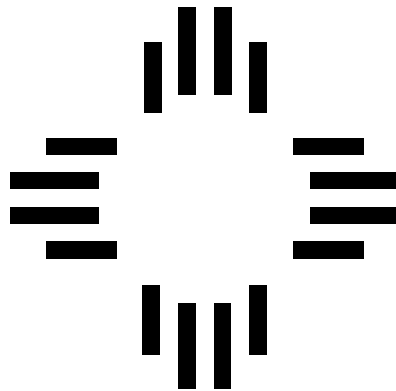


# **New Mexico Register**

**Volume XIII, Issue Number 19**  
**October 15, 2002**



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  
Santa Fe, New Mexico  
2002

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# New Mexico Register

Volume XIII, Number 19

October 15, 2002

## Table of Contents

### Notices of Rulemaking and Proposed Rules

<b>Construction Industries Commission</b>	
Notice of Regular Meeting . . . . .	769
<b>Education, Board of</b>	
Notice of Proposed Rulemaking . . . . .	769
<b>Energy, Minerals and Natural Resources Department</b>	
State Parks Division	
Notice of Public Hearing on Proposed Amendments to State Park Rules . . . . .	770
<b>Health, Department of</b>	
Notice of Public Hearing - Quality Management System and Review Requirements for Providers of Community Based Services . . . . .	770
Notice of Public Hearing - Incident Reporting and Investigation Requirements for Providers of Community Based Services . . . . .	770
<b>Highway and Transportation Department</b>	
Notice of Hearing on Proposed Rulemaking and Procedural Order . . . . .	771
<b>Human Services Department</b>	
Medical Assistance Division	
Notice of Public Hearing - Changes to Reconsideration of Audit Settlements . . . . .	772
Notice of Public Hearing - Electroconvulsive Treatment (ECT) . . . . .	772
Notice of Public Hearing - Elimination of Group of Eligibles for Specified Low Income Medicare Beneficiaries Program . . . . .	772
<b>Medical Examiners, Board of</b>	
Notice of Public Rule Hearing . . . . .	773
<b>Occupational Therapy, Board of Examiners for</b>	
Notice of Rule Hearing . . . . .	773
<b>Public Regulation Commission</b>	
Amended Notice of Proposed Rulemaking - Docket No. 02-103-PL . . . . .	773
Notice of Proposed Rulemaking - Utility Case No. 3619 . . . . .	774
<b>Public Safety, Department of</b>	
Notice of Hearing on Proposed Rulemaking and Procedural Order . . . . .	775
<b>Racing Commission</b>	
Notice of Rulemaking and Public Hearing . . . . .	776
<b>Taxation and Revenue Department</b>	
Announcement . . . . .	776

### Adopted Rules and Regulations

#### Effective Date and Validity of Rule Filings

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.

**A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered**

<b>Environmental Improvement Board</b>	
* 20.2.70 NMAC A Operating Permits . . . . .	777
<b>General Services Department</b>	
Transportation Services Division	
GSD 90-202 R State Motor Vehicle Regulations . . . . .	777
* 1.5.3 NMAC N Administration and Use of State Vehicles . . . . .	777
<b>Interior Design, Board of</b>	
* 16.42.5 NMAC Rn & A Interior Designers - Fees . . . . .	782
Multiple Rules Rn Notice of Renumber . . . . .	782

**Taxation and Revenue Department**

*	3.2.114 NMAC	A	Exemption - Gross Receipts and Compensating Tax - Fuel . . . . .	782
*	3.16.4 NMAC	A	Gasoline Tax - Deductions . . . . .	782
*	3.16.7 NMAC	A	Gasoline Tax - Registration as Distributor, Wholesaler or Retailer . . . . .	783
*	3.16.109 NMAC	A	Special Fuels Tax - Calculation of Excise Tax . . . . .	783
<b>Youth Conservation Corps</b>				
*	11.2.171 NMAC	A	The Youth Conservation Corps (YCC) Program . . . . .	783

Please note that the (\*) entries obey the reformatting rules set forth in 1.24.10 NMAC, effective 2/29/00

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [rules@rain.state.nm.us](mailto:rules@rain.state.nm.us).

# Notices of Rulemaking and Proposed Rules

## NEW MEXICO CONSTRUCTION INDUSTRIES COMMISSION

### CONSTRUCTION INDUSTRIES COMMISSION

Notice is hereby given that the Construction Industries Commission will hold a regular meeting on Friday, October 18, 2002 at 9:30 a.m., at the State Capitol, Room 321, Santa Fe, New Mexico. The Commission will consider pending agenda items and discuss such other business as may require formal action by the Commission. Anyone who requires special accommodations is requested to notify the Commission at 725 St. Michael's Drive, Santa Fe, New Mexico 87501 of such needs at least ten days prior to the meeting.

## NEW MEXICO BOARD OF EDUCATION

### NOTICE OF PROPOSED RULEMAKING

The New Mexico State Board of Education ("Board") will convene on Wednesday, October 30, 2002, at 8:00 a.m. Committee will meet on Wednesday, October 30, 2002, and Thursday, October 31, 2002. The regular meeting of the Board will begin on Friday, November 1, 2002, at 8:00 a.m. The committee meetings and the regular meeting will be held in Mabry Hall, State Education Building, 300 Don Gaspar, Santa Fe, New Mexico. Information regarding any change in the location of the meetings, the addition of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Administrative Assistant to the State Board and on the State Board's web page of the State Department of Public Education's website (<http://sde.state.nm.us/>).

The State Board of Education may consider the following item of rulemaking at the meeting:

RULE NUMBER	PROPOSED ACTION	(PROPOSED) RULE NAME
6.42.2 NMAC	Amend Rule	Transportation – School Attendance and Service Areas: Temporary Boundary Agreements ▶

▶ Finance, Transportation & Administration Committee

Notice has been previously provided regarding public hearings and the submission of written comments regarding the proposed rulemaking. For specific information, please contact Gilbert Perea, State Transportation Director, at (505) 827-6640 or <mailto:gperea@sde.state.nm.us>.

In addition, discussions will be held regarding proposed amendments to the following State Board of Education regulations:

RULE NUMBER	PROPOSED ACTION	RULE NAME
6.30.2 NMAC (Sections 10 and 11)	Amend Rule	Standards for Excellence ■
6.31.2 NMAC	Amend Rule	Children with Disabilities/Gifted Children ■

■ Instructional Services Committee

The New Mexico State Department of Public Education proposes to amend certain provisions of the State Board of Education's special education regulations and certain special education-related provisions in the state Standards for Excellence to bring some provisions into full compliance with the federal Individuals With Disabilities Education Act (IDEA) and to clarify other provisions. Copies of the proposed amendments, with explanations for each proposed change, are available from the following source:

Special Education Office  
State Department of Public Education  
300 Don Gaspar Avenue  
Santa Fe, NM 87501-2786  
Phone 505-827-6541  
Fax 505-827-6791

Electronic copies are available from the Department's Web site at [sde.state.nm.us](http://sde.state.nm.us).

Public hearings on the proposed changes were held in Ruidoso and Albuquerque on October 8 and October 9, 2002. Written comments will

be accepted until 5 p.m. Tuesday, November 5, 2002. Written comments may be mailed or faxed to the Special Education Office at the address above or e-mailed to [spedfeedback@sde.state.nm.us](mailto:spedfeedback@sde.state.nm.us). A final set of proposed changes will be presented to the State Board of Education for adoption at its meeting on November 20-22, 2002, in Santa Fe.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the State Board of Education Office at (505) 827-6571 as soon as possible.

The Board attempts to follow the order and date of items as listed on the Agenda; however, the order and date of specific items are tentative and may vary from the printed Agenda.

Comments, questions, or requests for copies of the Agenda should be directed to Mary Jo Bradley, State Department of Education, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 or (505) 827-6571.

**NEW MEXICO  
DEPARTMENT OF  
ENERGY, MINERALS AND  
NATURAL RESOURCES  
STATE PARKS DIVISION**

**NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENTS TO  
STATE PARK RULES**

The New Mexico State Parks Division of the Energy, Minerals and Natural Resources Department will hold a public hearing at **2:00 p.m. on November 1, 2002**, in Porter Hall, located at 1220 South St. Francis Dr., Santa Fe, New Mexico. Entrance is located on the first floor northeast side of the Energy Minerals and Natural Resources Building, (also known as the Pinon Building).

Purpose of the hearing is to consider proposed rule changes to:

19.5.1 NMAC **General Provisions** to add new definitions.

19.5.2 NMAC **Park Visitor Provisions** to update regulation for clarification of language in regulation so that it is clear and consistent with other Division regulations.

19.5.3 NMAC **Park Management and Development Plan**: to provide clarification

of language in Section 8 of the regulation so that it is clear and consistent with other Division regulations.

19.5.4 NMAC **Lease Lot and Mooring Site Provisions** and to remove all references to mooring sites; and update procedures for compliance and correct minor language so that it is clear and consistent with other Division regulations.

19.5.5 NMAC **Concession Activities** to update procedures for compliance and correct minor language so that it is clear and consistent with other Division regulations

Hearing will be conducted in accordance with the Open Meeting Act, NMSA 1 978, Section 10-15-1 et seq.; and the Energy, Minerals and Natural Resources Department Guidelines for Rulemaking (OFS 118). A copy of proposed regulations is available upon written request to **DRAFT REGULATIONS SECTION**, NM State Parks Division, P.O. Box 1147, Santa Fe, NM 87504-1147, or downloading a copy at [www.nmparks.com](http://www.nmparks.com), or calling (505) 476-3355 to request a draft.

Individuals are invited to make oral comments on the proposed regulations at the hearing or by submitting written comment by 5:00 p.m. on **Monday, November 4, 2002** to **DRAFT REGULATIONS SECTION**, NM State Parks Division, P.O. Box 1147, Santa Fe, New Mexico 87504-1147; or [nmparks@state.nm.us](mailto:nmparks@state.nm.us). 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 aid or service to attend or participate in the hearing, please contact Doris Archuletta, at least two weeks prior to the hearing or as soon as possible through New Mexico voice relay at 1-800-659-1779 or TTD 1-800 659-8331. Public documents can be provided in various formats if needed.

