parental Responsibility Act Compliance: This subsection is adopted pursuant to the Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA, 1978.

(1) All terms defined in the Parental Responsibility Act shall have the same meanings in this subsection.

(a) "HSD" means the New Mexico human services department.

(b) "statement of compliance" means a certified statement from HSD stating that an applicant or licensee/certificate holder is in compliance with the judgment and order for support.

(c) "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee/certificate holder is not in compliance with a judgment and order for support.

(2) If an applicant or licensee/certificate holder is not in compliance with a judgment and order for support, the board:

(a) shall deny an application for a license/certificate;

(b) shall deny the renewal of a license/certificate; and

(c) has grounds for suspension or

revocation of the license/certificate.

(3) Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support; the board shall match the applicant against the current certified list of board licensees/certificate holders and applicants.

(a) Upon the later receipt of an application for licensure, certification or renewal, the board shall match the applicant against the current certified list.

(b) By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees/certificate holders who are on the certified list and the action the board has taken in connection with such applicants and licensees/certificate holders.

(4) Upon determination that an applicant or licensee/certificate holder appears on the certified list, the board shall issue a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act, Section 61-1-1, et seq., NMSA, 1978, to take the appropriate action.

(a) The NCA shall state that the board has grounds to take such action unless the licensee/certificate holder or applicant:

(i) mails a letter (certified mail return receipt requested) within twenty (20) days of receipt of the notice of contemplated action requesting a hearing; and

(ii) provides the board, prior to the scheduled hearing date, with a statement of compliance from HSD.

(b) If the applicant or licensee/certificate holder disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee/certificate holder should contact the HSD child support enforcement division.

(5) In any hearing under this subsection, relevant evidence is limited to the following:

(a) a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under paragraph (2) of subsection E of 16.12.1.9 NMAC, unless;

(b) the applicant or licensee/certificate holder provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this subsection.

(6) When disciplinary action is taken under this subsection solely because the applicant or licensee/certificate holder is not compliance with a judgment and order for support, the order shall state that the applicant or licensee/certificate holder shall be reinstated upon presentation of a subsequent statement of compliance. Reinstatement following board action under

this subsection shall require the licensee or certificate holder to meet the requirements for reinstatement and payment of the appropriate reinstatement fee.

F. Disciplinary proceedings: are conducted in accordance with the Uniform Licensing Act, Section 61-1-1 et seq., NMSA, 1978 and Open Meetings Act, Section 10-15-1 et seq., NMSA, 1978.

(1) Filing of a complaint

(a) A ~~sworn~~ written complaint must be filed with the board of nursing before a disciplinary proceeding can be initiated.

(i) A complaint is an allegation of a wrongful act(s) or an omission(s), and

(ii) A complaint may include knowledge of a judgment or settlement against a licensee.

(b) A ~~sworn~~ written complaint may be filed by any person, including a member of the board.

(c) A nurse who suspects that a nurse or certificate holder has violated any provision of the Nursing Practice Act and/or rules of the board must file a ~~sworn~~ written complaint with the board of nursing; except when the nurse or certificate holder suspected of violating the Nursing Practice Act and/or rules of the board is a patient and patient confidentiality is involved.

(2) Investigation of a complaint

(a) Complaints alleging a violation of the Nursing Practice Act and/or rules adopted by the board may be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The investigation may result in one following inter alia;

(i) A board motion to issue a notice of contemplated action (NCA) if a violation exists; or

(ii) A board motion to dismiss the complaint because no violations exists.

(3) Notice of contemplated action

(a) The NCA shall be drafted by the administrative prosecuting attorney.

(b) The executive director of the board, or an assistant director in the director's absence, shall sign all NCAs on behalf of the board.

(c) NCAs are served on the licensee or certificate holder in accordance with the ULA.

(4) Request for a hearing, notice of hearing, and request for continuance.

(a) Notice of hearing, designating the date, time and place of the hearing, shall be mailed to the licensee or certificate holder via certified mail upon receipt of a written request for a hearing.

(b) The licensee or certificate holder may request to explore a settlement by negotiating a stipulation and agreement with the administrative prosecuting attorney

at any time prior to the hearing.

(i) If a settlement is negotiated, the proposed stipulation and agreement shall be presented to the board for final approval.

(ii) The proposed stipulation and agreement does not divest the board of its authority to require a formal hearing or final approval, amendment, or rejection.

(iii) If a settlement is not reached, a hearing shall be held.

