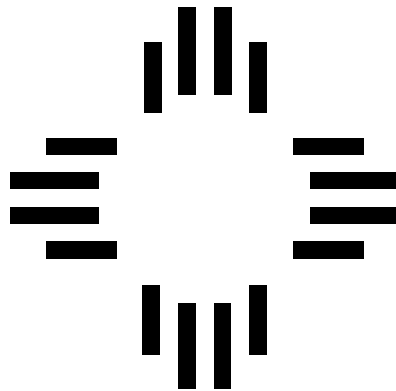


New Mexico Register

**Volume XIII, Issue Number 24
December 30, 2002**



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
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New Mexico Register

Volume XIII, Number 24

December 30, 2002

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

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

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING

On February 12, 2003, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold a public hearing in the Council/Commission Chambers of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM, 87102.

The purpose of the hearing is to receive testimony regarding the proposal to incorporate the revised carbon monoxide (CO) budgets, including the motor vehicle emissions budgets, into the State Implementation Plan (SIP) for air quality for Albuquerque/Bernalillo County. This revision is the result of implementing the new MOBILE6 emission factor model developed by the Environmental Protection Agency (EPA). EPA requires that each state do this by January 29, 2004.

Hearings and meetings of the Board are open to the public. All persons wishing to testify may do so at the hearings. Anyone who intends to present technical testimony should submit a written notice of intent to: Mr. Neal Butt, Attn: February Hearing record, Environmental Health Department, P.O. Box 1293, Albuquerque, NM, 87103, or in person at 400 Marquette Avenue NW, Room 3023, in advance of the hearing.

Written comments to be incorporated into the public record should be received at the above P.O. box address or in person at the Environmental Health Department office by February 5, 2003, and must identify the individual submitting the statement. **NO WRITTEN COMMENTS WILL BE ACCEPTED AFTER 5:00pm ON FEBRUARY 5, 2003.** Comments may also be submitted by e-mail to nbutt@cabq.gov. Interested parties may obtain a copy of the draft report at the Environmental Health Department office, or contact Mr. Neal Butt at (505) 768-2660, nbutt@cabq.gov.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in these hearings, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, 768-2600 (Voice); 768-2617 (FAX);

or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

NEW MEXICO BOARD OF EDUCATION

NEW MEXICO STATE BOARD OF EDUCATION NOTICE OF PROPOSED RULEMAKING

The New Mexico State Board of Education ("Board") will convene on Tuesday, January 21, 2003, at 8:00 a.m. Committees will meet on Tuesday, January 21, 2003, and Wednesday, January 22, 2003. The regular meeting of the Board will begin on Thursday, January 23, 2003. 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 or change 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 Department of Public Board of Education may consider the following items of rulemaking at the meeting:

RULE NUMBER	PROPOSED ACTION	RULE NAME
6.60.5 NMAC	Amend Rule	Competency Testing for Licensure*
6.61.9 NMAC	Amend Rule	Substandard Licensure*

* Quality Educators Committee. A public hearing will be held at 10:30 a.m. on Tuesday, January 7, 2003, in Room 128 of the State Education Building at the address shown above. Information regarding proposed rule changes, public hearing, and submission of written comments has been disseminated. For further information, please contact James Ball, Director, Professional Licensure Unit, at (505) 827-6587.

Written comments may be submitted to the individuals named above at the State Department of Education, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Unless otherwise noted, written comments will be accepted until 5 p.m. on January 10, 2003. However, the submission of written comments as soon as possible is encouraged.

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 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

NOTICE OF PUBLIC MEETING AND HEARING OF THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

The New Mexico Energy, Minerals and

Natural Resources Department will hold a meeting and hearing at **9:00 A.M. Friday, January 17, 2003** in Porter Hall, first floor, 1220 South Saint Francis Drive, Santa Fe, NM.

During the meeting, the New Mexico Energy, Minerals and Natural Resources Department will conduct public hearings on proposed rules for administration of the **Renewable Energy Production Tax Credit**, NMSA 1978, Section 7-2A-19 (2002).

Copies of the rules are available from the New Mexico Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, NM 87505 or by calling 505-476-3319. At the conclusion of the hearing, the Energy, Minerals and Natural Resources Department may deliberate and make final decisions on the rules.

A copy of the proposed rules will be available at least 24 hours before the meeting and may be obtained by contacting Michael McDiarmid at 476-3319, mmdiarmid@state.nm.us or Harold Trujillo at 476-3318, httrujillo@state.nm.us.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

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 or meeting, please contact McDiarmid or Trujillo at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact McDiarmid at 476-3319, through New Mexico voice relay at 1-800-659-1779 or TTD 1-800-659-8331, if a summary or other type of accessible format is needed.

A person who wishes to submit a written statement, in lieu of providing oral testimony at the hearing, shall submit the written statement prior to the hearing, or submit it at the hearing. No statements will be accepted after the conclusion of the hearing.

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, January 14, 2003, at 9:00 A.M. The meeting will be held at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Kathy Mattison

at 476-7902 by January 6, 2003. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The following items will be presented to the Commission for consideration:

Repeal

1.17.230 NMAC JRRDS, New Mexico District Courts

New

1.17.230 NMAC JRRDS, New Mexico District Courts

1.18.569 NMAC E R R D S , New Mexico Organic Commodity Commission

1.18.980 NMAC E R R D S , New Mexico Office of the Medical Investigator

Amend

1.18.670 NMAC E R R D S , New Mexico Veterans' Service Commission

1.18.665 NMAC E R R D S , New Mexico Department of Health

Renumber

1.18.953 NMAC E R R D S , New Mexico State University

to 1.18.954 NMAC E R R D S , New Mexico State University

**NEW MEXICO PUBLIC
SCHOOL CAPITAL
OUTLAY COUNCIL**

**PUBLIC SCHOOL CAPITAL OUTLAY
COUNCIL
NOTICE OF PROPOSED
RULEMAKING**

The Public School Capital Outlay Council will seek input regarding amendment of 6.19.2.9(C)(2) NMAC relative to waiver(s) of the requirement that a school district's remaining bonding capacity is calculated from its bonding capacity on May 15 of the grant year.

The proposed amendment(s) will be disseminated for field input and review and notice will be provided regarding a public hearing to seek input regarding the proposed amendment(s).

Final rules will be adopted by the Council at a public meeting for which notice is given in accordance with the Council's Open Meetings Policy. The agenda will be avail-

able at least twenty-four hours prior to the meeting from the Administrative Assistant to the Capital Outlay Unit.

Comments, questions, or requests for copies of the proposed amendment(s) or agenda should be directed to Lena Archuleta, Administrative Assistant, Capital Outlay Unit, at (505) 476-1600.

**End of Notices and
Proposed Rules Section**

Adopted Rules and Regulations

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

Explanatory paragraph: This is an amendment to Subsection R of 20.11.42 NMAC. EPA updated the definition of "major source" in 40CFR, Part 70, subpart 2, effective November 27, 2001. EPA required that each state revise its definition of "major source" and submit the revisions for EPA approval by November 27, 2002. This change mandated by EPA corresponds to Albuquerque / Bernalillo County Air Quality Control Board's regulation 20.11.42 NMAC, Operating Permits. The Albuquerque / Bernalillo County Air Quality Control Board adopted this amendment during its November 13th, 2002 regular meeting. This amendment becomes effective February 1, 2003.

20.11.42.7 DEFINITIONS: In addition to the definitions in 20.11.42.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.42 NMAC shall govern.

R. "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.

(2) A major stationary source of air pollutant 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 reduc-

- tion plants;
- (g) Primary copper smelters;
- (h) Hydrofluoric, sulfuric, or nitric acid plants;
- (i) Petroleum refineries;
- (j) Lime plants;
- (k) Phosphate rock processing plants;
- (l) Coke oven batteries;
- (m) Sulfur recovery plants;
- (n) Carbon black plants (furnace process);
- (o) Primary lead smelters;
- (p) Fuel conversion plant;
- (q) Sintering plants;
- (r) Secondary metal production plants;
- (s) Chemical process plants;
- (t) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (u) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (v) Taconite ore processing plants;
- (w) Glass fiber processing plants;
- (x) Charcoal production plants;
- (y) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (z) All other stationary source categories regulated by a standard promulgated under ~~the~~ Section 111 or 112 of the Federal Act, ~~but only with respect to those air pollutants regulated for that category~~.

[3/1/94. . . 12/1/95; 20.11.42.7 NMAC - Rn, 20 NMAC 11.42.1.7, 10/1/02; A, 2/1/03]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.18 NMAC, Sections 5 and 8:

16.5.18.5 EFFECTIVE DATE: September 30, 1996, unless a ~~different~~ later date is cited at the end of a Section ~~or Paragraph~~.
[9-30-96; 16.5.18.5 NMAC - Rn, 16 NMAC 5.18.5, 06-14-01; A, 12-30-02]

- 16.5.18.8 FEES:**
- A.** All fees are non-refundable.
 - B.** Application fee for licensure by examination is \$250, which includes the initial licensing period.
 - C.** Application fee for

licensure by credentials is \$300, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.

E. Triennial Renewal Fees:

(1) Triennial renewal fee is ~~[\$150]~~ \$225.

(2) Late fee for renewal applications received but not complete, or not received or post-marked by June 30 is \$100.

(3) Impaired Fee: In addition to the license renewal fee, each dental hygienist subject to renewal may be assessed a fee not to exceed \$30 per triennial renewal period.

F. Fees for Collaborative Practice:

(1) Application for Certification for Collaborative Practice fee is \$150

(2) Renewal of Certification for Collaborative Practice fee is \$50 at the time of each triennial license renewal. The initial fee will be prorated at \$20 per full year of certification.

G. Fees for Temporary Licenses and Application:

(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$100;

(3) twelve month license, application fee of \$100, license fee of \$150.

H. Application for Certification in Local Anesthesia Fee:

(1) By examination - \$40.

(2) By credentials - \$100 for application and credential review.

I. Reinstatement Fee is \$200.

J. Administrative Fees:

(1) Duplicate license fee is \$25;

(2) Multiple copies of the Statute or Rules are \$10 each

(3) Copies cost \$0.50 per page, with a minimum charge of \$5.00;

(4) List of current dental hygiene licensees is \$180. An annual list of current licensees is available to the professional association upon request at no cost; and

(5) Mailing labels of current dental hygiene licensees is \$230

[3-14-73, 4-11-81, 3-7-88, 3-28-91, 5-31-95, 12-15-97, 8-16-99; 16.5.18.8 NMAC - Rn & A, 16 NMAC 5.18.8, 06-14-01; A, 9-30-02; A, 12-30-02]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.25 NMAC, sections 5 and 9:

16.5.25.5 EFFECTIVE DATE: September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a Section ~~[or Paragraph]~~.
[9-30-96; 16.5.25.5 NMAC - Rn, 16 NMAC 5.25.5, 12-14-00; A, 12-30-02]

16.5.25.9 REINSTATEMENT: A licensee whose license has been placed in retirement status may request reinstatement of the retired license within five years of the date of retirement as indicated in Section 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, Board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, a completed application, and proof of the following continuing education courses:

(1) There will be 15 CE hours/year of retirement, up to 45 hours, required for reinstatement. the requirements of the infection control hours and the CPR hours taken in the past twelve months may be included toward these required hours

(2) proof of infection control course within the past twelve months; and

(3) proof of current CPR certification;

(4) 45 hours of continuing education required for the last triennial renewal cycle of active licensure. These hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period; and

(5) Verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession. Verification must be sent directly to the Board office from the other states(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. ~~[The request for reinstatement, including a statement of the applicant's activities during the period of retirement and any existing impairments, shall be reviewed by the committee at the next regularly scheduled meeting. If the committee finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the committee will recommend to the Board the license~~

~~be removed from retirement status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.24 NMAC.] The request for reinstatement, including a statement of the applicant's activities during the period of retirement and any existing impairments, shall be reviewed by a subcommittee as designated by the Chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the Committee and Board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.~~

C. A dental hygienist with a license in retirement status may not practice dental hygiene in New Mexico until proof of active licensure is received from the Board office.

D. If reinstatement of a retired license is requested after 5 years of retirement, application for a new license must be made.

[3-14-73, 3-11-89, 5-31-95, 9-30-96, 1-1-99; 16.5.25.9 NMAC - Rn & A, 16 NMAC 5.25.9, 12-14-00; A, 12-30-02]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.33 NMAC, Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16.

16.5.33.5 EFFECTIVE DATE: September 30, 1996, unless a ~~[different]~~ later date is cited at the end of a Section ~~[or Paragraph]~~.

[9-30-96; 16.5.33.5 NMAC - Rn, 16 NMAC 5.33.5, 12-14-00; A, 12-30-02]

16.5.33.6 OBJECTIVE: To establish the requirements for certification for dental assistants to perform expanded functions. These rules address applicants being certified via the following tracks:

A. Independent preparation for the requirements;

B. Attendance in a dental assisting program;

C. Attendance in an accredited dental hygiene school; and

D. New residents of New Mexico with current certificates in expanded functions in their previous state (credentials).

[9-30-96; 16.5.33.6 NMAC - Rn, 16 NMAC

5.33.6, 12-14-00; A, 12-30-02]

16.5.33.7 DEFINITIONS

A. "[~~Approved~~] Training Program" means a course of study ~~[approved by the Board]~~ resulting in ~~[the attendee]~~ applicant eligibility ~~[being eligible]~~ for ~~[certification to perform an]~~ expanded function certification.

B. "DANB" means the Dental Assisting National Board.

~~[C.] ["Personal Supervision" means the licensee is personally providing patient care and authorizes the assistant to concurrently perform a supportive procedure.]~~

~~[D.]C.~~ "Indirect Supervision" means a Licensee is present in the treatment facility while authorized treatments are being performed by a dental assistant.

~~[E.]D.~~ "General Supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan and in facilities as designated by rule of the board.

~~[F.] ["Direct Supervision" means a dentist is present in the facility and personally overseeing and directing the procedure.]~~

~~[G.]E.~~ "Rubber Cup Coronal Polishing" means the use of a rubber cup or a bristle brush to remove soft debris and stain from above the gingival margin.

F. "Limited Certificate" means a radiographic certificate that limits the holder to take only extra oral dental films.

[10-21-70...5-31-95, 9-30-96, 2-14-00; 16.5.33.7 NMAC - Rn, 16 NMAC 5.33.7, 12-14-00; A, 3-29-02; A, 12-30-02]

16.5.33.8 REQUIREMENTS

[FOR CERTIFICATION]: ~~[A licensee of the board shall not allow dental assistants to perform oral radiography under any level of supervision unless they are certified or in training by the Board of Dental Health Care. Dental assistants who perform coronal polishing, topical fluoride, or pit and fissure sealants under general supervision are required to be certified by the Board of Dental Health Care.]~~

A. A licensee shall not allow dental assistants to perform oral radiography under any level of supervision that are not certified or in authorized training by the New Mexico Board of Dental Health Care (NMBODHC).

B. A licensee shall not allow dental assistants to perform coronal polishing, topical fluoride application, or application of pit and fissure sealants under

general supervision without certification by the NMBODHC.

C. Dental assistants who perform oral radiography under any level of supervision are required to be certified by the NMBODHC. Dental assistants who perform coronal polishing, application of topical fluoride or application of pit and fissure sealants under general supervision are required to be certified by the NMBODHC.