**NEW MEXICO  
DEPARTMENT OF HEALTH**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Health, will hold a public hearing on 7.14.2 NMAC "Quality Management System and Review Requirements for Providers of Community Based Services". The Hearing will be held at 9:00 a.m. on Thursday, November 14, 2002, in the Colgate Building, 2nd Floor, located at 2040 South Pacheco, Santa Fe, New Mexico 87505.

The public hearing will be conducted to

establish the Quality Management System and Review Requirements for Providers of Community Based Services.

A draft of the proposed regulation can be obtained from:

Lorraine Kohls, Business Operations Specialist  
Division of Health Improvement  
1190 St. Francis Drive, Suite N3078  
Santa Fe, NM 87502  
(505) 827-2920

Please submit any written comments regarding the proposed regulation to the attention of:

Sidney Buff, Deputy  
Division of Health Improvement  
1190 St. Francis Drive  
P. O. Box 26110  
Santa Fe, NM 87502-6110

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Lorraine Kohls, Business Operations Specialist, Division of Health Improvement at (505) 827-2920. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO  
DEPARTMENT OF HEALTH**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Health, will hold a public hearing on 7.14.3 NMAC "Incident Reporting and Investigation Requirements for Providers of Community Based Services". The Hearing will be held at 10:00 a.m. on Thursday, November 14, 2002, in the Colgate Building, located at 2040 South Pacheco, 2nd Floor, Santa Fe, New Mexico 87505.

The public hearing will be conducted to establish the Incident Reporting and Investigation Requirements for Providers of Community Based Services.

A draft of the proposed regulation can be obtained from:

Lorraine Kohls, Business Operations Specialist  
Division of Health Improvement  
1190 St. Francis Drive, Suite N3078  
Santa Fe, NM 87502  
(505) 827-2920

Please submit any written comments

regarding the proposed regulation to the attention of:

Sidney Buff, Deputy  
Division of Health Improvement  
1190 St. Francis Drive  
P. O. Box 26110  
Santa Fe, NM 87502-6110

If you are an individual with a disability who is in need of a special assistance or accommodations to attend or participate in the hearing, please contact Lorraine Kohls, Business Operations Specialist, Division of Health Improvement at (505) 827-2920. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

## NEW MEXICO DEPARTMENT OF HIGHWAY AND TRANSPORTATION

### STATE OF NEW MEXICO STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

**IN THE MATTER OF THE AMENDMENT OF 7 NMAC 32.20, POLICIES, PROCEDURES, AND STANDARDS FOR NEW MEXICO'S DRIVING WHILE IMPAIRED SCHOOLS; 18 NMAC 20.3, NEW MEXICO'S DRIVER EDUCATION SCHOOLS; 18 NMAC 20.8, MINIMUM STANDARDS FOR REGULATING DRIVER IMPROVEMENTS/DEFENSIVE DRIVING SCHOOLS; AND 18 NMAC 20.11, MINIMUM STANDARDS FOR BREATH IGNITION INTERLOCK DEVICES.**

### NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER

The purpose of this hearing is to obtain input on proposed amendments to four rules promulgated by the State Highway and Transportation Department: 7 NMAC 32.20, Policies, Procedures, and Standards for New Mexico's Driving While Impaired Schools; 18 NMAC 20.3, New Mexico's Driver Education Schools; 18 NMAC 20.8, Minimum Standards for Regulating Driver Improvements/Defensive Driving Schools; and 18 NMAC 20.11, Minimum Standards For Breath Ignition Interlock Devices.

#### I. SOLICI-

#### TATION OF COMMENTS

The Secretary of the State Highway and Transportation Department is issuing this Notice to provide an opportunity for public comment and to create a record for decisions on the proposed rule amendments. The Secretary requests written and oral comments from all interested persons and entities on the proposed rule amendments.

All relevant and timely comments, including data, views, or arguments, will be considered by the Secretary. In reaching his decision, the Secretary may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Secretary's reliance on such information is noted in the Order the Secretary ultimately issues.

#### II.

#### ORDER

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing be held on November 14, 2002, at 9:00 a.m. at the Sheraton Albuquerque Uptown Hotel, 2600 Louisiana Boulevard, Albuquerque, New Mexico 87110 for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule amendments. All interested persons wishing to present testimony may do so at the hearing. Interested persons should contact Michael Sandoval at the State Highway and Transportation Department at (505) 827-1584 ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule amendments on or before November 7, 2002. All relevant and timely comments, including data, views, or arguments will be considered by the Secretary before final action is taken in this proceeding. An original and four copies of written comments must be filed prior to the hearing with the State Highway and Transportation Department, P.O. Box 1149, Santa Fe, NM 87504-1149, Attn: Michael Sandoval. The caption of this notice must appear on each submittal. Comments will be available for public inspection during regular business hours in the office of Michael Sandoval of the State Highway and Transportation Department, 604 W. San Mateo, Santa Fe, NM, 87505.

IT IS FURTHER ORDERED that

the Secretary may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Department staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*, both on or before October 15, 2002. To obtain a copy of the proposed rule amendments: (1) visit the State Highway and Transportation Department's website at <http://www.nmshtd.state.nm.us> (click on: links; local governments; NMTSB); (2) write to Michael Sandoval, c/o Traffic Safety Bureau, P.O. Box 1149, Santa Fe, NM 87504-1149 and include the caption on this notice and a self-addressed envelope; (3) call Michael Sandoval at 505-827-1584 with the caption on this notice; or e-mail Michael Sandoval at [Michael.Sandoval@nmshtd.state.nm.us](mailto:Michael.Sandoval@nmshtd.state.nm.us) with the caption on this notice (you will receive a copy of the rule in Microsoft WORD format by return e-mail). The proposed rule amendments are also available for inspection and copying during regular business hours in the office of Michael Sandoval at the State Highway and Transportation Department's Traffic Safety Bureau, 604 W. San Mateo, Santa Fe, NM, 87505.

#### III.

#### ADVISEMENTS

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, NMSA 1978, §§2-11-1 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rule-making and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for him or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Michael

Sandoval on or before November 7, 2002 at (505) 827-1584. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Mr. Sandoval.

DONE, this 1st day of October, 2002.

STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT

Pete K. Rahn, Secretary

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 1:30 p.m., on November 13, 2002, at the State Personnel building, Room 230 (2600 Cerrillos Road), Santa Fe, New Mexico. The subject of the hearing will be Changes to Reconsideration of Audit Settlements.

The Medical Assistance Division (MAD) currently allows providers who disagree with an audit settlement to submit a written request for reconsideration within 30 days of the date on the notice of final settlement. The MAD Director currently makes the final decision on reconsiderations as well as the final fair hearing decision if a provider chooses to request a fair hearing. MAD proposes changes to the regulations that would enable the MAD Deputy Director for Support Services to make the final reconsideration decision and that the MAD Director would only make the final fair hearing decision. Also, other language contained in this regulation has been revised for clarity purposes.

Interested persons may testify or submit written comments no later than 5:00 p.m., November 13, 2002, to Robin Dozier Otten, Secretary-Designate, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative

format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/mad.html](http://www.state.nm.us/hsd/mad.html). or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m., on November 14, 2002, at the State Capitol, Room 303, Santa Fe, New Mexico. The subject of the hearing will be Electroconvulsive Treatment (ECT).

The proposed changes will allow ECT treatments to be a covered benefit when determined by a psychiatrist to be medically necessary and when rendered by eligible providers.

Interested persons may testify or submit written comments no later than 5:00 p.m., November 14, 2002, to Robin Dozier Otten, Secretary-Designate, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/mad.html](http://www.state.nm.us/hsd/mad.html). or by sending a self-addressed stamped envelope to

Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 1:30 p.m., on November 14, 2002, at the State Capitol, Room 303, Santa Fe, New Mexico. The subject of the hearing will be Elimination of Group of Eligibles for Specified Low Income Medicare Beneficiaries Program.

Under section 4732 of the Balanced Budget Act of 1997, New Mexico created a new group of eligibles called Qualified Individuals 1 (QI-1). Individuals entitled to Part A of Medicare, with income above 120% but less than 135% of the federal poverty level (FPL), with resources not to exceed twice the SSI limit, and who were not otherwise eligible for Medicaid were eligible for QI-1. This program was funded by a limited Federal block grant beginning in 1998 and ending after the year 2002. The only benefit is the payment of the Medicare Part B premium.

Because the Federal block grant funding ends after the year 2002, New Mexico proposes to repeal the policy for the group of eligibles called QI-1. Therefore, repeal of this policy will terminate the benefit of payment of the Medicare Part B premium for all recipients of the QI-1 program, and their eligibility will terminate effective December 31, 2002. Effective January 1, 2003, the QI-1 program will no longer exist.

Interested persons may testify or submit written comments no later than 5:00 p.m., November 14, 2002, to Robin Dozier Otten, Secretary-Designate, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days



advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/mad.html](http://www.state.nm.us/hsd/mad.html). or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

**NEW MEXICO BOARD OF MEDICAL EXAMINERS**

Notice

The New Mexico Board of Medical Examiners will convene a Public Rule Hearing on Friday, November 22, 2002 at 9:00 a.m. at the Lovelace Health Facilities, East Classroom, 5400 Gibson Blvd SE, Albuquerque, New Mexico. The purpose of the Rule Hearing is to: adopt a new rule on the Management of Chronic Pain with Controlled Substances by transferring and updating the existing Pain Management Guidelines; to amend Part 19 relating to Anesthesiologist Assistants to include provisions for enhanced supervision of new graduates; to amend Part 2 relating to approval of residency programs expand credentialing options and add provision for licensure by endorsement; and to amend Part 9 relating to fees for applicants using the HSC credential service.

A Board meeting will follow the hearing. The Board may go into executive session to discuss pending litigation, personnel or licensee matters. A final agenda for the Board meeting will be available at the Board office on November 21, 2002. Persons desiring to present their views on the proposed new rule or amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., November 15, 2002, to the Board office, 491 Old Santa Fe Trail, 2nd floor, Lamy Building, Santa Fe, NM, 87501.

Copies of the proposed rules are available on request by October 21, 2002, from the Board office at the address listed above, by phone (505) 827-5022, or on the internet at [www.state.nm.us/nmbme/whatsnew.html](http://www.state.nm.us/nmbme/whatsnew.html).