(c) Once a hearing has been scheduled, a request for a continuance must be presented, along with evidence to support the request to the board, in writing, at least ten (10) days prior to the scheduled hearing. The board may approve or deny the request.

(i) A motion to continue the hearing must contain an affirmative statement that the licensee or applicant waives his or her right to a hearing held not more than sixty (60) days from the date of service of the notice of hearing.

(ii) One continuance may be granted in each case if proof is submitted to verify good cause such as illness, availability of new evidence or unavailability of the licensee or licensee's attorney. The board may approve or deny the request.

(d) If a person fails to appear before the board after requesting a hearing, the board may proceed to consider the matter as a default and make a decision.

(e) If no request for a hearing is made within the time and manner required by the ULA, the board may take the action contemplated in the NCA at its next regularly scheduled meeting. Such action shall be final and is not subject to judicial review.

(5) Administrative hearing

(a) All hearings shall be conducted by the board or, at the direction of the board by a hearing officer. The hearing officer shall have authority to rule on all motions. If the board does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case.

~~(b)~~ (b) All hearings before the board shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the board hearing.

(i) Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

(ii) Disciplinary action against a nursing license or certificate holder must not be based solely on hearsay evidence.

~~(b)~~ (c) The board may take testimony, examine witnesses and direct a continuance of any case.

~~(e)~~ (d) The board may hold closed, or open, deliberations before or during a hearing for the settlement or simplification of issues with the consent of the person whose license or certificate is involved.

~~(f)~~ (e) The executive director, or in the director's absence, an assistant director or designee shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the board.

G. Decision of the board

(1) The decision must be rendered by the board at a public meeting where a quorum of the members are present and participating in the decision.

(2) A copy of the written decision shall be mailed via certified mail to the applicant/licensee or certificate holder in accordance with the Uniform Licensing Act, Section 61-1-14 NMSA, 1978.

H. Request/motion to reopen disciplinary proceedings: An applicant who has been denied a license or certificate in New Mexico or a licensee or certificate holder who has had disciplinary action taken by the board and who wishes to have the case reopened must submit a written request/motion to reopen their case prior to filing a petition for review with the district court.

(1) The board shall be polled to consider whether to grant or refuse the applicant/licensee or certificate holder request/motion to reopen the case, Uniform Licensing Act 61-1-21 and Open Meetings Act 10-15-1-E NMSA, 1978. (1990 supplement)

(2) The board's decision to grant or refuse the request/motion to reopen the case shall be made, signed by the executive director, or an assistant director in the director's absence, and sent to the applicant/licensee or certificate holder within fifteen (15) days after receipt of the request/motion. The administrative prosecuting attorney shall be apprised of any decision of the board to reopen a case and shall be given an opportunity to respond to the motion.

(3) The formal hearing of the case shall be scheduled for the board's next regularly scheduled meeting. A notice of hearing shall be mailed, by certified mail, to the applicant/licensee or certificate holder within fifteen (15) days after service of the decision to grant the request/motion to reopen.

(4) The decision to grant or refuse the reopening of a case shall be in the discretion of the board, and the decision shall not be reviewable except for an abuse of discretion.

I. Public notification of disciplinary action: The disciplinary action of the board shall be made public in accordance with the Open Meetings Act, Section 10-15-1 et seq., NMSA, 1978 by the following means:

(1) Information regarding disciplinary action shall be coded in computer, license and/or certificate file.

(2) Submission of disciplinary action to the National Council of State Board's disciplinary Data Bank/National Practitioner Data Bank (NPDB).

(3) Publication of the disciplinary action in the board's newsletter and on the board's website.

J. Reinstatement of license or certificate

(1) Individuals who request reinstatement of their license or certificate or who request that their probation be lifted must be prepared to provide the board with evidence to support their request. This evidence may be in the form of written reports or verbal testimony from individuals who have knowledge of the licensee's or certificate holder's activities and progress during the period of probation, suspension or revocation.

(2) Requests for reinstatement of a revoked license or certificate shall not be considered by the board prior to the expiration of one year from the date of the order of revocation, unless provided for in the order of revocation. The date at which time the board chairman's signature is affixed to the order of revocation or suspension is the controlling date, unless otherwise specified in the order.

(3) Requests for reinstatement of a suspended license or certificate shall be considered at such time as provided by the board in the order of suspension.

(4) Reinstatement of a revoked or suspended license requires proof of meeting the renewal requirements as set forth in these rules adopted by the board, and payment of the reinstatement of current or lapsed license fee.