D. Expanded function certification offered by the NMBODHC is distinct from certification offered by DANB. DANB certification gives the individual the right to use the initials C.D.A after their name, but does not qualify the individual to perform expanded functions without being certified by the NMBODHC.

[9-7-84..9-30-96; 16.5.33.8 NMAC - Rn, 16 NMAC 5.33.8, 12-14-00; A, 3-29-02; A, 9-30-02; A, 12-30-02]

16.5.33.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR DENTAL RADIOGRAPHY CERTIFICATION:

A. Education Requirements: [~~Successfully complete a self study or training course on radiation health and safety, and have assisted with an/or observed five (5) cases of full mouth radiography.~~]

(1) Study by independent preparation or in a training course on radiation health and safety; and

(2) Have assisted with and/or observed five (5) cases of full mouth intra oral radiographic series or five (5) extra oral radiographs if applying for a limited certificate.

B. Examination Requirements:

(1) Pass the NMBODHC or DANB written [~~radiology~~] examination on radiation health and safety. [~~given by the Dental Assistants National Board or the Board approved written radiology examination; and~~] Evidence of successful completion shall be posted in the dental office and will serve as a training permit for 12 months from the date of examination.

(2) Pass the technique test demonstrating proficiency in the exposure of a full-mouth [~~periapical~~] intra oral radiographic [~~film~~] series or panoramic film as established by the [~~Board~~] NMBODHC.

(3) [~~The technique test will be taken in the office on a phantom or human patient with the applicant exposing a full mouth set of radiographs, developing and mounting the films. The exam must be done independently and submitted to the board office with a statement signed by the dentist attesting to the independent exam. The films will be graded by at least one~~

~~Board member and serve as the technique test required for certification.] If an applicant chooses to provide only a panoramic film the certificate holder is limited to taking only extra oral films.~~

(4) The technique test will be taken on a phantom or human patient. The applicant shall expose a full mouth intra oral radiographic series of radiographs, or a panoramic film, develop, mount, and label the films. The exam must be done independently and submitted to the NMBODHC office with an affidavit signed by the dentist, dental hygienist, or dental assistant certified in radiography attesting to the independent exam. The radiographs must be of diagnostic quality and will be graded by at least two Board or Committee members and serve as the technique test required for certification.

(5) Pass the take home jurisprudence examination.

[~~C. Training — Permit: Applicants who have passed the DANB written exam and completed a self study or training course will be issued a training permit which allows them to expose radiographs in the office under the personal supervision of a dentist, dental hygienist, or dental assistant certified to take radiographs. The training permit is valid for no longer than four months from the date of issue. When the supervising dentist believes the applicant is competent to independently expose radiographs, the exam will be taken in accordance with the provisions of paragraph (3) Subsection B of Section 16.5.33.9 NMAC.~~]

(1) Applicants who have completed or are enrolled in a dental assistant training program and have passed the DANB written exam will be issued a Radiography Technique Exam Admission slip, which will allow them to take the technique test as in paragraph (2) Sub Section B of Section 16.5.33.9 NMAC of this part of the rules.]

(2) Applicants for certification in radiology will be allowed to take the technique exam three times. With each failure the supervising dentist will be notified of their responsibility for training the applicant.]

(3) After a third failure the applicant and supervising dentist will be required to apply to the Board with a plan for remediation, including what steps will be taken to assure clinical competence.]

[~~D. C.~~] Exemptions

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who [~~has~~] having passed a curriculum in dental radiography, [~~course~~] may be granted a certificate to expose radiographs without an examination.

(2) A dental assistant [~~who is~~] certified to perform dental radiography in another state with requirements not less stringent than those in New Mexico may be certified based on credentials. [~~If the other state did not include a technique exam a training permit may be issued and only that portion of the certification exam required.~~] [9-7-84, 5-31-95, 9-30-96, 1-1-98, 2-14-00; 16.5.33.9 NMAC - Rn & A, 16 NMAC 5.33.9, 12-14-00; 16.3.33.9 NMAC - A, 2-28-02; A, 12-30-02]

16.5.33.10 EDUCATION, [EXPERIENCE], AND EXAMINATION REQUIREMENTS FOR RUBBER CUP CORONAL POLISHING AND APPLICATION OF TOPICAL FLUORIDE CERTIFICATION;

A. [~~Successfully completed a self study or training course on rubber cup coronal polishing, and have assisted with and/or observed five (5) cases of rubber cup coronal polishing in children and adults.~~] Education Requirements: Study by independent preparation or in a training course on rubber cup coronal polishing and application of topical fluoride and have assisted with and/or observed five (5) cases of rubber cup coronal polishing on children and/or adults and five (5) applications of topical fluoride.

B. [~~Pass a Board approved written examination on rubber cup coronal polishing; and~~] Examination Requirements:

(1) Pass a NMBODHC or DANB written examination on rubber cup coronal polishing and application of topical fluoride;

(2) Perform the technique while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and application of topical fluoride on five (5) adults and/or children and five (5) applications of topical fluoride on children; and

(3) Pass the take home jurisprudence examination.

[~~C. Following successful completion of the exam, perform rubber cup coronal polishing under the personal supervision of a licensed dentist or dental hygienist on 4 adults and 4 children.~~]

[~~D. C.~~] Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene [~~who has~~] having passed a curriculum for rubber cup coronal polishing and application of topical fluoride, may be granted a certificate without meeting the other requirements of this section.

(2) A dental assistant who is certified to perform rubber cup coronal polishing and application of topical fluoride in another state with requirements not less

stringent than those in New Mexico may be certified based on credentials.

(3) A dental assistant who holds a current CDA certification issued by DANB may be issued a certificate for rubber cup coronal polishing and application of topical fluoride without meeting the other requirements of this section.

[8-11-89...9-30-96, 1-1-98, 2-14-00; 16.5.33.10 NMAC - Rn, 16 NMAC 5.33.10, 12-14-00; A, 3-29-02; A, 12-30-02]

~~16.5.33.11~~ **EDUCATION, EXPERIENCE AND EXAMINATION REQUIREMENTS FOR APPLICATION OF TOPICAL FLUORIDE]**

~~A. Successfully complete a self study or training course on the use of topical fluoride, and assisted an/or observed five (5) cases of topical fluoride application;]~~

~~B. Pass a Board approved written examination on topical fluoride application; and]~~

~~C. Following successful completion of the exam, apply topical fluoride under the personal supervision of a licensed dentist or dental hygienist on 6 children;]~~

~~D. Exemptions:]~~

~~(1) A dental hygiene student enrolled in an accredited school of dental hygiene who has passed a curriculum for application of topical fluoride may be granted a certificate without meeting the other requirements of this section.]~~

~~(2) A dental assistant who is certified to perform topical fluoride in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.]~~

~~(3) A dental assistant who holds a current CDA certification issued by DANB may be issued a certificate for application of topical fluoride without meeting the other requirements of this section.]~~

[5-31-95, 9-30-95, 2-14-00; 16.5.33.11 NMAC - Rn, 16 NMAC 5.33.11, 12-14-00; A, 3-29-02; 16.5.33.11 NMAC - Rn, 16.5.33.12 NMAC & A, 12-30-02]

16.5.33.[42]11 EDUCATION, EXPERIENCE AND EXAMINATION REQUIREMENTS FOR APPLICATION OF PIT AND FISSURE SEALANTS CERTIFICATION:

A. [Proof of 4000 hours of chair side dental assisting experience in the five years immediately prior to application.] Experience Requirements: The applicant must have 2080 hours of clinical chair side dental assisting within the two years prior to applying for certification.

B. [Successfully completes a self study or training course on pit

~~and fissure sealant application, and assisted with and /or observed placement of 12 pit and fissure sealants.] Education Requirements:~~

~~(1) Study by independent preparation or a training course on pit and fissure sealant application; and~~

~~(2) Assisted with and/or observed application of twelve (12) pit and fissure sealants.~~

C. [Pass a Board approved written examination on pit and fissure sealant application. The applicant must hold a current certification for rubber cup coronal polishing prior to applying to take the pit and fissure examination; and] Examination Requirements:

~~(1) Pass a NMBODHC or DANB examination on the application of pit and fissure sealants.~~

~~(2) Following successful completion of the examination, apply pit and fissure sealants while being personally observed by a licensed dentist or dental hygienist on five (5) patients.~~

~~(3) Pass the take home jurisprudence examination.~~

~~D. Following successful completion of the exam, apply pit and fissure sealants under the personal supervision of a licensed dentist or dental hygienist on 6 patients;]~~

~~E.]D. Exemptions:~~

~~(1) A dental hygiene student enrolled in an accredited school of dental hygiene [who has] having passed a curriculum for pit and fissure sealants and rubber cup coronal polishing, may be granted a certificate without meeting the other requirements of this section.~~

~~(2) A dental assistant who is certified to perform application of pit and fissure sealants in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.~~

[5-31-95, 9-30-95, 2-14-00; 16.5.33.11 NMAC - Rn, 16 NMAC 5.33.11, 12-14-00; A, 3-29-02; 16.5.33.11 NMAC - Rn, 16.5.33.12 NMAC & A, 12-30-02]

16.5.33.[43]12 REQUIRED DOCUMENTATION: Each applicant for an expanded function dental assistant certificate must submit to the NMBODHC or its agent the required fees and following documentation. [The application fee must only be submitted with the initial request for certification. Additional expanded functions require only the documentation:]

A. Completed [signed] application with a passport quality photo taken within 6 months affixed to the application and the completed jurisprudence take home exam. [Applications are valid for 1

year from the date of receipt;]

B. Dental Radiography:

(1) [A letter from a supervising dentist or hygienist that the applicant has assisted with and/or observed five (5) cases of full mouth radiography.] Proof of passing the NMBODHC or DANB written examination on radiation health and safety.

(2) [Proof of completion of a training course in radiation health and safety or a letter of certification cosigned by the applicant and a dentist or hygienist, that they have completed a self study training course on radiation health and safety.] An affidavit from a supervising dentist, dental hygienist, or dental assistant certified in radiography verifying the applicant has:

(a) assisted with and/or observed five (5) cases of full-mouth intra oral radiographic series or five (5) panoramic films if applying for a limited certification; and

(b) that upon reaching competency, the applicant independently exposed the radiographs submitted for technique examination.

(3) The completed full mouth intra oral radiographic series or a panoramic film as required for the technique exam described in 16.5.33.9 of these rules.

C. Rubber cup coronal polishing and application of topical fluoride:

(1) [A letter from a supervising dentist or hygienist that the applicant has assisted with and/or observed five (5) cases of rubber cup coronal polishing.] Proof of passing the NMBODHC or DANB written examination for rubber cup coronal polishing and application of topical fluoride.

(2) [Proof of completion of a training course in rubber cup coronal polishing or a letter of certification cosigned by the applicant and a dentist or hygienist, that they have completed a self study training course on rubber cup coronal polishing;] An affidavit from a supervising dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and topical fluoride application that the applicant has:

(a) assisted with and/or observed five (5) cases of rubber cup coronal polishing on adults and/or children and five (5) applications of topical fluoride on children; and

(b) while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing, application of topical fluoride provided rubber cup coronal polishing on five (5) adults and/or children; and, provide applications of topical fluoride five (5) children.

[(3) A form, provided by the Board, signed by the dentist or dental hygienist who provided personal supervi-

sion and instruction of the required experience specified in Subsection C of 16.5.33.10 NMAC.]

~~[D. Topical Fluoride:]~~

~~[(1) A letter from a supervising dentist or hygienist that the applicant has assisted with and/or observed five (5) cases of topical fluoride application.]~~

~~[(2) Proof of completion of a training course on topical fluoride application or a letter of certification cosigned by the applicant and a dentist or hygienist, that they have completed a self study training course on topical fluoride application.]~~

~~[(3) A form, provided by the Board, signed by the dentist or dental hygienist who provided personal supervision and instruction on appropriate application techniques.]~~

~~[E.]~~**D.** Pit and Fissure Sealants:

(1) ~~[A letter from a supervising dentist or hygienist that the applicant has assisted with and/or observed placement of twelve (12) pit and fissure sealants.]~~ Proof of passing the NMBODHC approved examination on application of pit and fissure sealants.

(2) ~~[Proof of completion of a training course on pit and fissure sealants or a letter of certification cosigned by the applicant and a dentist or hygienist, that they have completed a self study training course on pit and fissure sealants;]~~ An affidavit from a supervising dentist or dental hygienist verifying that the applicant has:

(a) assisted with and/or observed placement of twelve (12) pit and fissure sealants; and

(b) while being personally observed by a dentist or dental hygienist, the applicant successfully place pit and fissure sealants on six (6) patients.

~~[(3) A form, provided by the Board, signed by the dentist or dental hygienist who provided personal supervision and instruction on appropriate application techniques, and]~~

~~[(4)]~~**(3)** Proof of ~~[4,000]~~ **2080** hours of chair side dental assisting experience ~~[in the five]~~ within two years immediately prior to application for certification.

(4) The completed jurisprudence exam.
[9-30-96, 1-1-98, 2-14-00; 16.5.33.12 NMAC - Rn, 16 NMAC 5.33.12, 12-14-00; 16.5.33.12 NMAC - Rn, 16.5.33.13 NMAC & A, 12-30-02]

16.5.33.[44]13 CERTIFICATION BY CREDENTIALS: Applicants for certification by credentials shall provide to the NMBODHC or its agent:

A. Verification of a current valid certificate from another state, or

B. An official letter from the director of an accredited dental hygiene program indicating the applicant has completed coursework in the requested expanded function, or

C. Proof of current, valid, certification as a CDA issued by DANB.

D. All certifications, letters and validations must be received directly by the Board office from the state, institution, or DANB.

[1-1-98, A, 8-16-99; 16.5.33.14 NMAC - Rn, 16 NMAC 5.33.14, 12-14-00; A, 3-29-02; A, 12-30-02]

16.5.33.[45]14 RE-EXAMINATION PROCEDURE: ~~[An applicant who does not obtain a passing score on the required exam must submit a new examination fee as defined in Subsection C of 16.5.32.8 NMAC. An applicant who does not pass the radiographic technique test must pay \$25 to be issued another training permit.]~~

A. An applicant who does not obtain a passing score on the required written exam must re-apply and pay the required fees in order to retake the examination.

B. Applicants for certification in radiography will be allowed to submit radiographs for the technique exam three times. With each failure the supervising dentist, dental hygienist, or dental assistant certified in dental radiography will be notified of their responsibility for training the applicant.

C. After a third failure, the applicant and supervising dentist, dental hygienist, or dental assistant certified in radiography will be required to submit to the NMBODHC a plan for remediation, including steps that will be taken to assure clinical competency.

[1-1-98, A, 8-16-99; 16.5.33.14 NMAC - Rn, 16 NMAC 5.33.14, 12-14-00; A, 3-29-02; 16.5.33.14 NMAC - Rn, 16.5.33.15 NMAC & A, 12-30-02]

16.5.33.[46]15 CERTIFICATION PROCEDURE: Upon receipt of a completed application, including all required documentation and fees the Secretary-Treasurer or delegate of the Board will review the application and determine eligibility for certification. The certificate must be displayed so that it is visible to the public.

[9-30-96, 2-14-00; 16.5.33.15 NMAC - Rn & A, 16 NMAC 5.33.15, 12-14-00; 16.5.33.15 NMAC - Rn, 16.5.33.16 NMAC & A, 12-30-02]

16.5.33.16 [RESERVED]

[5-31-95, 1-1-98; 16.5.33.16 NMAC - Rn, 16 NMAC 5.33.16, 12-14-00; A, 12-30-02]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.19 NMAC, Sections 1, 5, 8, 9, and 11. This rule was also reformatted and renumbered from 16 NMAC 5.19 to comply with the current NMAC requirements.