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 aid or service in order to attend or participate in the hearing or meeting, please contact the Executive Director at 491 Old Santa Fe Trail, Santa Fe, NM prior to the meeting. Public documents, includ-

ing the agenda and minutes, can be provided in various accessible formats. Please contact the Executive Director if a summary or other type of accessible format is needed.

**NEW MEXICO BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY**

Notice is hereby given that the New Mexico Board of Examiners for Occupational Therapy will convene a Rule Hearing to consider revisions to Title 16, Chapter 15, Part 1, General Provisions; Part 2, Licensing Requirements; Part 3, Supervision; Part 4, Continuing Education Requirements; Part 5, Disciplinary Proceedings; and Part 6, Fee Schedule.

This Hearing will be held on Friday, November 15, 2002, beginning at 12:00 p.m. The Hearing will be held in Classroom A/B at Presbyterian Healthplex, 6301 Forest Hills Dr., NE, in Albuquerque, New Mexico.

Notice is further given that the Board will convene a Regular Board Meeting on

Friday, November 15, 2002, immediately following the Rule Hearing. Final action on the proposed rules will be taken during this meeting. In addition to the open meeting, the Board may be going into closed session to consider matters pertaining to licensing. If you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please contact J.J. Walker at (505) 476-7085 at least two weeks prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

Persons desiring to present their views on the proposed rules may appear in person at said time and place or send their written comments to the Board of Examiners for Occupational Therapy, P.O. Box 25101, Santa Fe, New Mexico 87504. Copies of the proposed rules may be obtained at the Board office, 2055 S. Pacheco St, Suite 400, Santa Fe, New Mexico or by written request to the Board at P.O. Box 25101, Santa Fe, NM 87504. Written comments must be received by November 1, 2002.

If you have any questions regarding this meeting, please call (505) 476-7085.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PROPOSED	)	
REPLACEMENTS OF	)	
THE COMMISSION'S PIPELINE	)	
SAFETY RULES,	)	Docket No. 02-103-PL
	)	
TRANSPORTATION DIVISION STAFF	)	
OF THE PUBLIC REGULATION	)	
COMMISSION,	)	
	)	
	)	Petitioner.
	)	

AMENDED NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the New Mexico Public Regulation Commission ("Commission") proposes to repeal rules 18 NMAC 60.1.1 through 18 NMAC 60.1.27 and replace them with 18 NMAC 60.2.1 through 18 NMAC 60.2.24. The rules to be repealed concern pipeline safety; pipeline safety including excavation is covered in the replacement rules. This matter comes before the commission on staff's motion to initiate rulemaking ("motion"). Staff has moved the commission to commence a proceeding to revise the pipeline safety and excavation rules. The proposed, revised rules are attached as exhibit "A". The commission, having considered the motion and the attached, draft revised rules, and being otherwise fully advised, finds and concludes:

1. The Public Regulation Commission Act authorizes the commission to "adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties." NMSA 1978 section 8-8-4(B)(10) (2001).
2. NMSA 1978 section 70-3-13 (A) (1995) authorizes the commission to "promulgate, amend, enforce and repeal reasonable regulations establishing minimum safety standards for the transportation of oil, hazardous liquids . and gas and for the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of oil, hazardous liquid and or gas pipeline facilities." Id.

3. Staff proposes replacements for the commission's current pipeline safety rules. The replacement rules would adopt applicable Federal Office of Pipeline Safety regulations; eliminate duplicative material and address new duties and responsibilities regarding pipeline safety

4. The commission finds that it should consider repealing and replacing its pipeline safety rules as proposed by staff. The proposed rules, attached as exhibit A are identical to the proposed rules attached to the notice of proposed rules issued June 18, 2002.

5. The commission has received and will consider comments submitted by interested persons after the notice of proposed rulemaking issued on June 18, 2002. The commission will take written comments on the proposed rules from any person wishing to comment. Interested persons shall file their written comments no later than October 22, 2002. Any person wishing to respond to comments may do so by submitting a written response no later than October 29, 2002. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules shall be in legislative format. Copies of the proposed rules in electronic format may be obtained from the Commission's web site (www.nmprc.state.nm.us) to facilitate this requirement. Any proposed changes to exhibit A shall be submitted on paper, and the commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 formats). The label on the floppy disk shall clearly designate the name of the persons submitting the pro-

posed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice.

6. Comments on the proposed revised pipeline safety rules shall be sent to, and additional copies of the proposed rules, can be obtained from:

Bettie K. Cordova  
Attn: proposed rules in case no. 02-103-PL  
New Mexico Public Regulation  
Commission  
P.O. Box 1269  
Santa Fe, NM 87504-1269  
Telephone: (505) 827-4526

Additional copies of the proposed rules may also be downloaded from the commission's web site under "NMPRC proceedings." Copies of the existing pipeline safety rules may also be obtained from the commission's web site.

7. The commission will review all timely submitted written comments and will hold another public hearing to take oral comments regarding the proposed rules. A public hearing will be held on November 19, 2002 at 10:00 a.m. in Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico. A public hearing was held on August 22, 2002.

8. Interested persons should contact the commission to confirm the date, time and place of the public hearing, since hearings are occasionally rescheduled.

9. Any person with a disability requiring special assistance in order to participate in a hearing should contact Maria Brito at (505) 827-6940 at least 48 hours prior to the commencement of the hearing.

10. Copies of the notice of proposed rulemaking, without exhibit A, were sent to

all persons on the pipeline list, giving such persons actual notice of the August 22, 2002 hearing. Copies of this amended notice of proposed rulemaking should be sent to any other person requesting a copy, and should be published in three newspapers of general circulation in the state and in the New Mexico register.

IT IS THEREFORE ORDERED:

A. The replacement pipeline safety rules, attached to this notice as exhibit A, are proposed for adoption as permanent rules as provided by this notice. Interested persons shall file their written comments on the proposed rules as set forth in this notice.

C. A public hearing shall be held as provided in this notice. Staff of the Transportation Division shall mail a copy of this Notice without Exhibit A to all persons requesting a copy. Staff shall cause this notice to be published, without exhibit A, in three newspapers of general circulation in New Mexico and in the New Mexico register, and shall provide the notice by e-mail or by facsimile transmission to any persons who have so requested.

This notice is effective immediately.

ISSUED under the seal of the Commission at Santa Fe, New Mexico, this 17th day of September 2002.

NEW MEXICO PUBLIC REGULATION COMMISSION

Lynda M. Lovejoy, Chairwoman

Herb H. Hughes, Vice-Chairman

Rory McMinn, Commissioner

Jerome D. Block, Commissioner

Tony Schaefer, Commissioner

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AN INQUIRY )  
INTO RENEWABLE ENERGY AS A )  
SOURCE OF ELECTRICITY, ) Utility Case No. 3619  
)  
UTILITY DIVISION STAFF OF THE )  
PUBLIC REGULATION COMMISSION, )  
)  
Petitioner. )  
)

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the New Mexico Public Regulation Commission ("NMPRC" or "commission") proposes to adopt a new rule 573, repeal existing rule 572, replace a portion of rule 591, and to encourage the development of renewable energy in New Mexico.

The proposed new rule has two main parts: In the first, public utilities are to provide to all customers an energy portfolio with a

progressively greater percentage of service from renewable sources, preferably from generators in New Mexico. By January 1, 2004, the portfolio standard will be 4%. Then, the standard increases to 7% by January 1, 2007. Finally, the standard becomes 10% by January 1, 2010. A utility may satisfy some or all of these requirements through the purchase of renewable energy, provided that the renewable energy is delivered to retail customers in New Mexico. The proposed rule requires that no single renewable source type shall constitute more than 50% of the portfolio of any utility.

The second part of the proposed rule specifies that every utility must provide additional electricity from renewable sources to any customer who requests it. The price charged for these voluntary programs is to be established in renewable energy tariffs filed with and approved by the commission. The rule also requires a utility to offer to renewable energy sources generating less than 100 kw a reasonable net metering option that avoids any harm to the operation and safety of the utility electrical system.

The proposed rule would be adopted under the authority granted the commission by the New Mexico Constitution, article XI, section 2, and by the Legislature pursuant to NMSA 1978 sections 8-8-4; 8-8-15; 62-3-1; 62-3A-2; 62-3A-19; 62-3A-20; 62-6-4; 62-8-2; 62-8-7; and 62-6-19.

A copy of the proposed rule to be promulgated as NMPRC rule 573 is attached hereto as "exhibit A". The rule has been formatted for inclusion in the New Mexico Administrative Code pursuant to NMSA 1978 section 14-4-3 and, if adopted as proposed, would be cited as 17 NMAC 10.573.

The proposed rule specifies an effective date of January 31, 2003. Any person wishing to comment on the proposed NMPRC rule 573, 17 NMAC 10.573 may do so by submitting written comments no later than October 23, 2002. Any person wishing to respond to comments may do so by submitting written response comments no later than November 6, 2002. Comments suggesting changes to the rule as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice and must be served on all persons in the commission official service list for this case. Additional copies of the proposed rule can

be obtained from, and comments on the proposed rule shall be sent to:

Manager Maria Brito, Records  
 Division NMPRC - Utility  
 Marian Hall  
 224 East Palace Avenue  
 Santa Fe, New Mexico  
 87501  
 Telephone: (505) 827-6940

Pursuant to NMSA 1978, section 8-8-15 (B), this notice, including exhibit A, shall be mailed at least thirty days prior to the hearing date to all persons who have requested advance notice, and it must be published, without exhibit A, in two newspapers of general circulation in the state and in the New Mexico Register.

A public hearing will begin at 9:30 on Thursday, November 14, 2002, at the offices of the commission at Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico, to receive oral comment. Any person with a disability requiring special assistance in order to participate in this proceeding should contact the offices of the commission as soon as possible prior to the commencement of the proceedings described herein. Interested persons should contact the commission for confirmation of the hearing date, time, and place since hearings are occasionally rescheduled.

Copies of any final order adopting the proposed rule will be sent, along with copies of the particular rules adopted or amended, to all affected utilities, commentators in the case, and individuals requesting such copies. Copies of any final order will also be sent, as will copies of this notice, to parties to case nos. 3312 and 2860.

Issued under the seal of the commission at Santa Fe, New Mexico, this 1st day of October, 2002.