K. Complaints regarding firms, associations, institutions and corporations violating the Nursing Practice Act.

(1) The board of nursing shall accept and determine the disposition of ~~(sworn)~~ written complaints regarding firms, associations, institutions and corporations violating the Nursing Practice Act, causing the violation of the Nursing Practice Act, or asking employees to violate the Nursing Practice Act by policy or directive.

(2) The ~~(complainant)~~ agency shall be given the opportunity to respond in writing to the allegations in the complaint.

(3) If the board of nursing determines a violation of the Nursing Practice Act has occurred, the board of nursing shall identify and refer the complaint in writing to the appropriate authority for prosecution with a request to be kept apprised of the disposition of the case.

(4) If it is determined by the board of nursing that a violation of Section 61-3-30 A-H, NMSA, 1978 of the Nursing Practice Act has occurred, the board of nursing shall inform the agency to whom the complaint is referred of the requirements set out in Section 61-3-30 NMSA, 1978 of the Nursing Practice Act.

(5) The board shall keep a record of the number of complaints received and the disposition of said complaints.

[1-1-98, 2-26-99; 16.12.1.9 NMAC – Rn & A, 16 NMAC 12.1.9, 7-30-01; A, 11-16-01]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to Subsection A of 1.7.4.11 NMAC Administration of the Salary Schedules.

1.7.4.11 ADMINISTRATION OF THE SALARY SCHEDULES:

A. Entrance Salary:

(1) Upon entrance to a Technical Occupation Group Role, a newly-appointed employee's salary, subject to budget availability, should reflect the Appropriate Placement within the Pay Band. Any entrance salary in the Principal Contributor Zone must receive approval from the Director or Authorized Agent prior to appointment.

(2) Upon entrance to a Manager Category, a newly-appointed employee's salary, subject to budget availability, should reflect Appropriate Placement within the Pay Opportunity. Any entrance salary which exceeds a compa-ratio of 100.0% must receive approval from the Director or Authorized Agent prior to appointment.

(3) A newly-appointed employee's salary may be set below the minimum of the Pay Band or Pay Opportunity but shall not be lower than the agency's current employee holding the lowest below minimum salary in the same Technical Occupational Group Role or Manager Category. (expires 1/26/02)

B. Pay for Performance Increase:

(1) Subject to specific statutory authorization for each state fiscal year and subject to agency budget availability,

employees who fulfill established performance criteria shall be eligible for a salary increase within their assigned Pay Band or Pay Opportunity.

(2) Employees with a salary at or above the maximum of the position's Pay Band or Pay Opportunity shall not be eligible for an increase unless authorized by statute.

(3) Employees in a Technical Occupation Group Role or Manager Category with a higher Pay Band or Pay Opportunity than that assigned to the position shall not be eligible for a Pay for Performance increase unless the employee's Technical Occupation Group Role or Manager Category is adjusted to the Technical Occupation Group Role or Manager Category assigned to the position before the end of that state fiscal year. Thereafter, the employee shall be eligible for a Pay for Performance increase during the first full pay period following the adjustment provided that the employee's salary does not equal or exceed the maximum value of the new Pay Band or Pay Opportunity.

(4) Any period of continuous leave in excess of 30 calendar days shall not be credited as continuous employment toward eligibility for a Pay for Performance increase, unless the leave was otherwise authorized by statute.

(5) The anniversary date shall not change for those employees whose salaries have been temporarily increased in accordance with the provisions of *Subsections L. & M. of 1.7.4.II NMAC*. Their salary increases shall be based upon their regular non-temporary hourly base pay rate.

C. Salary Upon In Pay Band or In Pay Opportunity Adjustment: Upon In Pay Band Adjustment or In Pay Opportunity Adjustment, subject to budget availability and reflective of Appropriate Placement, agencies may increase an employee's salary up to ten percent (10%) during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than ten percent (10%) and the employee's base salary does not exceed the maximum of the assigned Pay Band or Pay Opportunity. Employee's salaries being adjusted in accordance with *Subsection I of 1.7.4.II NMAC* may be increased, subject to budget availability and Board approval, greater than ten percent (10%) to bring the employee's salary to the minimum of the Pay Band or Pay Opportunity.