16.5.19.1 ISSUING AGENCY: New Mexico Board of Dental Health Care [725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165]. [9-30-96; 16.5.19.1 NMAC - Rn & A, 16 NMAC 5.19.1, 12-30-02]

16.5.19.5 EFFECTIVE DATE: September 30, 1996, unless a [different] later date is cited at the end of a Section [or Paragraph]. [9-30-96; 16.5.19.5 NMAC - Rn & A, 16 NMAC 5.19.5, 12-30-02]

16.5.19.8 PREREQUISITE REQUIREMENTS FOR LICENSE: Each applicant for licensure as a dental hygienist by examination must possess the following qualifications:

A. Graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13 of the Act.

B. Passed the Dental Hygiene National Board Examination as defined in Section 61-5A-13,A;

C. Passed the WREB or CRDTS examination. The results of the WREB or CRDTS exam are valid in New Mexico for a period not to exceed five years;

(1) The applicant shall apply directly to WREB or CRDTS for examination, and

(2) WREB or CRDTS results must be sent directly to the Board office; and

D. Passed the Jurisprudence Exam with a score of at least [70] 75 percentile.

[3-14-73, 10-4-86, 3-7-88, 5-31-95; A, 12-15-97, A, 8-16-99; 16.5.19.8 NMAC - Rn & A, 16 NMAC 5.19.8, 12-30-02]

16.5.19.9 DOCUMENTATION REQUIREMENTS: Each applicant for a dental hygiene license by examination must submit the required fees and following documentation:

A. Completed application, signed and notarized with a passport quality photo taken within 6 months affixed to the application. Applications are valid for 1

year from the date of receipt;

B. Official transcripts from the dental hygiene program, to be sent directly to the Board office from the accredited program;

C. Copy of WREB or CRDTS certificate or score card;

D. Copy of National Board Examination certificate or score card;

E. Proof of having taken a course in infection control technique or graduation from dental hygiene school within the past twelve months;

F. Proof of current CPR certification; and

G. Verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession. Verification must be sent directly to the Board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

[3-14-73, 3-7-88, 10-4-86, 5-31-95, 9-30-96, 12-15-97; 16.5.19.9 NMAC - Rn & A, 16 NMAC 5.19.9, 12-30-02]

16.5.19.11 LICENSURE PROCEDURE: Upon receipt of a completed application, including all required documentation and fees, and successful completion of the examination requirements, a ~~designee of the~~ Committee member will review the application and may approve for licensure. The recommendation of the Committee will be given to the Board to formally accept the approval of the application at the next scheduled meeting.

A. Initial dental hygiene licenses are issued for a period not to exceed three years, as defined in Part 24.

B. Any application that cannot be approved by the ~~delegate of the~~ Committee member will be reviewed by the entire Committee at the next scheduled meeting.

[3-16-94..9-30-96; A, 8-16-99; 16.5.19.11 NMAC - Rn & A, 16 NMAC 5.19.11, 12-30-02]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is a renumbering and amendment to 16.5.21 NMAC, Sections 1, 5, 8, and 12. This rule was also reformatted and renumbered from 16 NMAC 5.21 to comply with the current NMAC requirements.

16.5.21.1 ISSUING AGENCY: New Mexico Board of Dental Health Care; 725 St. Michael's Drive, Santa Fe, NM 87504, (505) 827-7165]

[9-30-96; 16.5.21.1 NMAC - Rn & A, 16

NMAC 5.21.1, 12-30-02]

16.5.21.5 EFFECTIVE DATE: September 30, 1996, unless a ~~different~~ later date is cited at the end of a Section ~~or Paragraph~~.

[9-30-96; 16.5.21.5 NMAC - Rn & A, 16 NMAC 5.21.5, 12-30-02]

16.5.21.8 CATEGORIES OF TEMPORARY LICENSES: Temporary dental hygiene licenses may be issued in the following categories for specific purposes, if education and experience requirements are met.

A. Clinical Educator. ~~[Dental hygienists, not currently licensed in New Mexico, who provide clinical education or training that includes demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for forty eight hours (two days). If the course lasts longer than two days, additional forty eight hour licenses may be requested upon payment of the applicable fees. A temporary license may not be issued for less than forty eight hours.]~~

(1) ~~Dental Hygienists, not currently licensed in New Mexico, who provide continuing education or training that includes clinical demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for forty eight hours (two days). If the course lasts longer than two days, additional forty eight hour licenses may be requested upon payment of the applicable fees.~~

(2) ~~Dental Hygienists, not currently licensed in New Mexico, who intend to serve as a faculty member of an accredited Dental Hygiene Program must apply for a temporary license. The temporary license is issued for twelve months and may be renewed one time. Temporary licensees must be granted a license under the provisions of Part 19 of these rules or 16.5.21.15 NMAC of this section prior to the expiration date of the temporary license to continue uninterrupted practice of dental hygiene in New Mexico.~~

B. Public Health Dental Hygiene. A dental hygienist may be granted temporary licensure to practice in a state institution, public health clinic or public health program approved or maintained by the New Mexico Department of Health. The temporary license holder is restricted to work exclusively in the institution or program named on the application. A temporary license may be issued for six or twelve months ~~and may be renewed one time~~. Temporary licensees must be granted a license under the provisions of Part 19 of these Rules or ~~Part 20~~ 16.5.21.5 of this section prior to the expiration date of the

temporary license to continue uninterrupted practice of dental hygiene in New Mexico. [3-14-73, 5-31-95, 9-30-96; 16.5.21.8 NMAC - Rn & A, 16 NMAC 5.21.8, 12-30-02]

16.5.21.12 LICENSURE PROCEDURE:

A. Clinical Educator: Upon receipt of a completed application, including all required documentation and fees, a Committee member will review the application and ~~[determine eligibility for licensure] may approve for licensure. The license will be read into the Committee and Board records at the next scheduled meeting. [The temporary license may be issued by a delegate of the Board.]~~

B. Public Health Dental Hygiene: Upon receipt of a completed application, including all required documentation and fees, and successful completion of the jurisprudence examination, a Committee member will review the application and ~~[determine eligibility for licensure] may approve for licensure. The license will be read into the Committee and Board records at the next scheduled meeting. [The recommendation of the Committee will be given to the Board at the next scheduled meeting.]~~

[3-14-73, 9-30-96; 16.5.21.12 NMAC - Rn & A, 16 NMAC 5.21.12, 12-30-02]

NEW MEXICO BOARD OF EDUCATION

The State Board of Education has repealed and replaced the following regulations effective December 30, 2002:

6.63.4 NMAC Repeal rule
Licensure in Educational Diagnosis
6.63.4 NMAC Adopt new rule
Licensure in Educational Diagnosis

The State Board of Education repeals the following regulation effective June 30, 2003. The regulation is replaced by 6.63.5 NMAC, Licensure for School Psychologist, K - 12, effective July 1, 2003.

6 NMAC 4.2.3.11
Licensure for School Psychologists, K-12

NEW MEXICO BOARD OF EDUCATION

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 63 SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL
PART 4 LICENSURE IN

EDUCATIONAL DIAGNOSIS

6.63.4.1 ISSUING AGENCY: State Board of Education
[6.63.4.1 NMAC - Rp 6.63.4.1 NMAC, 12-30-02]

6.63.4.2 SCOPE: All persons seeking licensure in educational diagnosis.
[6.63.4.2 NMAC - Rp 6.63.4.2 NMAC, 12-30-02]

6.63.4.3 S T A T U T O R Y AUTHORITY: Sections 22-2-1, NMSA 1978 and 22-2-2, NMSA 1978.
[6.63.4.3 NMAC - Rp 6.63.4.3 NMAC, 12-30-02]

6.63.4.4 D U R A T I O N : Permanent
[6.63.4.4 NMAC - Rp 6.63.4.4 NMAC, 12-30-02]

6.63.4.5 EFFECTIVE DATE: December 30, 2002, unless a later date is cited in the history note at the end of a section.
[6.63.4.5 NMAC - Rp 6.63.4.5 NMAC, 12-30-02]

6.63.4.6 OBJECTIVE: This regulation establishes the licensure requirements for persons seeking licensure in educational diagnosis.
[6.63.4.6 NMAC - Rp 6.63.4.6 NMAC, 12-30-02]

6.63.4.7 DEFINITIONS:

A. "Level I Licensure" means a provisional license in Educational Diagnosis granted for up to three years. The license is nonrenewable unless the license holder verifies to the State Board of Education that he/she has not worked using the license during its effective dates.

B. "Level II Licensure" means a renewable license in Educational Diagnosis awarded after successful completion of Level I License requirements.

C. "Supervision for an entry-level educational diagnostician" means an entry-level educational diagnostician will be required to have a minimum of one-hour per week individual supervision with a Level II Licensed educational diagnostician.

D. "Term of Licensure for an entry-level educational diagnostician" means the entry-level educational diagnosis license is issued for a three-year period and is non-renewable. The licensee must acquire the competencies and requirements to achieve a Level II Educational Diagnosis license within the three-year period.

E. Satisfactory experience means the individual has:

(1) Satisfactorily carried out the duties and responsibilities of the position as verified by the Superintendent or the governing authority of a private school or state institution, and

(2) Satisfactorily met the quality of the practice of educational diagnosis and professional responsibilities as reported by the supervising educational diagnostician.
[6.63.4.7 NMAC - N, 12-30-02]

6.63.4.8 REQUIREMENTS FOR PERSONS SEEKING LEVEL I ENTRY-LEVEL EDUCATIONAL DIAGNOSIS LICENSURE: All persons who perform services in educational diagnosis in public schools or in those special state-supported schools within state agencies, must hold valid, educational diagnosis licensure issued by the State Board of Education. Persons seeking entry-level licensure in educational diagnosis pursuant to the provisions of this regulation shall meet the following requirements.

A. Bachelor's degree and Master's degree from a regionally accredited college or university; and

B. 30 graduate hours, (which may be completed as a part of the master's degree program or in addition to the master's) meeting the applicable program requirements as follows:

(1) The 30 graduate hours, if awarded by a New Mexico college or university, must be from an Educational Diagnostic or School Psychology program approved by the New Mexico State Board of Education and include a 240 hour internship; or

(2) The 30 graduate hours awarded by a college or university outside New Mexico must be from an educational diagnostic or school psychology program approved by the New Mexico Board of Education and include a 240 hour internship; and

(3) All persons previously licensed as an Educational Diagnostician may substitute two years of verified, successful employment as an Educational Diagnostician for these requirements if a Diagnostic Internship was not part of their educational program; and

C. Background experience. The applicant must meet this requirement by:

(1) Holding a valid New Mexico teaching license, counseling license, or a licensure in another ancillary area; or

(2) Demonstrating three (3) years of documented, verified satisfactory experience in one or a combination of the following areas: work in community-based programs serving developmentally disabled children/adults; mental health work related to educational diagnosis; clinical practice

related to educational diagnosis; vocational evaluation; or teaching.

[6.63.4.8 NMAC - Rp 6.63.4.8 NMAC, 12-30-02]

6.63.4.9 REQUIREMENTS FOR PERSONS SEEKING LEVEL II EDUCATIONAL DIAGNOSIS LICENSURE:

A. Persons seeking Level II Educational Diagnosis licensure pursuant to the provisions of this regulation shall meet the following requirements

A valid Level I license; and

B. Successful completion or demonstration of competencies for an entry-level educational diagnostician; and

C. Satisfactory completion of 1800 hours of supervised experience as an educational diagnostician (i.e., minimum of 240 internship hours and 1200 post internship supervised hours in a school-related setting).

[6.63.4.9 NMAC - N, 12-30-02]

6.63.4.10 IMPLEMENTATION: All persons holding a valid New Mexico license in educational diagnosis on December 30, 2003, shall be entitled to licensure in educational diagnosis. Such licensure may be further continued pursuant to regulation(s) as established by the State Board of Education.

[6.63.4.10 NMAC - Rp 6.63.4.9 NMAC, 12-30-02]

6.63.4.11 REFERENCED MATERIAL: Competencies for Entry Level Educational Diagnosticians

A. Professional Knowledge

(1) Parent/Professional Communication Skills

(a) Discuss, demonstrate and apply communication techniques.

(b) Describe community resources available to parents.

(c) Describe issues and problems faced by parents of exceptional children.

(d) Describe models (e.g. home, mainstream, and center-based) for service delivery.

(e) Demonstrate knowledge of and sensitivity to addressing cultural, social, and ethnic values and attitudes.

(f) Demonstrate ability to communicate assessment and evaluation results both verbally and in writing to parents and professionals.

(g) Demonstrate ability to communicate state and federal regulations and due process rights to parents and professionals.

(2) Exceptionalities

(a) Define each exceptionality.

(b) List characteristics and needs as differentiated from cultural and/or linguistic differences.

(c) Discuss general nature, etiologies, and learning styles.

(d) Describe current theories and best practices for education and habilitation or rehabilitation.

(e) Demonstrate ability to respond to various physical and sensory needs of children with various exceptionalities.

(f) Choose evaluation instruments and procedures appropriate for each exceptionality, age level, and/or cultural and linguistic factor(s).

(3) Least Restrictive Environment

(a) Describe the rationale necessary to determine a child's least restrictive environment.

(b) Discuss the historical development of the least restrictive environment concept.

(c) Demonstrate knowledge of common service delivery options.

(d) Demonstrate skill in making recommendations to facilitate integration into the regular program.

(e) Demonstrate knowledge of need for ancillary service and service delivery options.

(4) Educational Appraisal and Review Committee

(a) Describe the role and responsibilities of the committee.

(b) Describe the ideal composition of the committee.

(c) Demonstrate skill in developing a total service plan.

(d) Demonstrate skill as a member of an Educational Appraisal and Review Committee in reviewing students Individual Educational Plans for consideration for exiting from Special Education.

(e) Demonstrate skill in preparing comprehensive report summaries keyed to the development of a Total Service Plan.

B. Human Growth and Development

(1) Motor, Language, Socio-Emotional, and Cognitive Development

(a) Describe the steps or milestones of normal motor, language, socio-emotional, and cognitive development.

(b) Demonstrate knowledge of the approximate age expectancies for achieving milestones.

(c) List and discuss factors affecting development.

(d) Discuss knowledge of social, cultural, and physiological aspects of human development.

(e) Describe current theories of learning and learning styles.

(2) Medical Syndromes

(a) Describe medical syndromes commonly found among special populations and their impact on learning.

(b) Describe identifying characteristics and prognosis.

(c) Discuss causal factors.

C. Culturally and Linguistically Diverse Populations

(1) Demonstrate knowledge and sensitivity to address linguistic, cultural, and social differences among learners from diverse populations.

(2) Demonstrate knowledge of characteristics and needs as related to cultural and linguistic differences.

(3) Demonstrate skills in selecting and administering appropriate assessment instruments for learners from diverse populations.

(4) Demonstrate skill in utilizing language background, language dominance and language proficiency in the assessment process.

(5) Demonstrate understanding of the impact of acculturation on learning and language acquisition.

(6) Demonstrate knowledge of variations in traditions and values across and within cultures and their effects on relationships among individuals with exceptional learning needs, family, and schooling.

(7) Demonstrate awareness of cultural perspectives influencing the relationships among families, schools, and communities, as related to assessment.