New Mexico Public Regulation Commission

\_\_\_\_\_  
 Lynda M. Lovejoy, Chairwoman

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 Herb H. Hughes, Vice Chairman

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 Rory McMinn, Commissioner

\_\_\_\_\_  
 Jerome D. Block, Commissioner

\_\_\_\_\_  
 Tony Schaefer, Commissioner

**NEW MEXICO  
 DEPARTMENT OF  
 PUBLIC SAFETY**

**STATE OF NEW MEXICO  
 DEPARTMENT OF PUBLIC SAFETY**

**IN THE MATTER OF THE ADOPTION  
 OF 10.5.2 NMAC, UNAUTHORIZED  
 USE OF DEPARTMENT IDENTITY**

**NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER**

The purpose of this hearing is to obtain input on a proposed new rule: 10.5.2 NMAC, Unauthorized Use of Department Identity.

**I. SOLICITATION OF COMMENTS**

The Secretary of the Department of Public Safety is issuing this Notice to provide an opportunity for public comment and to create a record for a decision on the proposed rule. The Secretary requests written and oral comments from all interested persons and entities on the proposed rule.

All relevant and timely comments, including data, views, or arguments, will be considered by the Secretary. In reaching his decision, the Secretary may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Secretary's reliance on such information is noted in the Order the Secretary ultimately issues.

**II. ORDER**

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing be held on November 20, 2002, at 9:00 a.m. in Classroom 5 of the Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule. All interested persons wishing to present testimony may do so at the hearing. Interested persons should contact David C. Casteñeda at the Department of Public Safety at (505) 827-9060 ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written com-

ments on the proposed rule on or before November 13, 2002. All relevant and timely comments, including data, views, or arguments will be considered by the Secretary before final action is taken in this proceeding. An original and four copies of written comments must be filed prior to the hearing with the Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87501-1628, Attn: David C. Casteñeda. The caption of this notice must appear on each submittal. Comments will be available for public inspection during regular business hours in the office of David C. Casteñeda of the Department of Public Safety, 4491 Cerrillos Road, Santa Fe, NM, Room 293.

IT IS FURTHER ORDERED that the Secretary may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Department staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*, both on or before October 15, 2002. To obtain a copy of the proposed rule: (1) write to David C. Casteñeda, P.O. Box 1628, Santa Fe, NM 87501-1628 and include the caption on this notice, a self-addressed envelope and a check for \$5.00 made payable to the Department of Public Safety to cover the cost of copying and postage; (2) call David C. Casteñeda at 505-827-9060 with the caption on this notice (you will be billed \$5.00 to cover the cost of copying and postage); or e-mail David C. Casteñeda at [dcastaneda@dps.state.nm.us](mailto:dcastaneda@dps.state.nm.us) with the caption on this notice (you will receive a copy of the rule in Microsoft WORD format by return e-mail at no charge). The proposed rule is also available for inspection and copying during regular business hours in the office of David C. Casteñeda of the Department of Public Safety, 4491 Cerrillos Road, Santa Fe, NM, Room 293.

### III. ADVISEMENTS

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of gener-

al application. An individual who appears for him or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact David C. Casteñeda on or before November 13, 2002 at (505) 827-9060. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Mr. Casteñeda.

DONE, this 30th day of September, 2002.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

Thomas L. English, Secretary

## NEW MEXICO RACING COMMISSION

### 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 High Desert Room, Sunray Park and Casino, #39 Road 5568, Farmington, New Mexico, commencing in executive session at 3:00 o'clock p.m. on Tuesday, October 15, 2002. The public session will begin at 8:30 o'clock a.m. on Wednesday, October 16, 2002. The Commission will consider adoption of proposed new/amended rules for incorporation into the Rules Governing Horse Racing in New Mexico Nos. Subsection N of 15.2.2.8 NMAC (regarding barns) Subsection E of 15.2.4.8 NMAC (regarding claiming procedures) and Subsection M of 16.47.1.8 NMAC (regarding license renewals), and other matters of general business.

Copies of these proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission,

300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87108, (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: \_\_\_\_\_

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

### ANNOUNCEMENT

The Taxation and Revenue Department will not file at this time the proposed amendments to regulations 3.16.4.12 NMAC and 3.16.4.13 NMAC to Section 7-13-4 NMSA 1978 of the Gasoline Tax Act. Based on written comments and oral comments received at the proposed regulation hearing on September 16, 2002, Department officials believe the amendments warrant further study.

## End of Notices and Proposed Rules Section

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

Explanatory paragraph: This revision to 20.2.70 NMAC is being made in order to reflect a change made by EPA to the definition of "Major Source." The change is located in Subparagraph (aa) of Paragraph (2) of Subsection Q of 20.2.70.7 NMAC. EPA made their change on November 27, 2001 and requires states to make a corresponding change and submit it for EPA approval by November 27, 2002. Testimony and exhibits concerning this change were presented in an Environmental Improvement Board (EIB) hearing on September 13, 2002. The New Mexico Environment Department, Air Quality Bureau is using the short form publication with the approval of the Office of General Counsel who has stated that definition represents the change in its entirety.

**20.2.70.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**Q. "Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same Major Group (i.e., all have the same two-digit code), as described in the Standard Industrial Classification Manual, 1987, and that is described in paragraphs (1), (2) or (3) below.

(1) A major source under section 112 of the Federal Act, which is defined as:

(a) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to section 112 (b) of the Federal Act, 25 or more tons per year of any combination of such hazardous air pollutants (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator), or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units, whether or not such units are in a contiguous area or under com-

mon control, to determine whether such units or stations are major sources.

(b) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this paragraph, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plant;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) ~~[All other stationary source categories regulated by a standard promulgated as of August 7, 1980, under the section 111 or 112 of the Federal Act, but only with respect to those air pollutants that have been regulated for that category.] Any other stationary source category, which as of~~

August 7, 1980 is being regulated under section 111 or 112 of the Federal Act.

(3) A major stationary source as defined in part D of title I of the Federal Act, including:

(a) For ozone non-attainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or more per year in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Federal Act, that requirements under section 182(f) of the Federal Act do not apply;

(b) For ozone transport regions established pursuant to section 184 of the Federal Act, sources with the potential to emit 50 tons or more per year of volatile organic compounds;

(c) For carbon monoxide non-attainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide; and

(d) For particulate matter (PM10) non-attainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM10.

## NEW MEXICO GENERAL SERVICES DEPARTMENT TRANSPORTATION SERVICES DIVISION

**Repealing GSD 90-202, State Motor Vehicle Regulation, filed on 11/5/90 is hereby-repealed effective November 1, 2002. Replaced by NMAC 1.5.3; General Government Administration; Public Property Management; Administration and Use of State Vehicles.**

## NEW MEXICO GENERAL SERVICES DEPARTMENT TRANSPORTATION SERVICES DIVISION

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION  
CHAPTER 5 PUBLIC PROPERTY**

**MANAGEMENT****PART 3 ADMINISTRATION  
AND USE OF STATE VEHICLES****1.5.3.1 ISSUING AGENCY:**

General Services Department,  
Transportation Services Division.

[1.5.3.1 NMAC - N, 11-01-02]

**1.5.3.2 SCOPE:**

**A.** This rule applies to all public agencies that use state vehicles.

**(1)** Sections 1.5.3.1 through 1.5.3.27 NMAC apply to motor pool vehicles leased by a state agency.

**(2)** Sections 1.5.3.9 through 1.5.3.19 NMAC and 1.5.3.25 through 1.5.3.27 NMAC apply to state vehicles in the custody of a state agency.

**B.** This rule also applies to the legislative and judicial branches, public schools, and institutions of higher education to the extent they lease motor pool vehicles.

[1.5.3.2 NMAC - N, 11-01-02]

**1.5.3.3 STATUTORY**

**AUTHORITY:** NMSA 1978 Sections 15-8-6 and 15-8-10.

[1.5.3.3 NMAC - N, 11-01-02]

**1.5.3.4 DURATION:**

Permanent.

[1.5.3.4 NMAC - N, 11-01-02]

**1.5.3.5 EFFECTIVE DATE:**

November 1, 2002 unless a later date is cited at the end of section.

[1.5.3.5 NMAC - N, 11-01-02]

**1.5.3.6 OBJECTIVE:**

The purpose of this rule is to implement the Transportation Services Act, NMSA 1978 chapter 15, article 8, by establishing standards and procedures for the administration and use of state vehicles by state agencies.

[1.5.3.6 NMAC - N, 11-01-02]

**1.5.3.7 DEFINITIONS:**

In addition to the definitions in NMSA 1978 Section 15-8-3, as used in this rule:

**A. agency vehicle coordinator** means the individual assigned by Agency Head or designee who is responsible for providing motor vehicle information to TSD.

**B. authorized driver** means a public employee holding a valid New Mexico driver's license and a defensive driving certificate who is permitted to use a state vehicle in furtherance of official state business. A valid New Mexico driver's license **does not** include provisional, limited, restricted or administrative permits.

**C. authorized passenger** means an individual who is permitted to occupy a state vehicle in furtherance of offi-

cial state business or a person who has received prior authorization from the TSD Director to occupy a state vehicle. The TSD Director will provide, upon request blanket approvals for those agencies who regularly transport passengers in the furtherance of official state business.

**D. commute** means domicile-to-duty privilege provided by a Cabinet Secretary or Agency Head to vehicle operators where it is in the state's best interest to allow these employees to use a state vehicle to and from work and residence. (Refer to Section 1.5.3.17 NMAC, AUTHORIZATION TO COMMUTE).

**E. custody (of a state vehicle)** means the right to exercise final decision-making authority with respect to the purchase, title and registration, use, administration, operation, maintenance, replacement, and disposal of a state vehicle in accordance with state law and regulations.

**F. GSD** means the General Services Department

**G. G-series license plate** means a distinctive government license plate issued by the TSD via Taxation and Revenue Department for state vehicles marked as required by NMSA 1978 Section 15-8-6.

**H. motor pool vehicle** means a state vehicle in the custody of the division that is available for short-term or long-term lease to state agencies.

**I. OIG** means the Office of Inspector General of the Taxation and Revenue Department.

**J. passenger vehicle** means a motor vehicle used to transport human beings and includes sedans, station wagons, sport utility vehicles, pick-up trucks up to 3/4-ton, and mini-vans through 15-passenger vans.