D. Salary Upon Promotion: Upon promotion, an employee's salary, subject to budgetary availability, should reflect Appropriate Placement within the Pay Band or Pay Opportunity. A

salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the Director or Authorized Agent. A salary increase greater than fifteen percent (15%) to bring an employee's salary to the minimum of the Pay Band or Pay Opportunity or less than five percent (5%) to prevent an employee's salary from exceeding the maximum of the Pay Band or Pay Opportunity does not require the approval of the Director or Authorized Agent. The salary of a promoted employee shall be in accordance with *Subsection B of 1.7.4.II NMAC*.

E. Salary Upon Demotion: Upon demotion, an employee's salary shall be decreased to an hourly rate of pay which does not result in more than a fifteen percent (15%) decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new Pay Band or Pay Opportunity or the decrease is being made in accordance with *Paragraph (2) of Subsection F of 1.7.4.II NMAC*.

F. Pay Allowance for Performing Supervisory Duties:

(1) An agency shall grant a pay allowance for up to one year, renewable annually, to an employee in a Technical Occupation Group who accepts and consistently performs additional duties which are characteristic of a Supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the Technical Occupation Group Role and shall be between 0% and 20% above the employee's base pay rate.

(2) When the supervisory duties are no longer being performed, the agency shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increases.

(3) Agencies shall require that a form, established by the Director, be signed by all employees at the time of acceptance of a pay allowance and annually thereafter, evidencing their agreement to the terms and conditions of the pay allowance.

(4) The Director shall submit to the Board a quarterly report on pay allowance.

G. Salary Upon Suspension: The salary of an employee who has been suspended in accordance with *1.7.II NMAC* may be temporarily reduced by up to fifteen percent (15%) for a period not to exceed 160 consecutive work hours.

H. Salary Upon Transfer:
(1) The salary of employees who are transferring in accordance with the provisions of *Subsection RR of 1.7.I.7 NMAC* shall remain the same.

(2) Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

I. Salary Upon Pay Band or Pay Opportunity Change: When the Board authorizes a change of Pay Band or Pay Opportunity in accordance with the provisions of *1.7.4.9 NMAC* and/or *1.7.4.10 NMAC*, the salaries of affected employees shall be determined in accordance with *Subsection C of 1.7.4.10 NMAC*. Employees whose Pay Band or Pay Opportunity is adjusted upward or downward shall retain their current salary in the new Pay Band or Pay Opportunity. Employees' salaries may be addressed through In Pay Band or In Pay Opportunity Adjustment unless otherwise allowed by statute.

J. Salary Upon Reduction: The salary of employees who take a reduction may be reduced by up to fifteen percent (15%) unless the reduction is made in accordance with *Paragraph (2) of Subsection F of 1.7.4.II. NMAC*. The Director or Authorized Agent may approve a salary reduction greater than fifteen percent (15%) due to special circumstances that are justified in writing.

K. Salary Upon Return To Work Or Reemployment: The salary of former employees who are returned to work or reemployed in accordance with the provisions of *1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC* shall not exceed the hourly pay rate held at the time of separation.

L. Salary Upon Temporary Promotion: Pay for a temporary promotion will be administered in accordance with *Subsection D of 1.7.4.II NMAC*. At the end of a temporary promotion, the employee shall be returned to the hourly pay rate held prior to the temporary promotion, plus any authorized salary increases.

M. Temporary Salary Increase: An agency may, with the approval of the Director or Authorized Agent, grant a temporary salary increase of up to fifteen percent (15%), for a period not to exceed one year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a Technical Occupation Group Role or Manager Category assigned to a higher Pay Band or Pay Opportunity. The Director may approve temporary salary increases above the maximum of the Pay Band or Pay Opportunity, provided that the increase does not exceed the maximum of the higher Pay Band or Pay Opportunity or fifteen percent

(15%). An agency shall revert the employee to the hourly pay rate held prior to the salary increase plus any authorized salary increases when the temporary conditions cease to exist or the temporary salary expires.

[1.7.4.11 NMAC – Rp, 1 NMAC 7.4.11 & 1 NMAC 7.4.14, 07/07/01; A, 10/01/01]

**End of Adopted Rules
and Regulations Section**

2001
SUBMITTAL DEADLINES AND PUBLICATION DATES

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No. 1	January 4	January 15
No. 2	January 16	January 31
No. 3	February 1	February 14
No. 4	February 15	February 28
No. 5	March 1	March 14
No. 6	March 15	March 30
No. 7	April 2	April 13
No. 8	April 16	April 30
No. 9	May 1	May 15
No. 10	May 16	May 31
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No. 23	December 3	December 14
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