(8) Demonstrate knowledge of teaching strategies addressing learning styles and learning needs of children from culturally and linguistically diverse backgrounds.

D. Assessment/Evaluation

(1) Screening, Referral, and Evaluation

(a) Demonstrate skill in typical screening, referral, and evaluation procedures for exceptional individuals.

(b) Demonstrate skill in selecting and administering the types of assessment procedures, including informal and formal, standardized and non-standardized tests, and norm-referenced and criterion-referenced tests.

(c) Prepare reports giving testing information from educational diagnostic evaluations and state specific adjustments needed for the student in methods and materials.

(d) Demonstrate skill in observation techniques.

(e) Demonstrate various methods for regular monitoring of student progress.

(f) Take testing information from vocational assessments and incorporate the findings in comprehensive reports for classroom programming.

(g) Take assessment information from evaluation done by ancillary personnel and incorporate findings in comprehensive reports for classroom programming.

(h) Demonstrate knowledge and use of psychometric theory and descriptive statistics necessary to interpret psychoeducational tests.

(2) Individualized Educational Plan Development

(a) Complete contents and components of an Individualized Educational Plan.

(b) Describe the timelines and procedures of Individual Educational Plan development to include a total service plan and the instructional component.

(c) Recommend annual goals and short term objectives for a student's Total Service Plan.

(d) Design an Individualized Educational Plan (Instructional Component) for specific students.

(e) Describe the procedures for modifying an Individualized Educational plan.

(3) Individualized Educational Plan Implementation (Instructional Component)

(a) Demonstrate ability to integrate the Total Service Plan and Instructional Component of the Individualized Educational Plan into daily classroom programming.

(b) Select reading and mathematics inventories to individualize instruction. [6.63.4.11 NMAC - Rp 6.63.4.10 NMAC, 12-30-02]

HISTORY OF 6.63.4 NMAC:

PRE-NMAC HISTORY:

The material in this part was derived from that previously filed with the State Records Center and Archives under SBE Regulation No 76-25 Certification for Educational Diagnosticians, filed January 20, 1977; SBE Regulation No. 88-3 Licensure in Educational Diagnosis, filed April 13, 1988.

HISTORY OF REPEALED MATERIAL: 6.63.4 NMAC, Licensure in Education Diagnosis - Repealed 12-30-02

NEW MEXICO BOARD OF EDUCATION

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 63 SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL
PART 5 LICENSURE FOR**

SCHOOL PSYCHOLOGISTS, K-12**6.63.5.1 ISSUING AGENCY:**

State Board of Education
[6.63.5.1 NMAC - Rp 6 NMAC 4.2.3.11.1, 07-01-03]

6.63.5.2 SCOPE:

Chapter 63, Part 5 governs licensure for school psychologists, K-12, for those persons seeking such licensure.
[6.63.5.2 NMAC - Rp 6 NMAC 4.2.3.11.2, 07-01-03]

6.63.5.3 STATUTORY

AUTHORITY: Sections 22-2-1, NMSA 1978 and 22-2-2, NMSA 1978.
[6.63.5.3 NMAC - Rp 6 NMAC 4.2.3.11.3, 07-01-03]

6.63.5.4 DURATION:

Permanent
[6.63.5.4 NMAC - Rp 6 NMAC 4.2.3.11.4, 07-01-03]

6.63.5.5 EFFECTIVE DATE:

July 1, 2003, unless a later date is cited in the history note at the end of a section.
[6.63.5.5 NMAC - Rp 6 NMAC 4.2.3.11.5, 07-01-03]

6.63.5.6 OBJECTIVE:

This regulation establishes the requirements for three levels of school psychologist, K-12 licensure for persons seeking licensure as a level 1, entry level school psychologist, and a level 2, independent school psychologist, or a level 3A, supervising school psychologist practicing in a school-related setting. These licenses cannot be used to provide service outside a school-related setting. They cannot be used in a public setting.
[6.63.5.6 NMAC - Rp 6 NMAC 4.2.3.11.6, 07-01-03]

6.63.5.7 DEFINITIONS:

A. "School Psychologist" means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students, including assessment and psychological pre-referral/intervention procedures in a school-related setting.

B. "School-Related Setting" means limited to a public school, state institution, or State Board of Education accredited nonpublic school. These are settings in which the primary goal is the education of students of diverse backgrounds, characteristics, abilities, disabilities, and needs. The school setting has avail-

able an internal or external student services unit that includes at least one licensed school psychologist and provides student services according to state and federal law.

C. "Supervision for an entry level school psychologist" means an entry level school psychologist will be required to have a minimum of one-hour per week individual supervision with a level 3A supervising school psychologist.

D. "Term of Licensure for an entry-level school psychologist" means the entry-level school psychologist license is issued for a three-year period and is non-renewable. The licensee must acquire the competencies and requirements to achieve an independent school psychologist license within the three-year period. Supervised Experience means the individual has:

(1) Satisfactorily carried out the duties and responsibilities of the position as verified by the Superintendent or by the governing authority of a private school or state institution; and

(2) Satisfactorily met the quality of the practice of school psychology and professional responsibilities as reported by the supervising school psychologist.

F. "Independent School Psychologist (Level 2)" means a School Psychologist who is employed by the local education agency or nonpublic school, or is under contract by these entities. These services are provided in a school-related setting. The independent school psychologist does not require supervision as described for the entry-level school psychologist.

G. **Psychological Interventions and Practices** means the inclusion, but not limitation of, consultation, behavioral assessment/intervention, psychological evaluation, psycho-educational evaluation, counseling, family therapy, individual or group therapy, workshops in self-understanding, human relations, communication, and tutorial programs, and organizational development, parent counseling, vocational development, parent education programs, program planning and evaluation, crisis intervention, specific behavior management, skill training, and transition planning and evaluation. All psychological interventions and practices are to be provided within the scope of the psychologist's training and practice.

[6.63.5.7 NMAC - N, 07-01-03]

6.63.5.8 REQUIREMENTS FOR PERSONS SEEKING LEVEL 1, ENTRY LEVEL SCHOOL PSYCHOLOGIST LICENSURE:

Level 1 entry level school psychologists shall have documentation in their personnel file with the school district, local education agency, or school-related setting of a level 3A supervising

school psychologist who holds K-12 licensure pursuant to the provisions of this regulation, and shall meet the requirements of subsections A, B, and C:

A. A bachelor's and master's degree or educational specialist degree from a regionally accredited college or university; and

B. Qualifications meeting paragraph (1), (2), or (3):

(1) 60 graduate hours incorporating the State Board of Education approved competencies in school psychology (which may be completed as part of a master's or educational specialist degree program or in addition to the master's degree) meeting the applicable program requirements as follows:

(a) The 60 graduate hours awarded by a New Mexico college or university must include a 1200-hour internship supervised by an appropriately licensed psychologist, 600 hours of which must be in a school-related setting. Psychological assessment, counseling, and other psychological interventions with students with emotional disturbances shall comprise a minimum of 300 hours of the internship; or

(b) The 60 graduate hours awarded by a college or university outside New Mexico must be for a school psychology or equivalent program approved by the New Mexico State Board of Education and include an internship in a school setting as described in paragraph (1) of subsection B of 6.63.5.8; or

(c) The 60 graduate hours as described in paragraph (1) of subsection B of 6.63.5.8 or paragraph (2) of subsection B of 6.63.5.8 above, with documentation of 1200 hours within a two year period of successful supervised experience in one of the following areas: school psychology; psychological assessment and counseling, or other psychological interventions with at least 600 hours in a school-related setting;

(2) A doctoral degree in psychology, that includes 12 semester hours of child-focused course work in development, assessment, and intervention and 600 hours of supervised experience in a school-related setting; or

(3) A valid psychologist or psychologist associate license issued by the New Mexico Board of Psychologist Examiners; and that includes 12 semester hours of child-focused course work in development, assessment, and intervention and 600 hours of supervised experience in a school-related setting;

C. Fulfill the requirements of paragraph (1) or (2):

(1) Passing with at least a score of 600 the specialty area examination of the National Teachers examination in school

psychology, or;

(2) Current school psychologist certification by the National Association of School Psychologists.

[6.63.5.8 NMAC - Rp 6 NMAC 4.2.3.11.8.1, 07-01-03]

6.63.5.9 REQUIREMENTS FOR PERSONS SEEKING LEVEL 2, INDEPENDENT SCHOOL PSYCHOLOGIST LICENSURE: Persons seeking level 2, independent school psychologist, K-12 licensure pursuant to the provisions of this regulation shall meet the following requirements:

A. A valid level 1 license; and

B. Successful completion or demonstration of competencies for an entry level school psychologist, and:

C. Satisfactory completion of 2400 hours of supervised experience (i.e., minimum of 600 internship hours and 1200 post internship supervised hours in a school-related setting), and

D. One of the following valid and current certifications or licenses:

(1) A license as a psychologist issued by the New Mexico Board of Psychology Examiners; or

(2) A license as a psychologist associate issued by the New Mexico Board of Psychology Examiners; or

(3) A license as a Licensed Professional Clinical Mental Health Counselor issued by the New Mexico Counseling and Therapy Practice Board; or

(4) Current school psychologist certification by the National Association of School Psychologist.

[6.63.5.9 NMAC - Rp 6 NMAC 4.2.3.11.8.2, 07-01-03]

6.63.5.10 REQUIREMENTS FOR PERSONS SEEKING LEVEL 3A, INDEPENDENT SCHOOL PSYCHOLOGIST LICENSURE: Persons seeking level 3A, clinical supervising school psychologist, K-12 licensure pursuant to the provisions of this regulation shall meet the following requirements:

A. A valid level 2 license; and

B. Doctoral degree in psychology from a regionally accredited college or university. The doctoral program shall include at least one academic year of pre-doctoral supervised internship experience, consisting of a minimum of 1500 hours at least 750 hours of which must be in a school-related setting, or post-doctoral supervised experience consisting of a minimum of 1500 hours of which at least 750 hours of which must be in a school-related setting; and successful completion or

demonstration of competencies for an entry level school psychologist; and

C. Successful completion or demonstration of competencies for the independent school psychologist license, and

D. A valid psychologist license/certificate issued by the New Mexico Board of Psychologist Examiners, or current school psychologist certification issued by the National Association of School Psychologists; and

E. Two academic years of full-time satisfactory post-graduate work experience in a school-related setting(s) including 750 hours of satisfactory experience in diagnosing and treating children with emotional disturbances and/or behavior disorders in a school-related setting as reported by a supervising school psychologist.

[6.63.5.10 NMAC - Rp 6 NMAC 4.2.3.11.8.3, 07-01-03]

6.63.5.11 IMPLEMENTATION: All persons holding a valid New Mexico license in psychological counseling on June 30, 2002 shall be entitled to licensure in school psychology at level 1, 2 or 3. Such licensure may be continued pursuant to regulations as established by the State Board of Education.

[6.63.5.11 NMAC - Rp 6 NMAC 4.2.3.11.9, 07-01-03]

6.63.5.12 COMPETENCIES FOR ENTRY LEVEL SCHOOL PSYCHOLOGISTS REQUIRING SUPERVISION BY A LEVEL 3A SUPERVISING SCHOOL PSYCHOLOGIST

A. **P e r s o n a l** Characteristics: The school psychologist shall provide evidence that his/her professional work or demeanor is characterized by the following behaviors and developed and evaluated through courses, course content, practica, internships, work experience, or other appropriate means:

- (1) Flexibility
- (2) Communication Skills
- (3) Conscientiousness
- (4) Cooperation
- (5) Motivation
- (6) Personal Stability
- (7) Productivity
- (8) Professional Ethics
- (9) Respect for and valuing of individual and cultural diversity

B. **P s y c h o l o g i c a l** Foundations: The school psychologist shall demonstrate knowledge of basic psychological principles including:

(1) The relationship between biological principles (e.g. Courses in biological bases of development, neuropsychology,

psychopharmacology) and psychological functioning in normal and abnormal development;

(2) the manner in which concepts of social and cultural diversity (e.g. courses in cross cultural studies, social development, social and cultural diversity; social psychology) relate to an understanding of individuality;

(3) Using developmental principles to identify potential exceptionalities in students (e.g., applying understanding of human development and developmental abnormalities, as these relate to possible exceptionalities);

(4) Methods and models for identifying and diagnosing conditions of exceptionality;

(5) Principles, concepts and processes related to human learning;

(6) Basic research methodology as applicable to school related problems; and

(7) The relationship between social setting and the psychological functioning of students.

C. **E d u c a t i o n a l** Foundations: The school psychologist shall demonstrate knowledge of educational foundations including:

(1) Organization and operation of schools (e.g. courses in education of exceptional learners, school and community-based resources, alternative service delivery systems);

(2) The organization and administration of school psychological services, including record keeping; the social, philosophical, historical, and cultural issues in education; State standards and benchmarks; school curriculum, intervention programs and strategies;

(3) The current identification, referral, evaluation, and placement procedures for students with exceptionalities based upon state and federal regulations.

D. **T h e** School Psychologist shall possess the knowledge and professional expertise to collaborate with families and school and community-based professionals in designing, implementing, and evaluating interventions that effectively respond to the educational and mental health needs of students. The school psychologist shall demonstrate knowledge of ability to:

(1) Conduct multi-method psychological and psycho-educational assessments of students as appropriate;

(2) Conduct psychological and educational assessments to include fair and non-discriminatory evaluation of the areas of: personality, emotional status, social skills and adjustment, intelligence and cognitive functioning, scholastic aptitude, func-

tional and adaptive behavior, language and communication skills, academic knowledge and achievement, sensory and perceptual-motor functioning, family/environmental/cultural influences, level of acculturation, career and vocational development, aptitude, and interests.

(3) Utilize formal assessment instruments, procedures, and techniques such as interviews, observations, and behavioral evaluations ;

(4) Have particular regard for the context and setting in which their assessments take place and will be used; and

(5) Adhere to the regulations and standards of state and national professional organizations regarding assessment techniques, non-biased assessment, and programming for all students.

E. Interventions, Direct and Indirect: The school psychologist shall demonstrate the ability to implement direct (e.g., including counseling and behavior management) and indirect (e.g., including consultation, systems and organization change) intervention using educational and psychological principles when participating as a member of a team of school, school related, and community professional personnel, as outlined in the following:

F. Learning/Cognitive Setting: The school psychologist shall demonstrate the ability to:

(1) Plan and implement procedures for assessing the needs of students and recommending strategies for increasing learning and efficiency;

(2) Consult with appropriate personnel in the development of instructional programs, including vocational programs;

(3) Assist schools in working with parents to foster positive approaches to student's learning;

(4) Assist school personnel in developing, monitoring, and evaluating appropriate and measurable instructional/vocational/transitional objectives; and

(5) Consult with school personnel about the classroom environment.

G. Social/Affective Setting: The school psychologist shall demonstrate the ability to:

(1) Plan, develop, and implement district-wide procedures for assessing the social/emotional needs of students and for recommending strategies for increasing social/emotional growth;

(2) Assist schools in working with parents to foster positive emotional growth in their children;

(3) Assist school personnel in developing, monitoring, and evaluating objectives for social/emotional growth; and

(4) Consult with school personnel

about fostering healthy a healthy social/emotional environment in the school.

H. Intervention Techniques: The school psychologist shall demonstrate the ability to plan, implement, monitor, and evaluate intervention strategies which may include the following:

(1) Individual and group counseling with students;

(2) Remediation, including the provision of direct assistance to students receiving special education;

(3) Consultation with individuals and groups which may include parents, school personnel, and community agencies;

(4) Risk and threat assessment; and

(5) Behavioral management.