**K. provisional license** is the second stage of the graduated driver's licensing process that is intended to allow persons age 15 years and six months to operate a vehicle for a twelve month period free of any traffic violations before obtaining a driver's license. This license has established restrictions as to hours of operation and passenger requirements.

**L. RMD** means the Risk Management Division of the General Services Department.

**M. Secretary** means the Cabinet Secretary of the General Services Department.

**N. special-use vehicles** means vehicles designated as such by the Director, including but not limited to emergency and law enforcement vehicles, buses, tractors, boats, trailers, snow cats, vehicles of a special design or construction that

effectively limits their use for a particular purpose, passenger vehicles that have been modified to support a state agency's mission, and all other vehicles that are not passenger vehicles.

**O. state agency** means the State of New Mexico or any of its branches, departments, boards, commissions, instrumentalities or institutions. Includes any public agency authorizing an officer or employee use of motor pool vehicle.

**P. state employee** means any person who has been elected to, appointed to, or hired for any state office and who receives compensation in the form of salary or is eligible for per diem and mileage;

**Q. street license plate** means a regular passenger license plate issued to a state vehicle which is in the custody of a state agency and can be traced to that state agency.

**R. Transportation Services Division** or "TSD" means the Transportation Services Division of the General Services Department.

**S. TSD director** means the director of the Transportation Services Division.

**T. undercover license plate** means a regular passenger license plate issued to a state vehicle which is registered in a fictitious name and address that cannot be traced to the state agency having custody of the vehicle.

**U. valid New Mexico driver's license** means driver's license issued by the Motor Vehicle Division not including provisional, limited, restricted, any court-ordered restricted or administrative license or permit. An "H" restriction may allow an individual to operate their privately owned vehicle (POV) to and from employment. TSD will not authorize these individuals to operate a state-owned vehicle.

[1.5.3.7 NMAC - N, 11-01-02]

**1.5.3.8 LEASE OF MOTOR  
POOL VEHICLES:**

**A.** A state agency may lease a motor pool vehicle from the division:

**(1)** on a short-term lease for a period not exceeding six (6) consecutive months; or

**(2)** on a long-term lease for a period exceeding six (6) consecutive months.

**B.** Rates for the lease of motor pool vehicles are based on operational and replacement costs for the type of vehicle leased. The division will provide current rates and policies for the lease of motor pool vehicles upon request.

**C.** Either the division or a state agency may terminate the lease of a

motor pool vehicle per the leasing agreement.

[1.5.3.8 NMAC - N, 11-01-02]

**1.5.3.9 MOTOR POOL VEHICLE LICENSE PLATES:** The Director shall determine which type of license plate shall be issued for each motor pool vehicle.

**A.** A state agency may request an undercover license plate for any motor pool vehicle it uses for legitimate undercover law enforcement purposes.

**B.** A state agency may request a street license plate for any motor pool vehicle it uses in situations in which a G-series license plate would be inappropriate. The state agency must justify the need for a street license plate.

**C.** The Director shall issue a G-series license plate for all other motor pool vehicles.

[1.5.3.9 NMAC - N, 11-01-02]

**1.5.3.10 DOCUMENTS REQUIRED TO BE IN STATE VEHICLES:** Each state agency shall ensure that current copies of the following documents are kept in the glove compartment of all state vehicles in its custody.

**A. Fuel credit cards.** Detailed instructions and procedures for use of the fuel credit card, a list of authorized purchases, and a current list of statewide-authorized vendors.

**B. Vehicle maintenance.** Manufacturer's specifications or specifications of the Director.

**C. Emergency repairs.** Instructions and procedures for emergency repairs of mechanical breakdowns during and after normal business hours.

**D. Accident reports.** The Auto Accidents In State Vehicles package provided by RMD.

[1.5.3.10 NMAC - N, 11-01-02]

**1.5.3.11 AUTHORIZED DRIVERS AND PASSENGERS:**

**A. Authorized drivers.** TSD Director may authorize a state employee who possess a current valid New Mexico driver's license and who has completed a defensive driving course or orientation prescribed by the Division to operate a state vehicle. The state employee must have the appropriate class of driver's license to drive any state vehicle that is not a passenger vehicle.

**B. Authorized passengers.** Only authorized passengers may occupy a state vehicle.

A person who is not a state employee must obtain written authorization from the TSD Director before occupying a state vehicle.

**C.** TSD Director may suspend or revoke the state vehicle operator privileges of any state employee who permits a person who is not an authorized driver to operate a state vehicle or who transports, or permits the transportation of, a person who is not an authorized passenger. In addition, such state employee may be held personally liable to the extent permitted by law for any liability for personal injury, death or property damage arising out of the unauthorized use or occupancy of the state vehicle.

**D.** Exceptions. Nothing in this section shall be construed to prohibit the use or occupancy of a state vehicle:

(1) to render emergency aid or assistance to any person; or

(2) by private sector automobile mechanics or maintenance and repair personnel performing required maintenance or repairs.

[1.5.3.11 NMAC - N, 11-01-02]

**1.5.3.12 DEFENSIVE DRIVING COURSE:**

**A. Course availability.** The division shall offer defensive driving classes in Santa Fe, Albuquerque and Las Cruces. A state agency or state employee may contact the division for information about scheduled classes, locations, costs, and registration.

**B. Certification required.** The division may require a person who seeks to operate a motor pool vehicle to provide proof of current certification. If a state employee needs to operate a state vehicle in furtherance of state business but has not successfully completed the defensive driving course, the state employee must register for the next available defensive driving course. The state agency must request waiver of the certification requirement from the TSD Director; the waiver request shall include the state employee's name and New Mexico driver's license number, and the date the state employee is scheduled to attend the defensive driving course.

**C. Re-Certification.** Each public employee is required to take a defensive driving refresher course every four (4) years. Employees must take at least a four (4) hour course provided by TSD. All state employees who are authorized to operate state-owned vehicles have four (4) years from the effective date of this rule to become re-certified.

**D. List of certified state employees.** The agency vehicle coordinator shall maintain a list of certified state employees.

**E. Lost certificates.** If a state employee loses his or her defensive

driving certificate, the division will issue a replacement certificate or register the state employee for a defensive driving course.

[1.5.3.12 NMAC - N, 11-01-02]

**1.5.3.13 TRAFFIC LAWS AND OPERATOR CONDUCT:**

**A.** Authorized drivers shall obey all applicable traffic laws while operating a state vehicle.

**B.** Authorized drivers must exercise appropriate caution and prudence while operating a state vehicle.

**C.** Authorized drivers shall not engage in discourteous behavior or inappropriate conduct while operating a state vehicle.

**D.** Authorized drivers shall not use state vehicles for inappropriate or illegal activities.

**E.** Authorized drivers shall only utilize a cell phone with a hand-free device while operating a motor vehicle.

**F.** Authorized drivers shall operate state vehicles below posted at or below posted speed limits.

**G.** An authorized driver who receives a traffic citation or parking ticket while using a state vehicle shall be personally responsible for the citation or ticket. If the Division receives a traffic citation or parking ticket involving a motor pool vehicle, the Director will forward it to the state agency leasing the state vehicle on the date and time the citation was issued.

[1.5.3.13 NMAC - N, 11-01-02]

**1.5.3.14 USE OF ALCOHOL, CONTROLLED SUBSTANCES, DRUGS, TOBACCO, WEAPONS AND PETS PROHIBITED:**

**A.** No person shall operate a state vehicle while under the influence of intoxicating alcohol, controlled substances, or drugs.

**B.** No person shall transport intoxicating alcohol of any type, whether in open or unopened containers, while operating or occupying a state vehicle, unless the person is an employee of the State Alcohol and Gaming Division of the Regulation and Licensing Department or a state law enforcement officer investigating criminal activities.

**C.** No person shall operate a state vehicle when he or she is so impaired by a legal drug that he or she is rendered incapable of operating a motor vehicle in a safe and responsible manner.

**D.** No person shall smoke or use smokeless tobacco products of any type in any state vehicle.

**E.** No person shall possess a weapon while operating a motor vehicle unless they are a certified law enforcement

officer on duty.

**F.** No pets allowed at any time in state vehicles. The Director may authorize canine patrols or transportation of other animals upon written request.  
[1.5.3.14 NMAC - N, 11-01-02]

#### 1.5.3.15 SEAT BELT USE:

**A.** All drivers and occupants of state vehicles shall wear seat belts.

**B.** A driver shall observe child safety and restraint laws at all times when transporting a minor in a state vehicle in furtherance of official state business.

**C.** Violation of this law may result in loss of state operator privileges.

[1.5.3.15 NMAC - N, 11-01-02]

#### 1.5.3.16 USE OF FUEL CREDIT CARDS:

**A.** All state agencies and authorized drivers are required to use the department-issued fuel credit card for authorized purchases.

**B.** The Director shall assign a single fuel credit card to each vehicle and a Personal Identification Number (PIN) to each authorized driver.

**C.** Whenever possible, authorized drivers shall use self-service fuel pumps when refueling motor pool vehicles. Authorized drivers are encouraged to use alternative fuels when they are available.

**D.** If an authorized driver uses the fuel credit card to purchase an unauthorized item or service, the state agency shall collect the cost of the unauthorized purchase from the authorized driver. The state agency or the Director may suspend or revoke the state vehicle operator privileges of an authorized driver for misuse of a fuel credit card. A state agency may also take other appropriate disciplinary action.

**E.** A state agency or authorized driver shall immediately notify the Director if the fuel credit card for a motor pool vehicle is lost.

[1.5.3.16 NMAC - N, 11-01-02]

#### 1.5.3.17 AUTHORIZATION TO COMMUTE:

**A.** No person shall use a state vehicle for private use.

**B.** A state agency must develop a written policy that allows state employees to use motor pool vehicles to commute between work and residence if doing so assists the state agency in accomplishing its mission.

**C.** Each state agency permitting state employees this domicile-to-duty privileged shall maintain current records of:

(1) all commuters by name and position;

(2) the number of miles each state employee who commutes drives annually between work and residence using a state vehicle;

(3) the number of times annually a state employee who is authorized to use a state vehicle to commute between work and residence is called back to work when the state employee is off duty;

(4) review all authorizations to use a state vehicle to commute at least once a year; and

(5) forward a copy of the report and subsequent changes to TSD annually.