I. Prevention, Crisis Intervention and Mental Health: The school psychologist shall have knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior. The school psychologist shall provide or contribute to prevention and intervention programs that promote the mental health and physical well being of students.

J. Family and community Interventions: The school psychologist shall demonstrate the ability to:

(1) Describe community resources available to families;

(2) Describe issues and problems faced by families or students with exceptionalities;

(3) Describe a continuum of services available to students and their families;

(4) Explain state and federal regulations and due process rights to families, school personnel and community professionals; and

(5) Communicate information regarding state mental health and Children's Codes and the Mandatory Reporting Child Abuse and Neglect Act.

K. Statistics and Research Methodologies: The school psychologist is a competent consumer of research and new knowledge, and is able to use diverse methodologies (e.g., ethnographic, single subject designs, quantitative methods) to evaluate professional practices (e.g., interventions) and/or programs. That knowledge base shall include research and evaluation methods, statistics, and measurement.

L. Professional School Psychology: The school psychologist shall demonstrate the ability to:

(1) Practice school psychology in accordance with the ethics of the profession;

(2) Practice the profession of school psychology within the laws and regulations of the local, state, and federal gov-

ernments;

(3) Continue education for the promotion of professional growth;

(4) Demonstrate knowledge of different models, concepts, and current issues concerning the practice of school psychology; and

(5) Examine interactions between systems and individuals within the schools and between schools and outside agencies to determine strengths, weaknesses, and problem areas and aid in maximizing effective functioning.

M. An Entry Level (Level 1) school psychologist will be required to have a minimum of one hour per week individual supervision with the Level 3A Supervising School Psychologist. At least one session per month must be in person with the Level 3A supervising school psychologist. Supervision will not be provided to Level 1's who have not reached the Level 2 requirements in the time period established by NMSDE.

[6.63.5.12 NMAC - Rp 6 NMAC 4.2.3.11.10, 07-01-03]

6.63.5.13 COMPETENCIES FOR LEVEL 2 INDEPENDENT SCHOOL PSYCHOLOGISTS:

The independent school psychologist shall meet all competencies required for the Level 1 Entry Level School Psychologist in subsections A through L of section 6.63.5.12. In addition, the independent school psychologist shall have knowledge and ability to:

A. Conduct risk/threat assessments, interventions, and referrals as necessary.

B. Cooperate with institutions of higher education in the training of students in school psychology.

[6.63.5.13 NMAC - Rp 6 NMAC 4.2.3.11.10.7, 07-01-03]

6.63.5.14 COMPETENCIES FOR LEVEL 3A CLINICAL SUPERVISING SCHOOL PSYCHOLOGISTS:

The supervising school psychologist shall meet all competencies required for the Level 1 Entry Level School Psychologist in subsections A through L of section 6.63.5.12 and for the independent school psychologist section 6.63.5.12. In addition, the supervising school psychologist shall demonstrate:

A. Knowledge of models of consultation and supervision;

B. Ability to utilize appropriate models of consultation and supervision in various school-related situations;

C. Ability to form a collaborative relationship with school administrators, professional supervisees and consultants and other school personnel;

D. Ability to form a collaborative relationship with school administration and other personnel regarding the assessment of the supervisee and ability to make recommendations as to whether the supervisee has demonstrated proficiency in required areas of competencies;

E. Ability to formulate a plan of supervision and consultation to assist supervisees and consultees in attaining professional goals and remediating areas of difficulty; and

F. Ability to cooperate with the institutions of higher education while providing supervision to school psychologists in training;

G. Ability to pursue monthly guidance from a more experienced supervising school psychologist for the first year of being a supervisor.
[6.63.5.14 NMAC - Rp 6 NMAC 4.2.3.11.10.2.8, 07-01-03]

HISTORY OF 6.63.5 NMAC:

PRE-NMAC HISTORY:

The material in this regulation was derived from that previously filed with the state records center and archives under: SBE Regulation 93-2, Licensure for School Psychologists, K-12, filed January 6, 1993.

HISTORY OF REPEALED MATERIAL: 6 NMAC 4.2.3.11, Licensure for School Psychologists, K - 12, Repealed 06-30-03

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.19.1 NMAC. The amendment deletes paragraph 3 of subsection B of 6.19.1.8 NMAC and adds subsection E to 6.19.1.9 NMAC.

6.19.1.8 INDICATORS AND MEASUREMENTS:

The State Department of Public Education ["Department"] shall annually measure public schools on the five statewide indicators. All scores, rates, and other measures used in the Accountability Rating System shall be verified by the Department. Groups of students are denoted by grade levels and subpopulations of grade levels. Assessment data shall be considered for accountability ratings only when a group represents 10 or more students. Each school generates data points which have been identified as either exemplary, exceeds standards, meets standards, or probationary.

A. The student achievement indicator will utilize results from the state-mandated norm referenced achievement test(s) ("NRT") in Spanish or English. Students will be tested using the NRT in

Spanish or English or other assessments, when appropriate, as defined by federal guidelines. Likewise, all exemptions to statewide testing requirements and all accommodations provided in statewide testing must be in compliance with federal guidelines.

(1) The NRT will be represented at a rate proportionate to the number of students taking each of the subtests in English or Spanish. Each subtest – reading, language arts, mathematics, science, and social studies – will provide one data point per grade at the school for a total of five data points per grade. These data points shall be referred to as "status data points".

(a) The test results of the students who have been in attendance on or prior to the 40-day attendance count shall be used to determine the rating of each status data point.

(b) A status data point is rated exemplary if the median percentile rank is above the 70th percentile, exceeds standards if the percentile rank is above the 60th percentile to the 70th percentile, meets standards if it is at the 40th through the 60th percentile, and probationary if it is below the 40th percentile.

(2) The results of the NRT shall also be utilized to determine the growth in student performance.

(a) Growth is determined by the number of scale score points a cohort group within the same school achieves from one year to the next.

(b) Growth shall be measured for one, two and three years when available in a school.

(c) "Typical growth" shall be utilized to determine if a cohort group has achieved the growth expectations set by the Board. Each grade and each subject has varying scale score points to achieve in order to meet "typical growth."

(d) When all of the growth data are configured, the number of data points for growth shall be weighted to equal the status data points. The number of students contributing to the growth data shall contribute proportionately to the growth data.

(e) Students who take the tests with accommodations shall be considered as a proportion of the total number of students in cohort groups.

(f) Each growth data point shall be determined to be either high, middle, or low range, prior to measuring the growth, by the median percentile. If the median percentile is below the 40th percentile, the data point is considered low range. If it is at the 40th percentile through the 60th percentile, the data point is considered middle range. If the data point is above the 60th percentile, the data point is considered high range.

(g) Utilizing the standard determined by the test publisher to represent "typical growth" scales, a low range data point must increase:

(i) by 1.75 or higher times typical growth to achieve exemplary;

(ii) by 1.5 to 1.74 times typical growth to achieve exceeds standards;

(iii) by 1.25 to 1.4 times typical growth to achieve meets standards; and,

(iv) below 1.25 times typical growth to achieve probationary.

(h) Utilizing the same standard determined by the test publisher to represent "typical growth" scales, a middle range data point must achieve:

(i) 1.5 or higher times typical growth to achieve exemplary;

(ii) 1.25 to 1.4 times typical growth to achieve exceeds standards;

(iii) 1.0 to 1.24 times typical growth to achieve meets standards; and,

(iv) less than typical growth to achieve probationary.

(i) Utilizing the same standard determined by the test publisher to represent "typical growth" scales, a high range data point must achieve:

(i) 1.25 or higher times typical growth to achieve exemplary;

(ii) 1.0 to 1.24 times typical growth to achieve exceeds standards,

(iii) less than typical growth to achieve meets standards;

(iv) and show a decline for probationary.

(3) Achievement results for small schools shall be rated by utilizing the concept of "rolling averages." For purposes of rating schools, a school is considered to be a small school if it has any one grade level with fewer than a total of 10 students enrolled. Once identified as a small school, a school will continue to be rated as a small school for three years before considering whether to rate it as a larger school. These data are configured by using all the students in attendance at the school that have statewide test results. All the scores for all the students for the past three years are considered as if they represented one class. The median percentile is then determined and a status data point assigned based on this median. There are no growth data points for small schools.

(4) In addition to the results from the required testing described in Subsection A of 6.19.1.8 NMAC, the New Mexico High School Competency Examination shall be used to provide achievement data

points for schools that have 10th grade in attendance. There are five subtests that shall be used – reading, language arts, mathematics, science, and social studies. Each subtest shall generate a data point by using results of tenth grade first time test-takers as follows:

(a) A data point shall be exemplary if it has an average scale score value of 205 or higher;

(b) A data point shall be exceeds standards if the average scale score is 180 to 204.9;

(c) A data point shall be meets standards if the average scale score is 175 to 179.9

(d) A data point shall be probationary if the average scale score is below 175.

B. The attendance indicator utilizes the definition of a full day of attendance as established in the Accountability Data System (ADS) and data will be collected through the ADS mechanism to establish an attendance rate for each public school.

(1) Attendance is assigned one data point per school.

(2) The State Board defines:

(a) exemplary attendance as 94% or higher;

(b) exceeds standards attendance as 93% to 93.9%;

(c) meets standards attendance as 92% to 92.9%; and,

(d) probationary attendance as below 92%.

~~[(3) A school that receives an overall rating of probationary and also has a probationary attendance data point may appeal the attendance data point to the Commission if a higher attendance data point would prevent a probationary rating of the school and the probationary attendance data point can be explained due to weather eonditions, extreme illness, transportation problems, or other such matters. The appeal must be made to the State Superintendent of Public Instruction (“State Superintendent”) in writing within twenty days of the school’s receipt of official notice of the school rating. The State Superintendent will designate staff to coordinate and process the appeal. If the Commission determines that the attendance data point should be rated Meets Standards, the school’s rating will be amended as appropriate. The Educational Standards Commission has the final approval of the appeal of this data point.]~~

C. The dropout indicator utilizes the National Center for Education Statistics (“NCES”) definition and includes grades 7 through 12.

(1) Dropout rate is assigned one

data point per school.

(2) The State Board delineates dropout data for grade levels 9 – 12 as:

(a) exemplary when it is 1.0% or less;

(b) exceeds standards when it is 1.1 % to 4.0%;

(c) meets standards when it is 4.1% to 7.0%; and,

(d) probationary when it is higher than 7.0%.

(3) For grades seven and eight, the dropout data is:

(a) exemplary when it is less than 0.1%;

(b) exceeds standards when it is 0.1% to 1.0%;

(c) meets standards when it is 1.1% to 2.5%; and,

(d) probationary when it is higher than 2.5%.

(4) When a school has a rate for 7th and/or 8th grade, and also has a rate for grade 9 or higher, the data point rating will be determined by an average of the two rates.

D. The Parent and Community Involvement indicator will utilize the school’s Department-approved Parent and Community Involvement Plan and the six national standards for parent-community involvement.

E. The Safe School indicator will utilize the school’s Department-approved Safe School Plan.

[6.19.1.8 NMAC – N, 03-29-02; A, 12-30-02]

6.19.1.9 SCHOOL RATINGS:

A. A school’s rating will determine when intervention is appropriate.

B. A school’s rating is determined by the percentage of data points that are rated as exemplary, exceeds standards, meets standards, and probationary.

C. The ratings shall be publicized each year and provided by the Department to districts and to schools.

D. New schools are not rated.

E. A school that receives an overall rating of probationary for a first or second time and will enter either the performance warned or the first year of school improvement categories may appeal the rating to the Educational Standards Commission. The appeal must be made to the State Superintendent of Public Instruction (“State Superintendent”) in writing within twenty days of the school’s receipt of official notice of the school rating. The State Superintendent will designate staff to coordinate and process the appeal. If the Educational Standards Commission determines that additional data

substantiates the appeal, a recommendation from the Educational Standards Commission that the school should be rated Meets Standards will be forwarded to the State Board of Education. The Educational Standards Commission will make the recommendation, based on findings of fact, to the State Board of Education that will have final approval of the possible change of a school’s rating from probationary to meets standards.

[6.19.1.9 NMAC – N, 03-29-02; A, 12-30-02]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.19.2.16 NMAC. The amendment adds new language as subsection B and reorganizes the section to provide for subsections A and B.

6.19.2.16 ANNUAL STATUS REPORT:

A. The State Superintendent shall report on the progress of any local school board suspension periodically to the State Board. At a minimum, the State Superintendent shall report to the State Board on the 12th-month anniversary of the suspension of a local school board. Additionally, he shall report to the State Board upon the termination of suspension of a local school board. Modification of any action plans need not be reported unless they involve substantial changes.

B. In the case of local corrective action plans approved by the State Superintendent with or without mandatory conditions, the school will have one full school year from the time of identification to meet the criteria for an extension of school improvement or to meet standards as a result of having implemented the corrective action plan.

[6.19.2.16 NMAC - N, 03-29-02; 6.19.2.16 NMAC - Rn, 6.19.2.15 NMAC, 07-15-02; A, 12-30-02]

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

This is an amendment to 19.5.1 sections 5, and 7. 19.5.1 NMAC was also renumbered and reformatted from 19 NMAC 5.1 to conform to the current NMAC requirements.

19.5.1.5

EFFECTIVE DATE:

December 31, 1996, unless a ~~different~~ later date is cited at the end of a Section ~~or Paragraph.~~

[12-31-96; 19.5.1.5 NMAC - Rn & A, 19 NMAC 5.1.5, 12/31/02]

19.5.1.7 DEFINITIONS

A. "Boating and rafting excursions" means any guiding service for boating or rafting trips offered to the general public.

B. "Capital improvement" means a construction project by a concessionaire to the concession premises that is not maintenance or repair and that costs at least \$1,000.00.

[B]C. "Commercial activity" means any for-profit sales or services but does not include the operation of vending machines unless the vending machine is operated as part of a larger concession operation.

[C]D. "Concession" means any commercial activity conducted within a state park or recreation area and authorized in writing by the department.

[D]E. "Concessionaire" means the owner or operator of a concession who operates pursuant to a concession contract with the department.

[E]F. "Concessions administrator" means an employee of the state parks division who maintains all records and documentation concerning concession contracts and concession permits.

[F]G. "Concession contract" means an agreement between the department and a person, business entity or friends group which allows the concessionaire to provide services, merchandise, accommodations or facilities within a state park or recreation area. The concessionaire shall occupy a permanent structure or location within the state park or recreation area. The term of the concession contract shall not exceed 30 years pursuant to Section 16-2-9 NMSA 1978.

[G]H. "Concession permit" means a permit issued to a person, business entity or friends group by the department to provide services in a state park or recreation area for a time period of one year or less. The fee for a concession permit shall be a fixed fee and shall not exceed \$500. The director may waive this fee for concession permits issued to friends groups. The concession permittee shall not maintain any fixed assets within the state park and recreation area. The concession permittees business address shall be outside of the state park or recreation area. Services authorized under a concession permit are limited to guiding and fishing services, boating and rafting excursions, educational services and park resource protection services for exam-

ple, firewood sales.

[H]I. "Concession permittee" means the holder of a concession permit issued by the department.

[I]J. "Cultural property" means a structure, place, site or object having historic archaeological, scientific, architectural or other cultural significance.

[J]K. "Department" means the energy, minerals and natural resources department.

[K]L. "Developed site" means a park camping site with at least one shelter, table, grill or any combination of two or more such facilities at the site. Sites with recreational vehicle utility hookups shall be considered developed regardless of the presence of shelters, tables or grills.

[L]M. "Director" means the director of the state parks division of the energy, minerals and natural resources department.

[M]N. "Division" means the state parks division of the energy, minerals and natural resources department.

[N]O. "Flotation assist device" means a wet suit or wearable flotation device in good condition capable of providing flotation to the wearer on the surface of the water.

[O]P. "Friends group" means an organized group of individuals recognized by the division that ~~that~~ ~~which~~ volunteers time, services or funds to promote and support the division.

[P]Q. "Gross receipts from sales and services" means the total amount of receipts from sales and services.

[Q]R. "Guide" means an individual or an employee of an outfitter who is hired to escort or accompany clients in fishing, rafting or boating.

[R]S. "Lessor" means the state parks division.

[S]T. "Leaseholder" means an individual who leases a portion of land ~~or a mooring site~~ from the state parks division.

[T]U. "Net receipts from sales and services" means the total amount of receipts from sales and services, less the amount of gross receipts taxes.

[U]V. "Off highway motor vehicle" means any motor vehicle operated or used exclusively off the highways of this state and that is not legally equipped for operation on the highway.

[V]W. "Outfitter" means a person or company who employs guides.

[W]X. "Park management and development plan" means a plan used as a guide for all expansion, services, programs and development for the park.

[X]Y. "Person" means an individual, partnership, firm, corporation,

association, joint venture or other entity.

[Y]Z. "Personal flotation device" means a coast guard approved life preserver, buoyant vest, hybrid device, ring buoy or buoyant cushion.

[Z]AA. "Primitive site" means a camping site that offers no facilities except a cleared area for camping. Primitive sites may have trash receptacles, chemical toilets or parking.

[AA]BB. "Property marker" means a secured object, such as a flag or pole, that is used to mark lease lot boundaries.

[BB]CC. "Receipts" means all consideration in money and in trade received from sales and charges for services.

[CC]DD. "Regional manager" means a state parks division employee responsible for several parks within a region.

[DD]EE. "Resolution committee" means a group of individuals that consists of one representative from the state parks division, one representative from the United States bureau of reclamation, when applicable, and leaseholders involved in survey dispute.

[EE]FF. "Sales and services" means all transactions by a concessionaire, or agents or employees of a concessionaire for which the concessionaire receives consideration in money or money's worth in connection with the concession business operated pursuant to the concession contract.

[FF]GG. "Secretary" means the secretary of the energy, minerals and natural resources department.

[GG]HH. "Special use permit" means a permit issued to a person, business entity, friends group or organized group by the division to provide an event or activity within a state park and recreation area. Examples of special use events and activities include: regattas, boat races, parades, races, fishing tournaments, exhibitions, and educational activities. The term of a special use permit shall be for the duration of the approved event or activity but shall not be issued for a period of more than five consecutive days.

[HH]II. "State park official" means any employee of the state parks division.

[II]JJ. "State parks system" means all land and water in state park and recreation areas.

[JJ]KK. "Superintendent" means an employee of the state parks division who is in charge of a specific park(s).

[KK]LL. "Vending machine" means any coin-operated beverage, snack or service machine subject to approval by the

division

~~LE~~MM. "Veteran's permit" means one (1) annual day use permit for entry into state parks, issued to a New Mexico resident veteran with a permanent one hundred percent (100%) service connected disability. A veteran's permit shall be for personal use only by the veteran and is non-transferable.

[7-17-67, 7-25-72, 7-31-79, 12-21-89, 12-31-89, 5-20-92, 12-31-96, 12-31-98, 7-1-99; 19.5.1.7 NMAC - Rn & A, 19 NMAC 5.1.7, 12/31/02]

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

This is an amendment to 19.5.2 NMAC, sections 5, 11, 12, 13, 15, 17, 18, 22, 23, 24, 27, 28 and 30. 19.5.2 NMAC was also **renumbered and reformatted** from 19 NMAC 5.2 to conform to the current NMAC requirements.

19.5.2.5 EFFECTIVE DATE: December 31, 1996, unless a ~~different~~ later date is cited at the end of a Section ~~or Paragraph.~~
[12-31-96; 19.5.2.5 NMAC - Rn & A, 19 NMAC 5.2.5, 12/31/02]

19.5.2.11 DAY USE

A. Day use of a park area is from 6:00 a.m. to 9:00 p.m.; different hours may be posted. Visitors shall pay day-use fees upon entry to the park. See 19.5.6 NMAC.

B. Picnicking is allowed in the state parks system. Areas designated for picnicking may be closed to overnight camping.

C. Users ~~must~~ shall maintain sites in state parks or recreation areas in a clean and sanitary condition at all times. The user shall clean the site after use and dispose of all trash and litter in appropriate waste receptacles.

[7-17-67, 7-31-79, 12-31-96, 12-31-98; 19.5.2.11 NMAC - Rn & A, 19 NMAC 5.2.11, 12/31/02]

**19.5.2.12 O V E R N I G H T
CAMPING**

A. Overnight camping is allowed in the state parks system in designated areas, provided that a valid camping permit is obtained. Persons shall obtain permits upon entry with the payment of appropriate fees. See 19.5.6 NMAC. All

use of park properties and facilities between the hours of 9:00 p.m. and 6:00 a.m. is overnight camping. Check out time, the time the campsite is to be vacated, is 2:00 p.m.; however, the camping permit will allow day use of the park until 9:00 p.m. or as posted by superintendent.

B. Camps may not be retained and left vacant by the camper for more than 24 hours without special permission from the superintendent.

C. Campers ~~must~~ shall maintain campsites in a clean and sanitary condition at all times. Campers ~~must~~ shall clean campsites after use and place litter only in appropriate disposal containers. Campers in remote areas ~~must~~ shall carry out all supplies and refuse and dispose of these items properly in appropriate waste receptacles.

D. A camper may reside in a park for a maximum of 14 days during any 20-day period unless otherwise posted or waived by the director. Camps ~~must~~ shall be completely removed from the park for six days during the 20-day period.

E. Fees shall be charged according to the facilities provided at each campsite, as provided in 19.5.6 NMAC, regardless of whether the facilities at the campsite were used. For example, camping at a site with electricity requires payment of the fee for a developed site with electrical hookup even if no electricity is used.

F. All vehicles in a park between the hours of 9:00 p.m. and 6:00 a.m. are individually subject to the appropriate overnight camping fees. Motor homes towing a vehicle or vehicles towing a camper ~~will~~ shall be considered a single vehicle for purposes of this rule.

G. Special areas within a park may require full fee payment in advance for weekends, holidays or special events, regardless of other permits.

H. Anchoring a boat or vessel overnight within a state park constitutes overnight camping and requires a valid camping permit for the anchored boat or vessel unless camping fees have been paid for towing vehicle. Anchored boats or vessels may not be left vacant for more than 24 hours without special permission from the superintendent. Anchored boats or vessels may remain within a state park for a maximum of 14 days during any 20-day period unless otherwise posted or waived by the director. Anchored boats or vessels ~~must~~ shall be completely removed from the park for six days during the 20-day period. Subsection H of 19.5.2.12 NMAC does not apply to boats or vessels moored at concession operated facilities such as marinas or buoy lines. Such boats or vessels are not subject to camping permits and fees or time

limits while they are moored at the concession facilities.

[7-17-67, 5-17-82, 12-21-89, 12-31-96, 12-31-98; 19.5.2.12 NMAC - Rn & A, 19 NMAC 5.2.12, 12/31/02]

19.5.2.13 USE OF FACILITIES

A. All facilities are available on a first come, first serve basis with the exception of parks where a reservation program is established. Campers shall not save or reserve camping spaces for other individuals even by purchasing additional permits. Campers shall not have sole and continuing possession of any picnic or shade shelter or other park facility to the exclusion of other park visitors except as provided in Sections 11 and 12 of this Part unless special permission has been granted by the superintendent.

B. Persons using any park facility shall keep it in a clean and sanitary manner and shall leave it in a clean and sanitary condition.

C. Special facilities have been developed and designated for the use of individuals with disabilities. Individuals with disabilities shall have preferential use of these facilities over other persons.

D. Removing water for domestic use from the park or depositing domestic trash generated outside the park or from lease lots within a park is prohibited.

E. Advance reservations are required for the use of meeting rooms. Meeting rooms are not available at all parks. Any person who reserves a meeting room is responsible for setting up the room, cleaning the room after use and leaving the room in the same condition it was in before use. See 19.5.6 NMAC for meeting room fees.

F. The director may designate areas within the state parks system for use by reservation.

G. Advance reservations are required for the use of group shelters, group areas or reservation camp sites. All users are required to pay the appropriate day use or camping fees in addition to the reservation fee. Annual permits may not be accepted at certain reservation campsites as posted. See 19.5.6 NMAC for group shelter fees.

[7-17-67, 5-6-87, 12-31-96, 12-31-98; 19.5.2.13 NMAC - Rn & A, 19 NMAC 5.2.13, 12/31/02]

19.5.2.15 VEHICLE TRAFFIC

A. Vehicles shall be driven within the state parks system only on established roads or areas authorized for vehicle traffic, provided that vehicle operation is at speeds at or below the posted limit and in a manner ~~which~~ that is reasonable and pru-

dent, having due regard for traffic, pedestrians and road surface conditions and width.

(1) Vehicles shall not be operated in a manner that endangers the safety of persons, property or wildlife.

(2) Vehicles shall not be operated at speeds greater than the posted limit and ~~with~~ shall not exceed 30 miles per hour where no limit is posted.

B. All vehicles operating within a state park shall be registered and operated according to New Mexico motor vehicle laws.

C. It is unlawful to ride or to allow anyone to ride in a boat loaded on a trailer, except when launching or loading a boat at an established boat ramp.

[7-17-67, 5-6-87, 12-21-89, 12-31-96, 12-31-98; 19.5.2.15 NMAC Rn & A, 19 NMAC 5.2.15, 12/31/02]

19.5.2.17 SWIMMING: All swimming shall be at the swimmer's own risk. Swimming is prohibited within 150 feet of public or concession boat docks, launching ramps, dams, above or below, or where otherwise posted. Persons using air mattresses, inner tubes, surfboards, sail or wind, styrofoam flotation devices and other similar articles ~~must~~ shall wear a U.S. coast guard approved personal flotation device or a flotation assist device.

[7-17-67, 12-31-96; 19.5.2.17 NMAC Rn & A, 19 NMAC 5.2.17, 12/31/02]

19.5.2.18 SKIN OR SCUBA DIVING

A. Skin or scuba diving is at the diver's own risk and is prohibited 150 feet from marinas, docks and ramps except for official activities and in other areas designated by the superintendent.

B. Scuba diving is permitted only in groups of two or more divers. An additional diver or competent diver-tender ~~must~~ shall remain above water at all times.

C. All equipment such as tanks, weight belts and so forth shall ~~must~~ be equipped with quick-release fasteners.

D. All scuba divers ~~must~~ shall be equipped with a buoyancy compensator. Only self-inflated, air supplied canister, or tank inflated, direct connection to the tank supplied air, shall be used.

E. A diver's flag ~~must~~ shall be used to mark the point of submergence. All scuba divers shall fly the diver's flag from a boat or flotation device while diving. The flag shall be red with a white diagonal stripe running from the upper left corner to the lower right corner. All boats shall stay at least 150 feet away from a diver's flag and ~~must~~ shall exercise special care in the vicinity of such warning flags.

[7-17-67, 12-21-89, 12-31-96; 19.5.2.18 NMAC - Rn & A, 19 NMAC 5.2.18, 12/31/02]

19.5.2.22 NOISE LIMITATIONS

A. Park "quiet hours" begin at 10:00 p.m. and end at 7:00 a.m. The operation of generators, radios, unmuffled vehicles and other loud activity disturbing others is prohibited during this time period.

B. Except in case of an emergency, creation of any loud noise through the use of a loudspeaker shall require advance written approval of the superintendent. Radios, tape players and other sound producing devices ~~with~~ shall be operated at a reasonable level during non-quiet hours so as not to disturb other park visitors.

C. The use of any type of firework is prohibited without advance written approval from the superintendent. [7-17-67, 2-16-78, 5-17-82, 12-31-96; 19.5.2.22 NMAC - Rn & A, 19 NMAC 5.2.22, 12/31/02]

19.5.2.23 CONDUCT

A. Park visitors and campers are encouraged to enjoy all park experiences without infringing upon the ability of other visitors to enjoy the same experiences. Threatening, abusive, boisterous, insulting or indecent language and behavior are prohibited. Solicitation, gambling and illegal discrimination in any manner are prohibited.

B. Park visitors and campers shall not evade, disobey or resist any lawful order of a state park official.

C. Parents, guardians or other adults in charge are required to exercise constant direct supervision of minor children or adults who do not possess the intelligence or awareness to recognize possible danger.

D. A state park official may eject from a state park any person who violates a state law or a regulation of the department or any person who evades, disobeys or resists any lawful order of a state park official. Based on the severity of conduct or reported incident, i.e., threatening or intimidating conduct toward park visitors or park staff, the ejection may be permanent. Permanent ejection requires an order by the superintendent or his designee. To request review of a permanent ejection issued by the superintendent, an individual ejected from state parks shall submit a written request to the director within 15 days of issuance and provide written notice to the superintendent. A request shall include the reasons for requesting review. The superin-

endent and the ejected individual shall submit written statements to the director within 10 working days of the submission of the request for review. The director shall base his decision on the written statements unless the ejected individual or the superintendent requests the opportunity to call witnesses or make oral arguments within 10 working days of the request for review. A request for hearing shall explain the need for any witness testimony or oral argument. If the ejected individual or superintendent asks to make oral arguments or call witnesses, the director may set a hearing to be held within 10 working days of receiving that request and provide notice of the hearing date, time, and location to the superintendent and the ejected individual. Oral testimony shall be made under oath. A tape or stenographic record shall be made of any oral argument or witness testimony. The director shall issue a written final decision, including findings of fact within 10 working days after the date for submission of written statements, or a hearing if any, and send copies to the ejected individual and the superintendent.

[7-17-67, 5-6-87, 12-21-89, 12-31-96; 19.5.2.23 NMAC - Rn & A, 19 NMAC 5.2.23, 12/31/02]

19.5.2.24 PETS

A. Persons with dogs, cats or other domestic pets in areas of the state parks system shall be responsible for control of their pets, so as not to cause a nuisance to others. Pet owners shall ensure all pets are vaccinated in accordance with all applicable county ordinances and state laws.

B. Pet owners shall pick up after their pets and shall maintain the area in a clean and sanitary condition.

C. Owners shall restrain pets on leashes ~~which~~ that are not more than 10 feet in length, except in areas designated by the superintendent. This rule shall not apply to pets being used in authorized activities such as field trials, retriever training or hunting.

D. Owners shall be required to prevent their pets from excessive barking, howling and loud noises, so as not to disturb others. Owners shall be required to prevent their pets from biting or attacking any person or destroying any property. Pets shall not be left unattended in vehicles or camp sites.