[1.5.3.17 NMAC - N, 11-01-02]

#### 1.5.3.18 SUSPENSION OF STATE VEHICLE OPERATOR PRIVILEGES:

**A.** The Director shall automatically suspend a state employee's authorization to operate a state vehicle if the state employee's New Mexico driver's license expires or is revoked or suspended.

**B.** The Director or the state agency that employs an authorized driver may suspend or revoke a state employee's state vehicle operator privileges for failure to comply with any provision of this rule. A state agency shall report each suspension or revocation to the Director. Upon request of a state agency, the Director will provide the names of any state employees employed by the requesting state agency whose state vehicle operator privileges have been suspended or revoked.

**C.** In order to determine that state employees authorized to drive a state vehicle have a valid driver's license, the Director will review semi-annually the current driving records of all state employees authorized to drive a state-owned vehicle. The director will review the current status of the driving record of any individual employee upon receipt of any complaint or police report of alleged vehicle abuse.

**D.** The Director shall review all complaints of alleged fraud, waste, and abuse involving state vehicles, and shall forward them to the head of a state agency when appropriate.

[1.5.3.18 NMAC - N, 11-01-02]

#### 1.5.3.19 STATE VEHICLE CARE AND MAINTENANCE:

**A.** An authorized driver must turn off the ignition, close all windows, and lock the doors and trunk of a state vehicle whenever the state vehicle is left unattended.

**B.** State agencies must ensure that appropriate maintenance servicing is done on all motor pool vehicles at

regular mileage or time intervals in accordance with the manufacturer's specifications or as otherwise specified by the Director.

**C.** State agencies are responsible for the cleanliness of state vehicles inside and out. State agencies are also responsible for checking the state vehicle's vital engine fluids and refueling whenever required.

No person shall abuse or misuse a state vehicle. The Director or a state agency may assess authorized drivers and authorized passengers for the costs of loss of or damage to a state vehicle if the loss or damage was caused by reckless driving or driving while under the influence of intoxicating liquor, controlled substances or drugs.

**D.** The Director will charge a state agency for the cost of repairing a state vehicle damaged due to abuse. The Director will charge a state agency if the state agency neglects a motor pool vehicle or fails to inform the Director of possible damage or a maintenance problem. The Director may recall a motor pool vehicle or suspend or revoke the state vehicle operator privileges of an authorized driver for damage or improper care of a motor pool vehicle.

**E.** State agencies must ensure that appropriate maintenance servicing is done on all motor pool vehicles at regular mileage or time intervals in accordance with the manufacturer's specifications or as otherwise specified by the Director

(1) The state agency is responsible for ensuring that oil and oil filters on all motor pool vehicles are changed in accordance with the manufacturer's specifications or every 5,000 miles, and that all other preventive maintenance functions are performed in accordance with the prescribed service schedule.

(2) A state agency may, without the prior approval of the Director, use the fuel credit card to perform minor repairs of emergency equipment, such as changing windshield wipers, repairing a damaged tire, replacing a fan belt, or adding a quart of oil.

**F.** State agencies may not display any commercial advertising on a state vehicle at any time. A state agency may display its toll-free telephone number on a state vehicle. A state agency must display the "1-800-627-6639" toll free telephone number bumper sticker on the rear bumper of all state vehicles with G-series license plates. The agency head must approve any other bumper sticker, plaque or signage prior to affixing it to a state vehicle. If the state vehicle is a **commercial or third-party leased vehicle**, the Director



must also approve such signage before it is affixed to a state vehicle.

**G.** No person shall alter, modify, convert, or improve the original vehicle equipment of any state vehicle without the prior written authorization of the Director.

[1.5.3.19 NMAC - N, 11-01-02]

### **1.5.3.20 STATE VEHICLE RETURN:**

**A.** The Director may rotate state vehicles within an agency or between agencies if the Director determines that a state agency is under or over utilizing an assigned vehicle.

**B.** A state agency shall return a motor pool vehicle to the division within thirty (30) calendar days if the Director finds that the state agency has violated the terms of the lease agreement.

**C.** The Director will notify state agencies if there is a manufacturer's recall applicable to a state vehicle. The state agency shall take the state vehicle to the appropriate dealer for service or modification, and shall, upon completion of the recall-related work, notify the Director.

**D.** The Director shall determine when a motor pool vehicle needs to be replaced. Life cycles are determined primarily from use requirements provided by the agency vehicle coordinator. A state agency must return a motor pool vehicle to the division upon receipt of a new or different motor pool vehicle.

**E.** A state agency may return a long-term leased motor pool vehicle in accordance with the terms of the leasing agreement.

**F.** A state agency shall not transfer or receive control or custody of a state vehicle to or from another state agency without the prior written authorization of the Director.

[1.5.3.20 NMAC - N, 11-01-02]

### **1.5.3.21 EMERGENCY REPAIRS AND MECHANICAL BREAKDOWN:**

An authorized driver shall immediately take steps to correct any mechanical or operating problem that occurs while a state vehicle is in operation. An authorized driver shall in no case continue to operate a state vehicle if continued operation could endanger any person or property.

[1.5.3.21 NMAC - N, 11-01-02]

**1.5.3.22 UNDER-UTILIZATION OF STATE VEHICLES:** The Director may reallocate state vehicles that are being under utilized.

**A.** The Director shall analyze monthly state vehicle mileage statistics.

**B.** If the Director finds that a state vehicle is accumulating low mileage, the Director will notify the state agency in writing that a state vehicle assigned to it is being under utilized.

**C.** The state agency shall examine its utilization of the state vehicle and respond in writing justifying its need for the state vehicle and describing its intra-agency vehicle rotation plan. If the state agency does not have such a plan, the Director will rotate vehicles among state agencies.

**D.** The Director will continue to monitor mileage utilization of the state vehicle for several months. If the agency's use of the state vehicle does not increase, the Director may recall the vehicle or replace it with a state vehicle that has more mileage.

**E.** The Director will consider under utilization of state vehicles when evaluating a state agency's requests for additional or different vehicles.

[1.5.3.22 NMAC - N, 11-01-02]

### **1.5.3.23 VEHICLE DISPOSAL PROGRAM:**

A state agency may request disposal of a state vehicle. The Director will consider disposing of a state vehicle when:

**A.** the state vehicle reaches the end of its predetermined accounting and life cycle;

**B.** the estimated cost of repairs exceeds the value of the state vehicle; or

**C.** the state vehicle is inoperable or obsolete.

[1.5.3.23 NMAC - N, 11-01-02]

### **1.5.3.24 OUT OF STATE AND OUT OF COUNTRY TRAVEL IN STATE VEHICLES:**

**A.** The Director must approve all out of state and out of country travel in state vehicles in advance.

**B.** The agency vehicle coordinator must obtain the proper insurance and registration documentation for out of country travel.

[1.5.3.24 NMAC - N, 11-01-02]

### **1.5.3.25 ACCIDENTS AND ACCIDENT REPORTING:**

**A.** An authorized driver shall file a police accident report for any auto accident in a state vehicle as soon as possible, especially if there is property damage, bodily injury, or the authorized driver is possibly at fault. The authorized driver shall provide a copy of the police accident report to the agency vehicle coordinator, and, if the state vehicle is a motor pool vehicle, shall also provide a copy to the Director. If the authorized driver did not

file a police report, the agency vehicle coordinator must complete the Automobile Loss Notice and include the authorized driver's written statement describing the accident in detail.

**B.** RMD will assist the Director in maintaining accident reports and filing insurance claims for state vehicles.

[1.5.3.25 NMAC - N, 11-01-02]

### **1.5.3.26 CUSTODY OF STATE VEHICLES:**

**A.** Determination by Director. The Director may, on his own initiative or in response to a written request from a state agency, determine that custody of certain state vehicles should reside in a state agency. The Director shall make such determination in accordance with the criteria set forth in subsection B of NMSA 1978 Section 15-8-6. The division shall retain title, under electronic seal, to all state vehicles in the custody of other state agencies.

**B.** Responsibilities of state agencies with custody of state vehicles. A state agency that has custody of one or more state vehicles shall:

(1) appoint a agency vehicle coordinator who shall be responsible for answering any questions from the Director regarding state vehicles in the state agency's custody;

(2) maintain an accurate inventory of all state vehicles in its custody, including any public property with a license plate;

(3) submit an inventory report to the Director by August 30 of each year for the fiscal year ending on June 30 of that year;

(4) notify the Director within 30 days of any change in the name, address, telephone number, or facsimile number of the state agency or the agency vehicle coordinator, or any change in the status of state vehicles in the state agency's custody;

(5) register all state vehicles using the name GSD/SCFA as the first lien holder or Name 1; the name of the state agency as Name 2, and the state agency accounting code as "VIN 2";

be responsible for all operation, maintenance, repair, and replacement costs of state vehicles in the state agency's custody;

(6) be responsible for all operation, maintenance, repair, and replacement costs of state vehicles in the state agency's custody;

(7) budget appropriately for replacement of state vehicles;

(8) develop written inventory, administrative, operational, and replacement policies;

(9) develop a written policy regarding the use of state vehicles for commuting between work and residence;

(10) track all special use vehicles

and vehicles leased or purchased totally or partially with federal funds using the Vehicle Identification Number (VIN) instead of the license plate number;

(11) maintain insurance coverage on state vehicles in accordance with the requirements established by RMD.

C. License plates. OIG shall determine which type of license plate shall be issued for each vehicle in the custody of a state agency based on information provided by the requesting agency. [1.5.3.26 NMAC - N, 11-01-02]

#### 1.5.3.27 WAVIER FROM TSD

**RULES:** The GSD Secretary or his authorized designee may waive any portion of this rule provided the request is submitted in writing.

[1.5.3.27 NMAC - N, 11-02-02]

#### HISTORY OF 1.5.3 NMAC:

**Pre NMAC History:** Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

GSD 85-202, State Motor Vehicle Regulations, filed 10-28-85;  
GSD 90-202, State Motor Vehicle Regulations, filed 11-05-90.

#### History of Repealed Material:

GSD 90-202, State Motor Vehicle Regulations, filed 11-05-90, **repealed** effective 11-01-02.

#### Other History:

GSD 90-202, State Motor Vehicle Regulations, filed 11-05-90 **replaced** by 1.5.3 NMAC named Administration and Use of State Vehicles, effective 11-01-02.