E. Pets are prohibited, except disability assistance dogs, with valid document that verifies the dog is an assistance dog that can be presented to the state park official at time of use, within all visitor centers and at the following parks:

(1) Rio grande nature center state

park

(2) Living desert state park [7-17-67, 5-6-87, 12-21-89, 12-31-96, 12-31-98; 19.5.2.24 NMAC - Rn & A, 19 NMAC 5.2.24, 12/31/02]

19.5.2.27 FEES AND CHARGES

A. All persons shall pay required fees, as described in 19.5.6 NMAC, upon entrance to a park. ~~[Visitors shall be responsible for obtaining and displaying applicable permits and paying the required fees.]~~ The visitor shall display applicable permits in accordance with instructions provided with the permit. Failure to obtain a permit shall result in field collection of fees and may include an administrative fee in addition to the required fee. See 19.5.6 NMAC. Failure to pay the administrative fee may result in a criminal action and ~~[or]~~ eviction from the park.

B. Permits ~~[must]~~ shall be displayed at all times inside any park. Nonstop highway travel through a park on numbered state highways shall not require a park use permit.

C. The superintendent may waive or reduce park fees for organized youth groups, special events, government agencies or employees of businesses working with the division or its contractors. The director may waive or reduce fees for special circumstances.

D. A state park official may issue rain checks for unused, prepaid daily camping activities or the cancellation of a group shelter reservation.

E. Fees in addition to the appropriate use fee may be charged for reservation processing and cancellation. The reservation fee ~~[will]~~ shall be collected for those park sites where a reservation program has been established. See 19.5.6 NMAC. The reservation fee ~~[will]~~ shall be paid in advance with all applicable fees for camping, electricity or other service for the total period of the reservation.

F. Repealed. [5-6-87, 12-21-89, 12-31-96, 12-31-98; 19.5.2.27 NMAC - Rn & A, 19 NMAC 5.2.27, 12/31/02]

19.5.2.28 PERMITS AND PASSES

A. Annual Permits:
(1) Annual Day Use Permits: authorize the vehicle owner or individual to access and use the park at no charge during the times indicated in Section 11 of this Part. Annual day use permits are available for use at all parks, except at the rio grande nature center and living desert state park.

(2) Annual Overnight Camping

Permits: authorize the vehicle owner or individual to access and use the park at no additional charge except for utility hookups during the times indicated in Section 12 of this Part.

(3) Veteran's Permit: authorize a New Mexico resident veteran with a permanent ~~[(100%)]~~ one hundred percent service connected disability to obtain ~~[(4)]~~ one non-transferable annual day use permit at no charge for personal use only. An eligible veteran desiring more than one permit ~~[must]~~ shall purchase additional annual day use permits at full price. To obtain a permit, an eligible veteran shall present to the division the following proof of disability and New Mexico residency:

(a) A photocopy of the award letter issued by the United States department of veterans affairs indicating the veteran has a one hundred percent ~~[(100%)]~~ service connected disability; and,

(b) Proof of New Mexico residency, such as a New Mexico driver's license, or other state of New Mexico-issued identification.

(4) Terms and Limitations

(a) All permits expire on December 31 of the year issued, regardless of the date issued. No refund nor proration shall be made for permits that remain in effect for less than a full calendar year.

(b) Annual overnight camping permits are only available for:

(i) New Mexico residents 62 years of age or older with acceptable identification indicating the date of birth.

(ii) New Mexico residents with disabilities with acceptable identification documenting disability.

(iii) New Mexico residency is documented with a current New Mexico driver's license or other state of New Mexico-issued identification.

(c) Permits are not accepted at concession operated camping grounds or other areas as described in Subsection G of 19.5.2.12 NMAC.

(d) Replacement permits and stickers may be obtained by submitting the original permit, proof of purchase or issuance in the case of a veteran's permit, or signed affidavit describing the facts of the purchase or issuance, and loss or destruction of the permit.

B. Leaseholders and Concessionaires: The director or his/her designee may issue a park pass to leaseholders, concessionaires, concession permittees, or their commercial contractors, suppliers and agents, for the purpose of access to and from the concession or a lease lot. Leaseholders, concessionaires, concession permittees, or their commercial con-

tractors, suppliers and agents using the park, lake or facilities away from the concession premises or lease lot are subject to the appropriate fees.

C. Contractors: The director or his/her designee may issue a park pass to contractors, suppliers or agents of the division or other persons providing services to a park for the purpose of access to the park.

D. Complimentary Park Passes: The director or his/her designee may issue complimentary passes to legislators, park advisory board members, volunteers or individuals who significantly contribute to the division or in exchange for promotion of the division or advertising.

E. Gift Certificates: The division may sell gift certificates for annual day use permits and annual camping permits.

F. Special Use Permits:

(1) Short term events and activities within the state parks system, such as regattas, boat races, parades, races, fishing tournaments, exhibitions and educational activities, are authorized only by a special use permit and only after payment of associated fees. See 19.5.6 NMAC. Special use permits shall only be issued for events and activities ~~[which]~~ that provide a needed service to the park and that ~~[which]~~ benefit the park. Applications for special use permits ~~[must]~~ shall be submitted to the park where the event is proposed at least two weeks prior to the event, or at least 30 days prior to the event if the event is a regatta, motorboat or boat race, marine parade, tournament or exhibition. A special use permit shall not be issued for a period of more than five consecutive days. The park may charge fees in addition to the minimum fee to cover costs of additional staff, facilities, etc. needed for the event.

(2) Special Use Restrictions: No person shall violate any condition or restriction attached to or indicated on the special use permit. Violation of this regulation may result in the immediate cancellation of the permit.

[7-17-67, 12-21-89, 12-31-96, 12-31-98, 7-1-99; 19.5.2.28 NMAC - Rn & A, 19 NMAC 5.2.28, 12/31/02]

19.5.2.30 METAL DETECTING;

Metal detecting within a state park is prohibited unless authorized by superintendent for scientific activities such as projects permitted through the New Mexico Cultural Properties Review Committee or to retrieve lost items. New Mexico Cultural Properties Act, Section 18-6-9.1 NMSA 1978; NM Outdoor Recreation Act, Section 16-2-32 NMSA 1978.

[19.5.2.30 NMAC - N, effective 12/31/02]

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

This is an amendment to 19.5.3 NMAC, sections 5, 8, 9, 10, 11 and 12. 19.5.3 NMAC was also **renumbered, and reformatted** from 19 NMAC 5.3 to conform to the current NMAC requirements.

19.5.3.5 EFFECTIVE DATE: December 31, 1996, unless a later date is cited at the end of a Section [~~or Paragraph~~]. [12-31-96; 19.5.3 5 NMAC - Rn & A, 19 NMAC 5.3.5, 12/31/02]

19.5.3.8 REQUIREMENT: Each state park [~~with~~] shall establish a park management and development plan and conform to the plan at all times except in cases of emergency in order to protect life or property. This requirement shall not prevent the director or secretary from making and implementing policy decisions concerning management and operation of a state park if a plan is not in place and shall not require an existing plan to be amended before such policy decision is made and implemented. [12-31-96; 19.5.3.8 NMAC - Rn & A, 19 NMAC 5.3.8, 12/31/02]

19.5.3.9 CONTENT OF PARK MANAGEMENT AND DEVELOPMENT PLANS:

A. Park management and development plans shall address at a minimum:

(1) Mission and goals of the state park;

(2) Park operational and management programs [~~which~~] that:

(a) identify how public use facilities, support facilities and infrastructure are maintained;

(b) identify how the state park is managed to provide recreation opportunities and to protect park resources and visitors; and

(c) provide for the administration of the state park.

(3) Current and future concessions at the state park; and

(4) Expansion and development concepts which identify future capital improvement needs to facilities, structures and recreational use areas.

B. Park management and development plans shall include a map [~~which~~] that identifies current facilities, activity areas and may identify areas where

future development, management and recreational activities may be planned in the state park.

[12-31-96, 12-31-98; 19.5.3.9 NMAC - Rn & A, 19 NMAC 5.3.9, 12/31/02]

19.5.3.10 PUBLIC COMMENT: The park management and development plan [~~with~~] shall be available for public comment for 30 days before it is implemented or modified. A public notice shall be published in a newspaper of general circulation in the locality of the state park and mailed to all persons who have made a written request for advance notice at least 30 days before the park management and development plan is implemented or modified.

[12-31-96; 19.5.3.10 NMAC - Rn & A, 19 NMAC 5.3.10, 12/31/02]

19.5.3.11 APPROVAL: Park management and development plans [~~must~~] shall be approved in writing by the director and secretary.

[12-31-96; 19.5.3.11 NMAC - Rn & A, 19 NMAC 5.3.11, 12/31/02]

19.5.3.12 MODIFICATION OF PARK MANAGEMENT AND DEVELOPMENT PLAN: No park management and development plan shall be modified or changed without a public comment period as provided in Section 10 of this Part. Park management and development plans in effect [~~with~~] shall be reviewed and updated at least every five years. Park management and development plans may be reviewed and updated at any time if the director determines review is necessary.

[12-31-96; 19.5.3.12 NMAC - Rn & A, 19 NMAC 5.3.12, 12/31/02]

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

This is an amendment to 19.5.4 NMAC, sections 2, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22. 19.5.4 NMAC was also renumbered, and reformatted from 19 NMAC 5.4 to conform to current NMAC requirements.

PART 4 LEASE LOT [~~AND MOORING SITE~~] PROVISIONS [~~AND FEES~~]

19.5.4.2 SCOPE: This Part applies to all persons who lease a portion of

land [~~or a mooring site~~] or who leased a mooring site at ute lake state park within a state park from the New Mexico state parks division.

[12-31-96, A, 12-31-98; 19.5.4.2 NMAC - Rn & A, 19 NMAC 5.4.2, 12/31/02]

19.5.4.5 EFFECTIVE DATE: December 31, 1996, unless a [~~different~~] later date is cited at the end of a Section [~~or paragraph~~].

[12-31-96; 19.5.4.5 NMAC - Rn & A, 19 NMAC 5.4.5 12/31/02]

19.5.4.6 OBJECTIVE: The objective of this Part is to establish standards and requirements for lease lot [~~and mooring site~~] use and maintenance, and a procedure for approval of construction activity on lease lots [~~and mooring sites and annual fees for lease lots and mooring sites~~].

[12-31-96; 19.5.4.6 NMAC - Rn & A, 19 NMAC 5.4.6 12/31/02]

19.5.4.8 LEASE LOT BOUNDARIES:

A. Property Markers: All property markers old or new [~~must~~] shall be protected, preserved and replaced, if missing, by a registered surveyor.

B. Property Lines: All property lines [~~must~~] shall have a clear and unobstructed line of sight from property corner to property corner.

C. Survey of Property: Any survey of property lines [~~must~~] shall be accomplished by a professional surveyor registered by the state of New Mexico. The leaseholder requesting the survey shall pay all expenses incurred during the survey. Copies of the original survey plots [~~with~~] shall be located at the local park office and at the division office in Santa Fe.

D. Survey Reports: The leaseholder shall provide reports of all surveys conducted on lease lots by registered surveyors to the division and the bureau of reclamation, as applicable, for review and acceptance when lease lot boundary reestablishment or readjustment is being considered.

E. Survey Results: If the results of a survey reveal an encroachment or overlap of a structure, fence, road, landscaping, etc. onto an adjacent lease lot, roadway or non-leased state park property, a resolution committee [~~with~~] shall be convened to resolve any issues that may result from the survey. A resolution committee [~~with~~] shall consist of a representative from the division, the bureau of reclamation if bureau of reclamation property is involved and each involved leaseholder. The resolution committee [~~with~~] shall try to resolve the

encroachment or overlap problem to the mutual satisfaction of committee members. However, the final decision on the status of any encroaching structure ~~[will]~~ shall rest with the division and the bureau of reclamation if bureau of reclamation property is involved.

[5-3-85, 12-31-96, 12-31-98; 19.5.4.8 NMAC - Rn & A, 19. NMAC 5.4.8, 12/31/02]

19.5.4.9 IMPROVEMENTS AND STRUCTURES ON LEASE LOTS ~~[AND MOORING SITES]:~~

A. Minimum Square Footage: Residences, houses and cabins built on lease lots ~~[or mooring sites]~~ or added to after May 3, 1985 shall have a minimum living space of 300 square feet, excluding porches and garages.

B. Set Back Requirement: No building on a lease lot shall be closer than eight feet from a lot line. Buildings on lease lots shall comply with any public utility setback requirements.

C. Drawings: The leaseholder shall submit three sets of drawings ~~[which]~~ that represent the proposed improvements to the division for written approval prior to construction. The drawings shall consist of the following:

(1) Plot plans - showing location of proposed construction and all existing improvements including roads, wells, sanitary disposal system, utilities, retaining walls, lot lines, all outbuildings, major vegetation for example, large trees and any other improvements or conditions;

(2) Foundation plans and composition;

(3) Floor plans - showing all plumbing, gas and electrical lines and data on materials proposed for use;

(4) Exterior elevations; and

(5) Typical wall, ceiling and roof sections - (interior and exterior) indicating types of materials to be used.

D. Excavations and Fill: Excavation and fill activities on a lease lot from the natural ground level ~~[must]~~ shall be approved by the director and the bureau of reclamation, if applicable, to protect the natural environment and prevent unnecessary erosion. Excavation for basements or subsurface carports ~~[and]~~ or garages is prohibited.

E. Grades: Restored soil grades on a lease lot shall complement and blend in with existing natural slopes, except where water runoff would affect erosion or become ponded. The restored grade shall provide safe and convenient access to the lease lot.

F. Erosion Control: Erosion control measures such as revegeta-

tion, retention walls, dikes, etc. ~~[must]~~ shall be constructed with environmentally safe materials approved by the division and shall be initiated and completed within 60 days of the initial ground disturbance.

G. Code Compliance: All construction shall be in compliance with the national uniform building code and other applicable codes recognized in the state of New Mexico. All roofs and exterior walls shall be finished with a permanent material that will not present an objectionable appearance. Siding or roofing materials providing only temporary protection such as tarpaper are prohibited. Prior to any construction activities, the appropriate permits shall be obtained from the state of New Mexico regulation and licensing department, construction industries division, or manufactured housing division, as applicable, and shall be displayed at the site. The leaseholder ~~[is responsible to]~~ shall submit a copy of this permit to the superintendent.

H. Fences: If prior written approval is received from the director, fences on lease lots ~~[will]~~ shall be permitted provided that they are constructed of safe and aesthetic material, do not exceed five feet in height and are built inside of the lease lot boundary line. Barbed-wire fences are prohibited.

I. Structure Height Limitations: Only single level structures limited to 15 feet at the point of maximum height of that structure on the natural ground surface ~~[will]~~ shall be permitted on lease lots ~~[or mooring sites]~~. The height of the structures shall be measured from the highest point of the lot that is covered by the structure's foundation before any soil is disturbed.

J. Skirting and Anchoring: If piers are used for building supports, the space between the floor and the finished grade shall be enclosed with non-flammable skirting. All mobile homes, regardless of size, shall be anchored and skirted with nonflammable material within eight weeks following parking on the lease lot.

K. Utilities: Installation of any utilities such as water systems, power lines, sewer, gas, etc., by a leaseholder, alone or in conjunction with other leaseholders, ~~[must]~~ shall be requested and approved by the director and the bureau of reclamation, if applicable, prior to installation. All wells must also be approved by the New Mexico state engineer office.

L. Energy Efficiency: Residences, houses and cabins built on lease lots ~~[or mooring sites]~~ after December 31, 1996 shall comply with construction industries commission regulations and applicable codes for energy and water con-

servation. All new fixtures and appliances shall be water efficient and shall comply with all national standards.