## NEW MEXICO BOARD OF INTERIOR DESIGN

This is an amendment to 16.42.5 NMAC, Section 8. This rule was also renumbered and reformatted to comply with current NMAC requirements.

#### 16.42.5.8 FEES:

A. An applicant for licensure may request an application packet from the board. The application must be accompanied by ~~[a forty five dollar (\$45.00)]~~ one hundred dollars (\$100.00) non-refundable fee.

B. The initial certificate of licensure shall be two hundred dollars (\$200.00).

C. The renewal fee shall be ~~[one hundred fifty dollars (\$150.00)]~~ two hundred fifty dollars (\$250.00) due on the first day of December of each year. In the

event a licensee fails to renew his license by December of any year, the board may reinstate the license upon payment of a late fee of ~~[fifty dollars (\$50.00)]~~ one hundred dollars (\$100.00) and any outstanding fees, proof of compliance with all other requirements, and in additions, the board may require the former licensee to appear before the board, and/or successfully pass an examination prior to reinstating the license.

D. The fee for a duplicate original certificate of licensure to replace a lost certificate of licensure, or a replacement certificate of licensure with a new name, or for a board-verified copy of a certificate of licensure shall be twenty-five dollars (\$25.00).

[11/10/97; 16.42.5.8 NMAC - Rn & A, 16 NMAC 42.5.8, 10-26-2002]

## NEW MEXICO BOARD OF INTERIOR DESIGN

The New Mexico Board of Interior Design has renumbered and reformatted the following rules to comply with current NMAC requirements, effective October 26, 2002.

16.42.1 NMAC, General Provisions

16.42.2 NMAC, Code of Professional Conduct

16.42.3 NMAC Licensing Requirements

16.42.4 NMAC Complaints

16.42.5 NMAC Fees

16.42.6 NMAC Continuing Education Guidelines.

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to Section 3.2.114.8 NMAC.

#### 3.2.114.8 REFUND OF TAX:

When a refund of tax imposed by ~~[Section 7-13-3]~~ Sections 7-13-3 and 7-16A-2.1 NMSA 1978 is given the purchaser under ~~[Section 7-13-17]~~ Sections 7-13-17 or 7-16A-13.1 NMSA 1978, the compensating tax will be deducted from such refund and no gross receipts tax will be charged at the time of sale of the product. The reasonable value of gasoline or special fuel for compensating tax purposes will be the price paid for the fuel, including any applicable excise taxes whether separately stated or included in the price. This version of Section 3.2.114.8 NMAC applies to transactions on or after July 1, 1998.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.114.8 NMAC - Rn, 3 NMAC 2.26.8 & A, 10/31/2000; A, 10/15/02]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to Section 3.16.4.9 NMAC.

#### 3.16.4.9 DEDUCTION - SALES TO OTHER DISTRIBUTORS:

A. Gasoline received by a distributor and sold to another distributor may not be deducted from the amount of gasoline received in New Mexico, even though the other distributor is bonded and registered, because the purchasing distributor did not "receive" gasoline within the meaning of the act.

B. The tax consequences of sales to other distributors and sales by them to the United States are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the gasoline to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser.

#### C. Examples:

(1) A, a registered gasoline distributor in New Mexico, received one thousand (1,000) gallons of gasoline in June. B, also a registered distributor who is located in the same city as A, needed one thousand (1,000) gallons of gasoline of the type A had received and arranged to purchase the one thousand (1,000) gallons from A. A may not deduct the one thousand (1,000) gallons from the amount of gasoline A received in ~~[that]~~ June. B is not liable for tax on this gasoline because B did not receive it.

(2) In addition to the facts in example 1, B delivered the one thousand (1,000) gallons of gasoline purchased from A to the United States. A must report the one thousand (1,000) gallons of gasoline ~~[and pay the tax upon it]~~ as received. A may deduct one thousand (1,000) gallons from the amount of gasoline received ~~[because of]~~ as provided in Subsection B of Section 7-13-4 NMSA 1978 if A provides satisfactory proof as required in Section 3.16.4.8 NMAC.

~~[(3) In addition to the facts in example 2, B had not received any gasoline in the month in which the transaction took place. B may carry over to the next month the deduction for the one thousand (1,000) gallons of gasoline sold to the United States. B may not obtain a refund from the department of any amount of the tax which was included by A in its sale to B.]~~

[1/23/73, 8/31/96; 3.16.4.9 NMAC - Rn & A, 3 NMAC 16.4.9, 6/14/01; A, 10/15/02]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to Section 3.16.7.11 NMAC.

### 3.16.7.11 DEPARTMENT MAY REMOVE NONCOMPLYING DISTRIBUTORS FROM LIST:

A. In accordance with Section 3.16.7.11 NMAC, the department may cancel the registration of a distributor as a distributor of gasoline and remove its name from the list of distributors registered under the Gasoline Tax Act if the distributor does not substantially comply with the requirements to file gasoline tax returns in the form and manner prescribed by the secretary or to file petroleum products loading fee reports in the form and manner prescribed by the secretary with respect to gasoline loaded or imported by the distributor.

B. The department shall notify the distributor of its intent to cancel the distributor's registration as a distributor of gasoline and to remove its name from the list. The notice shall provide for a hearing at least ten days after the date of the date notice is provided. At the hearing the distributor will be given an opportunity to demonstrate substantial compliance. If, in the judgment of the hearing officer, substantial compliance is not demonstrated, the hearing officer shall order the immediate cancellation of registration as a distributor and removal from the list of ~~distributor or to file petroleum products loading fee reports in the form and manner prescribed by the secretary with respect to gasoline loaded or imported by the distributor~~ distributors.

[8/31/96; 3.16.7.11 NMAC - Rn & A, 3 NMAC 16.7.11, 6/14/01; A, 10/15/02]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to Section 3.16.109 NMAC.

3.16.109.13 **SPECIAL FUEL USED IN SCHOOL BUSES:** Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses are subject to gross receipts tax and not the special fuel excise tax.

[3.16.109.13 NMAC - N, 10/15/02]

## NEW MEXICO YOUTH CONSERVATION CORPS

This is an amendment to 11.2.171 NMAC, Sections 1, 3, 5, 6, 7, 8, 11, 12, 13, 16, 17 and 18. **The Youth Conservation Corps (YCC) Program. Changes to document are as follows:** 11.2.171.7 adds a definition for the term **non-profit** and a definition for the term **project sponsor**, 11.2.171.11 adds the residential projects to the rules and defines in more detail the ability for non-profits to sponsor projects on property owned by another entity. 11.2.171.13 changes the language to clarify which activities are prohibited. 11.2.171.18 changes the service requirements for the cash bonuses and tuition vouchers.

11.2.171.1 **ISSUING AGENCY:** New Mexico Youth Conservation Corps[; 408 Galisteo St., Mailing Address: P.O. Box 1948, Santa Fe, New Mexico 87504-1948, (505) 827-7467.]

[5-31-97; 11.2.171.1 NMAC - Rn, 11 NMAC 2.YCC.1, 4/30/2001; A, 10/15/02]

11.2.171.3 **STATUTORY AUTHORITY:** NMSA 1978, Section 9-5B-1 et-seq. [SB 509, Laws of 1994, Chapter 145.]

[5-31-97; 11.2.171.3 NMAC - Rn, 11 NMAC 2.YCC.3, 4/30/2001; A, 10/15/02]

11.2.171.5 **EFFECTIVE DATE:** May 31, 1997, unless a later date is cited at the end of a section ~~or paragraph~~.

[5-31-97, 2-28-98; 11.2.171.5 NMAC - Rn, 11 NMAC 2.YCC.5, 4/30/2001; A, 10/15/02]

11.2.171.6 **OBJECTIVE:** ~~[To provide a process to employ young people in public projects that conserve New Mexico's natural resources, provide community benefits, improve natural and urban environments and enhance work skills and education.]~~

To provide a program to enhance the educational opportunities, abilities and attitudes of youth, and to provide a process to employ young persons in public projects that conserve New Mexico's natural resources, provide community benefits of lasting value, improve natural and urban environments and enhance work skills and education. New Mexico will benefit by having its natural and urban environments improved and enhanced. New Mexico youth will be instilled with an appreciation of natural resources, the benefits of cooperation, hard work and a sense of accomplishment with an emphasis on a sound work ethic that will supplement their other educa-

tional opportunities.

[5-31-97; 11.2.171.6 NMAC - Rn, 11 NMAC 2.YCC.6, 4/30/2001; A, 10/15/02]

### 11.2.171.7 DEFINITIONS:

A. "basic employment skills" mean those attributes that assist people in seeking and securing permanent employment, such as promptness, dependability, ability to take direction and cooperation with peers at the work site.

B. "nonprofit organization" means any organization that has been granted an exemption from federal income tax by the United States commissioner of internal revenue as an organization described in section 501(c) of the United States internal revenue code of 1986, as amended or renumbered.

C. "project sponsor" means any local public body, state or federal agency, not-for-profit entity or native american tribe that will agree to do projects consistent with the program.

D.~~[B.]~~ "time of enrollment" ~~[shall mean]~~ means the day a corps member reports to work for the first time.

[5-31-97; 11.2.171.7 NMAC - Rn, 11 NMAC 2.YCC.7, 4/30/2001; A, 10/15/02]

### 11.2.171.8 THE YOUTH CONSERVATION CORPS (YCC) PROGRAM:

~~[A. The commission is authorized to use state/federal grants and appropriations and private funds as available to coordinate corps participants engaged in projects within the state of New Mexico and to enter into agreements with any municipality, state or federal agency, not for profit entity or native american tribe which will agree to do projects consistent with the program.~~

B. ~~The purpose of the New Mexico youth conservation corps is to provide a program to enhance the educational opportunities, abilities and attitudes of youth, and to provide a process to employ young persons in public projects that conserve New Mexico's natural resources and provide community benefits of lasting value. New Mexico will benefit by having its natural and urban environments improved and enhanced, and its youth instilled with an appreciation of natural resources, cooperation, hard work and accomplishment which will supplement their other educational opportunities.~~

C. ~~The program shall endeavor to provide needed community services in urban, suburban and rural settings by the conservation, rehabilitation and enhancement of the state's natural, historic, agricultural, cultural, recreational and community resources.~~

~~D. It shall endeavor to develop in participating youth basic employment skills, an understanding of the state's natural environment and cultural heritage, and encourage opportunities for employment by education and training.~~

~~E. These goals will be accomplished in such a way that young people will be provided with an opportunity to acquire increased self dignity and self discipline, be better able to work with peers and supervisors and learn to work with and relate to people of various social, ethnic, racial and economic backgrounds.~~

~~F. To the maximum extent possible, each conservation corps project will have the following characteristics: a balanced work/learning program in which environmental awareness and work skills are learned primarily through meaningful work activities on public lands or facilities; a program to enhance the educational abilities and attitudes of corps members including, but not limited to basic education, literacy and high school or equivalency diplomas; a mixture of youth of both sexes from various social, economic, ethnic and racial backgrounds which is representative of youth residing within the recruiting area; an enrollment of size sufficient to permit group learning and social interaction; components that will educate the corps members about our natural environment and cultural heritage, teach first aid and basic employment skills and encourage them to further their education; and crews which are easily recognized as members of the New Mexico youth conservation corps regardless of the identity of project sponsors.]~~

~~A. The program shall endeavor to provide needed community services in urban, suburban and rural settings by the conservation, rehabilitation and enhancement of the state's natural, historic, agricultural, cultural, recreational and community resources.~~

~~B. It shall endeavor to develop in participating youth basic employment skills, an understanding of the state's natural environment and cultural heritage and encourage opportunities for employment by education and training.~~

~~C. These goals shall be accomplished in such a way that young people will be provided with an opportunity to acquire increased self-dignity and self-discipline, be better able to work with peers and supervisors and learn to work with and relate to people of various social, ethnic, racial and economic backgrounds.~~

[5-31-97; 11.2.171.8 NMAC - Rn, 11 NMAC 2.YCC.8, 4/30/2001; A, 10/15/02]

#### 11.2.171.11 PROJECT REQUIREMENTS:

~~A. Classification of projects: The corps program may be made up of the following classes of projects; summer projects operated during the months of June, July and August; seasonal projects which may be operated at any time of the year and are six months or less in duration.~~

~~B. Project sites: a project may be undertaken on any public lands, waters or structures located within the state of New Mexico under the jurisdiction of the project sponsor or in accordance with a written agreement between the project sponsor and the commission.~~

~~C. A project may be undertaken by a not for profit entity or native american tribe on any lands, waters or structures owned or administered by such entity or native american tribe provided that these facilities are open to the public on a reasonable basis and there is a public value or benefit to the project; the facilities are located within the state of New Mexico.]~~

~~A. Classification of projects: the corps program may be made up of the following classes of projects:~~

~~(1) summer projects operated during the months of June, July and August;~~

~~(2) seasonal projects that may be operated at any time of the year and are six months or less in duration; and~~

~~(3) residential.~~

~~B. Project sites: Projects may be undertaken on:~~

~~(1) public lands, waters or structures located within the state of New Mexico that are under the jurisdiction of the project sponsor or in accordance with a written agreement between the project sponsor and the agency that has jurisdiction over the public lands; waters or structures;~~

~~(2) by a not-for-profit entity non-profit organization or native american tribe on any lands, waters or structures owned or administered by such entity or native american tribe provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project and the facilities are located within the state of New Mexico; or~~

~~(3) by a project sponsor on any lands, waters or structures owned or administered by a nonprofit organization or native american tribe in accordance with a written agreement between the project sponsor and the not-for-profit entity or native american tribe provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project and the facilities are located within the state of New Mexico.~~

~~C. To the maximum extent possible, each conservation corps project shall have the following characteristics:~~

~~(1) a balanced work/learning pro-~~

gram in which environmental awareness and work skills are learned primarily through meaningful work activities on public lands or facilities;

(2) a program to enhance the educational abilities and attitudes of corps members including, but not limited to basic education, literacy and high school or equivalency diplomas;

(3) youth of both sexes from various social, economic, ethnic and racial backgrounds that is representative of youth residing within the recruiting area;

(4) an enrollment of size sufficient to permit group learning and social interaction; components that will educate the corps members about our natural environment and cultural heritage, teach first aid and basic employment skills and encourage them to further their education; and

(5) crews that are easily recognized as members of the New Mexico youth conservation corps regardless of the identity of project sponsors.

[5-31-97, 2-28-98; 11.2.171.11 NMAC - Rn, 11 NMAC 2.YCC.11, 4/30/2001; A, 10/15/02]

**11.2.171.12 TYPES OF PROJECTS:** Projects must be cost efficient and consistent with the purposes of the NMYCC program and may include, but need not be limited to, projects ~~which~~ that:

A. protect air, fish, forest, land, water and wildlife.

B. help maintain and improve botanical gardens, historic sites, libraries, museums, parks, parkways, refuges, trails, zoos and other recreational and natural areas.

C. reinforce the "keep New Mexico beautiful" campaign.

D. provide disaster relief, increase energy conservation and recycling, improve fire prevention, beautify New Mexico highways, upgrade public lands and facilities, revitalize urban areas and further the goals of community renewal, protection and enhancement of natural resources.

[5-31-97; 11.2.171/12 NMAC - Rn, 11 NMAC 2.YCC.12, 4/30/2001; A, 10/15/02]

#### 11.2.171.13 SPECIAL REQUIREMENTS:

A. Projects shall be designated to further the purpose and goals of the corps as set forth in the act.

B. Project sponsors shall be responsible for providing educational opportunities for corps members by providing training and reference materials; coordinating with educational institutions for the awarding of academic credit for competencies developed; encouraging corps members to improve educational competencies

during non-working hours through basic skills enhancement, high school equivalency preparation, participation in skill training programs or enrolling in accredited institutions of higher education; and accessing the services available from schools, colleges, and all other agencies and institutions of higher training in New Mexico.

C. Project sponsors shall ensure that all project sites conform to appropriate state and federal health and safety standards and requirements.

~~D. The following activities are prohibited in the conduct of any NMYCC project; the discrimination against any employee, corps member or applicant because of the individual's race, color, religion, ancestry, sex, national origin, handicap or disability; the displacement or substitution for an existing employee by a corps participant or the replacement of a seasonal employee normally hired by the project sponsor; the participation by corps members in the removal or cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and the assignment of corps members to general work activities such as, but not limited to, routine lawn mowing, litter pick up, custodial duties and clerical tasks.~~

~~D [E]. A project sponsor, subject to the approval of the commission, may use existing corps members for casualty and disaster relief.~~

**E. PROHIBITED ACTIVITIES:** The following activities are prohibited in the conduct of any NMYCC project:

(1) the discrimination against any employee, corps member or applicant because of the individual's race, color, religion, ancestry, sex, national origin, handicap or disability;

(2) the displacement or substitution for an existing employee by a corps participant or the replacement of a seasonal employee normally hired by the project sponsor;

(3) the participation by corps members in the removal or cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and

(4) the assignment of corps members to general work activities such as, but not limited to, routine lawn mowing, routine litter control, janitorial duties and clerical tasks.

[5-31-97; 11.2.171.13 NMAC – Rn, 11 NMAC 2.YCC.13, 4/30/2001; A, 10/15/02]

**11.2.171.16 VALUATION OF PROPOSALS:** ~~[Proposals will be reviewed and evaluated by the commission to determine conformance of the proposed project with the goals of the NMYCC as~~

~~described in the act.]~~

The commission shall review and evaluate proposals to determine the proposed project's conformance with the goals of the NMYCC as described in the act.

[5-31-97; 11.2.171.16 NMAC – Rn, 11 NMAC 2.YCC.16, 4/30/2001; A, 10/15/02]

**11.2.171.17 PROJECT AGREEMENT:** A successful applicant shall enter into an agreement with the commission for the expenditure of [state or federal grant] funds in accordance with any request for proposals issued by the commission.

[5-31-97; 11.2.171.17 NMAC – Rn, 11 NMAC 2.YCC.17, 4/30/2001; A, 10/15/02]

**11.2.171.18 EDUCATIONAL TUITION**

A. Corps members shall be encouraged to increase their opportunities for employment by education and training. Project sponsors shall seek cooperative agreements with community colleges, vocational schools and other institutions of higher learning in an effort to aid corps members in achieving their educational goals. Project sponsors shall provide opportunities for corps members to achieve basic education, literacy and high school or equivalency diplomas.

~~[ B. On completion of employment, a corps member who has one full year of continuous employment as a corps member employment as a corps member, and who has received satisfactory evaluations throughout his employment, is entitled to receive as additional compensation five hundred dollars (\$500) or a one thousand dollar (\$1,000) educational tuition voucher at a New Mexico public institution of higher education. The educational tuition voucher is valid for two years. If the corps member receives a satisfactory employment evaluation and the program manager determines that the corps member's employment was completed in less than a year period due to circumstances beyond the corps member's control, the program manager may authorize a partial compensation payment or a partial educational tuition voucher to that corps member.]~~

B.

(1) On completion of employment, a corps member who has twelve full months of employment as a corps member during a period not to exceed forty-eight months, and who has received satisfactory evaluations throughout his employment, is entitled to receive as additional compensation \$500.00 or a \$1000.00 educational tuition voucher at a New Mexico institution of higher education. The educational tuition voucher is valid for two years. If the

corps member receives a satisfactory employment evaluation and the program manager determines that the corps member's employment was less than twelve months in a four-year period due to circumstances beyond the corps member's control, the program manager may authorize a partial compensation payment or a partial educational tuition voucher to that corps member.

(2) To qualify to receive a pro-rated cash bonus/tuition voucher, in addition to meeting the other requirements, the corps member must complete a minimum of six months employment as a corps member.

(3) The project sponsor shall certify that the corps member was employed for the duration of the project. If the corps member was not employed for the full duration, the project sponsor shall certify the time period the corps member was employed.

(4) Circumstances beyond a corps member's control include but are not limited to:

- (a) illness
- (b) death in the family
- (c) return to school
- (d) family relocates

(5) Circumstances beyond the corps member's control do not include the unavailability of projects or that the project sponsor did not select them for employment with the project.

[5-31-97; 11.2.171.18 NMAC – Rn, 11 NMAC 2.YCC.18, 4/30/2001; A, 10/15/02]

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## End of Adopted Rules Section

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

### 2002

<b>Volume XIII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

### 2003

<b>Volume XIV</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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