M. Construction Period: Construction of any approved building shall be a continuous project insofar as building seasons allow, but shall not extend beyond one year from the date of initial construction activity.

N. Review of Construction Request:

(1) The leaseholder shall submit all construction requests including plans to the superintendent for review. If the submission is administratively complete, the superintendent shall forward the plans to the lease lot administrator at the state parks division, P.O. Box 1147, Santa Fe, New Mexico 87504-1147. If applicable, the leaseholder ~~[must]~~ shall also submit a copy for review and comment to: department of the interior, bureau of reclamation, highway contract 32, box 312, Truth or Consequences, New Mexico 87901.

(2) The leaseholder shall begin construction only after written approval has been provided by the division and other requirements of this Part have been met.

(3) The division or the bureau of reclamation, if applicable, shall have the right to disapprove any plans submitted in the event such plans are incomplete or are deemed to be contrary to the interest and welfare of the state park.

(4) Response to all construction requests by approving, denying or requesting additional information shall be made within 30 days of receipt of the request by the division, provided the request is properly submitted.

O. Variances: The leaseholder may submit a request for a variance from requirements in this Part with the original construction request. The division will review all requests for variances on a case-by-case basis.

(1) Any leaseholder requesting a variance from this Part shall first submit all drawings required by Subsection C of 19.5.4.9 NMAC to the superintendent. One copy of the drawing shall be made available for public review and comment at the local park office.

(2) The leaseholder requesting the variance shall mail certified letters to all adjoining leaseholders/property owners, including those whose properties are separated from the lease lot in which the variance is requested by a roadway, advising them of the variance request. The notification shall include:

(a) a description of the improvement;

(b) the nature of the variance being requested;

(c) a statement that plans are on file at the local park office or can be mailed to them without charge; and

(d) that they have 30 days in which to review and comment to the division.

(3) Adjoining leaseholders and property owners shall be granted a 30-day comment period from the date of the certified mailing as required by Paragraph (2) of Subsection O of 19.5.4.9 NMAC during which they may submit their comments and concerns with respect to the requested variance to the superintendent.

(4) The superintendent and regional manager shall make a recommendation to the director based on comments received from adjoining leaseholders, concerned citizens and federal agency representatives. The director shall issue a decision within 30 days of the closure of the comment period in accordance with Paragraph (3) of Subsection N of 19.5.4.9 NMAC.

(5) If the director does not approve the variance request, the leaseholder may modify the variance request and resubmit it for review and approval.

(6) The leaseholder requesting the variance shall bear all associated costs, including reproduction, notification and mailing.

[5-3-85, 12-31-96, 12-31-98; 19.5.4.9 NMAC - Rn & A, 19 NMAC 5.4.9 12/31/02]

19.5.4.10 LEASE LOT ~~AND MOORING SITE~~ USE:

A. Authorized Individuals: A lease lot ~~[or mooring site]~~ is to be used by the leaseholder, members of the leaseholder's immediate family and guests. If a lease lot ~~[or mooring site]~~ is shared, the names of all individuals using the lot or site, including family and guests, must be included as leaseholders in the lease agreement. Individuals visiting a lease lot shall be allowed to park motor homes, camp trailers, etc., on the lot if proper electrical and sewage hookups are provided. Visitors shall not stay at a lease lot ~~[or mooring site]~~ for more than 30 consecutive days per visit or a total of 70 days per calendar year.

B. Illegal Activity: No activity that violates federal, state or local law shall be conducted from or on a lease lot.

~~[B]C.~~ Commercial Activity: No commercial activity regardless of size or nature shall be conducted from or on a lease lot ~~[or mooring site]~~. Gardening is permitted on lease lots provided the garden produce is not sold by the leaseholder.

~~[C]D.~~ Rentals or Subleasing: No portion of a lease lot ~~[or mooring site]~~ or structures thereon shall be rented or sub-

leased.

~~[D]E.~~ Single Family Dwelling: Only one single family dwelling ~~[with]~~ shall be permitted on each lease lot ~~[or mooring site]~~ regardless of size of the lease lot ~~[or mooring site]~~. For the purpose of this Part, a one family dwelling shall be defined as any structure, permanent or mobile, having one kitchen.

~~[E]E.~~ Non-use: If a lease lot ~~[or mooring site]~~ is not used, the division shall terminate the lease agreement for "non-use." For the purpose of this Part, "non-use" is defined as follows:

(1) Any lease lot ~~[or mooring site]~~ that is not physically used visited or occupied for at least ten days per year;

(2) Any lease lot ~~[or mooring site]~~ that is placed for sale and remains unused and on the open market for more than two years;

(3) Any lease lot ~~[or mooring site]~~ where approved sanitary facilities septic systems are not provided within one year after the establishment of a living facility on the lease lot ~~[or mooring site]~~; or

(4) Any lease lot ~~[or mooring site]~~ or improvements thereon that are not maintained, improved or kept in a clean and orderly manner during any one-year period.

~~[F]G.~~ Livestock and Poultry: No horses, cattle, sheep, goats, pigs, rabbits, poultry or livestock of any description shall be kept or maintained temporarily or otherwise on a lease lot.

~~[G]H.~~ Address: Lease "lot" and "block" numbers shall be posted in a highly visible manner at the entrance of the property along with the street address. [5-3-85, 12-31-96, 12-31-98; 19.5.4.10 NMAC - Rn & A, 19 NMAC 5.4.10, 12/31/02]

19.5.4.11 LEASE LOT APPEARANCE AND UPKEEP:

A. Garbage and Solid Waste Disposal: All garbage and solid waste materials shall be kept in water tight containers on the lease lot ~~[or mooring site]~~ until the garbage is removed for disposal. All solid waste shall be hauled away from the lease lot ~~[or mooring site]~~ by either the leaseholder or a contract hauler at least weekly. The material ~~[must]~~ shall be disposed of in an approved sanitary landfill that complies with all laws, rules and regulations of local, county, state or federal governmental agencies. Leaseholders shall not burn garbage on a lease lot, use a park dumpster to dispose of trash or dump trash on state park property.

B. Storage of Recreational Vehicles: ~~[A]H.~~ The leaseholder shall remove vehicles, boats, trailers, recreation vehicles, travel trailers, etc., that do not

have a current registration with the appropriate state agency ~~[shall be removed by the leaseholder]~~ from the lease lot. Only vehicles that are registered to the leaseholder, his or her spouse, children and visitors, who presently reside with leaseholder, may be parked or placed on the lease lot.

C. Landscaping:

(1) Landscaping, such as planting grass, trees, shrubs, etc., to improve the appearance of a lease lot is permitted, provided these plantings are not of a weedy species and will not reduce the visual value and panoramic view of area leaseholders. Landscaping on lease lots shall be drought resistant and consume a minimal amount of water. The planting of trees and shrubs ~~[which]~~ that have the capability of obstructing the view of leaseholders ~~[must]~~ shall be approved by the superintendent and the bureau of reclamation, if applicable, prior to planting.

(2) A leaseholder shall not plant trees, shrubs or any vegetation other than grass within three feet of the property line of the lease lot or nearer than 30 feet from the centerline of all frontage roads.

(3) A leaseholder shall not burn or remove grass, trees, shrubs and similar protective ground cover on a lease lot or cause excessive ground disturbance ~~[which]~~ that may cause erosion or damage natural vegetation and soil conditions on a lease lot. A leaseholder may conduct a limited amount of clean-up on a lease lot in the immediate vicinity of buildings, driveways, roads, paths, septic systems, propane tanks or for fire breaks necessary to reduce a fire hazard or the possible spread of fire.

(4) A leaseholder shall not thin, prune ~~[and]~~ or remove native trees and shrubs except when these activities are conducted to prevent damage to structures, prevent personal injury, provide proper clearance for power lines, allow for access to the lease lot or provide for traffic safety. At no time shall these activities be conducted outside the boundaries of a lease lot.

(5) A leaseholder shall maintain all improvements and grounds on a lease lot in such a manner as to guarantee an attractive and safe development.

D. Equipment and Machinery Storage: Any piece of operable or inoperable commercial equipment or machinery placed or parked on a lease lot for more than 14 consecutive days or a total of 22 days during any calendar year is prohibited.

E. Storage of Building Materials: All lumber or other building material shall be neatly stacked to the rear of a lease lot and shall not be stored in excess of the construction period as provided in Subsection M of 19.5.4.9 NMAC.

F. Storage of Firewood: Leaseholders shall neatly stack and store all firewood so as not to cause a fire hazard.

G. Use of Pesticides and Herbicide: The use of pesticides and herbicides on a lease lot shall comply with all provisions of federal and state pesticide laws, amendments thereto and department of the interior policies. The leaseholder is prohibited from using chemicals on the department of the interior's current prohibited list; chemical toxicants for killing predator mammals or birds; and chemical toxicants ~~[which] that~~ cause secondary poisoning for killing mammals, birds and reptiles. [5-3-85, 12-31-96, 12-31-98; 19.5.4.11 NMAC - Rn & A, 19 NMAC 5.4.11, 12/31/02]

19.5.4.12 SANITATION:

Leaseholders shall comply with all regulations of the New Mexico environment department regarding solid waste management, liquid waste disposal and water supply. An approved septic system ~~[must]~~ shall be installed for all residences on lease lots ~~[or mooring sites]~~ prior to occupancy. The use of pit toilets is prohibited. Any lease lot whose lot lines are within 100-yards of a public sanitation facility including sewer lines, shall have up to one year from the date the infrastructure and utility easement is in place to connect to that facility. [5-3-85, 12-31-96; 19.5.4.12 NMAC - Rn & A, 19 NMAC 5.4.12, 12/31/02]

19.5.4.13 SAFETY:

A. Leaseholders shall maintain all structures on lease lots ~~[or mooring sites]~~ in a safe condition. ~~[All floating structures shall be securely maintained and anchored at all times to avoid breaking loose and causing damage].~~ Leaseholders shall immediately repair or remove damaged structures or deteriorated portions of structures such as broken windows, steps or stairways, roofing, porches or decking. Leaseholders shall comply with all applicable state, county and federal safety codes and laws.

B. Leaseholders shall repair any structure partially or completely destroyed by fire or other cause and remove all debris from the structure within 90 days from the date the leaseholder becomes aware or is notified of such incident.

C. Leaseholders or guests of leaseholders bringing or keeping dogs, cats or other domestic pets on a lease lot ~~[or mooring site]~~ shall pen, chain or otherwise restrain such animals in such a manner as to prevent them from running loose.

D. The department may terminate a lease agreement if the secretary or the bureau of reclamation, if applicable,

determines the lease lot ~~[or mooring site]~~ presents a safety hazard to the leaseholder or to the public.

[5-3-85, 12-31-96, 12-31-98; 19.5.4.13 NMAC - Rn & A, 19 NMAC 5.4.13 12/31/02]

19.5.4.14 ENCROACHMENT AND ACCESS EXISTING ROADS:

All access or frontage roads within the lease lot areas of a state park are designed with a 50-foot easement. Encroachment of any nature within 25 feet of the centerline of the road is prohibited. All access to lease lots ~~[will]~~ shall originate from originally designated access roads. Access to lease lots from undesignated roads or unauthorized construction of new roads is prohibited. Encroachment outside of a lease lot boundary is prohibited.

[5-3-85, 12-31-96; 19.5.4.14 NMAC - Rn & A, 19 NMAC 5.4.14, 12/31/02]

19.5.4.15 VIOLATIONS:

A. The leaseholder shall comply with all provisions of this Part and the lease agreement. The division ~~[will]~~ may conduct periodic inspections for compliance with the terms of the lease agreement and this Part.

B. Upon violation of any provision of this Part or the lease agreement by a leaseholder, the division shall give at least ten days notice to the leaseholder prior to initiating enforcement or corrective action. Notice shall consist of:

(1) a registered or certified letter mailed to the leaseholder describing the violations and the corrective action required; and

(2) a notice describing the violations and the corrective action required posted on the lease lot ~~[or mooring site]~~ in a conspicuous place.

C. If the leaseholder does not initiate corrective action acceptable to the division within the time provided in the notice, the division may, at the leaseholder's expense, correct the violation prohibited by this Part. The division shall have a lien against improvements located on the lease lot ~~[or mooring site]~~ in order to secure payment for expenses incurred. The division may dispose of any materials, equipment, vehicles or animals removed from the lease lot ~~[or mooring site]~~ pursuant to this provision in any legal manner it deems appropriate.

D. The division may terminate leases for actions occurring on the lease lot that constitute a misdemeanor involving violence or a felony. To proceed with termination of a lease the division shall schedule a hearing and provide written notice of the intent to terminate to the lease-

holder by personal delivery or certified mail return receipt requested at least 10 working days before the date set for the hearing. The written notice of the intent to terminate shall include the date, time, and location of the hearing. The hearing shall be held before the director. The leaseholder may request the hearing be rescheduled, and the director may grant such request for good cause in writing. The director shall issue a written decision within 10 working days of the hearing, unless extended for 10 working days for good cause in writing. If the director determines the lease shall be terminated, the leaseholder shall have 90 days from the date of the director's decision or any review of the decision to terminate the lease by the secretary, pursuant to 19.5.4.19 NMAC, to sell the improvements and transfer the lease. The division may extend the time to sell the improvements and transfer the lease for good cause. The division shall have a lien against the improvements located on the lease lot in order to secure payment for expenses incurred.

[5-3-85, 12-31-96; 19.5.4.15 NMAC - Rn & A, 19 NMAC 5.4.15 12/31/02]

19.5.4.16 LEASE AGREEMENT RENEWAL:

[A leaseholder may request to renew a lease agreement prior to the expiration of the lease agreement. Such request must be made at least three months prior to the expiration of the lease agreement. A leaseholder must be in compliance with the current lease agreement and this Part in order for the department to enter into a new lease agreement.] The director shall determine whether it is in the best interest of the department to lease or to continue to lease a lease lot. In determining whether it is in the best interest of the department, the director shall consider all relevant factors, including safety, whether the lease lot poses a nuisance or a hazard, whether the leaseholder has repeated violations of the rules or lease agreement, or whether significant illegal activity has or is occurring on the lease lot. The director shall consult with the bureau of reclamation and the president of the lease lot association prior to determining not to lease or continue to lease a lease lot. If the director determines it is in the best interest of the department to continue leasing the lease lot, the leaseholder shall have the first right to enter into any new or renewed lease offered by the department. The terms of the new or renewed lease may change from the existing lease and shall be in compliance with these rules. Any change in the terms of the new or renewed lease shall be consistent with this Part. The director shall not unreasonably withhold a renewal, or place any unreasonable conditions or unreasonable modifications on a

lease agreement as a condition of approval. The leaseholder shall be in compliance with the current lease agreement and this Part in order for the department to enter into a new or renewed lease agreement [12-31-96; 19.5.4.16 NMAC - Rn & A, 19 NMAC 5.4.16, 12/31/02]

19.5.4.17 LEASE LOT

INSPECTION: A state park official shall conduct an inspection of a lease lot ~~(or mooring site)~~ for compliance with the terms of the lease agreement and this Part three months prior to the expiration of a lease agreement, upon application for transfer of a lease agreement or as directed by the superintendent. State park officials and bureau of reclamation, if applicable, shall have access to all lease lots ~~[and mooring sites]~~ for official business at reasonable times.

[12-31-96; 19.5.4.17 NMAC - Rn & A, 19 NMAC 5.4.17 12/31/02]

19.5.4.18 LEASE AGREEMENT TRANSFER:

Neither the lease agreement nor any interest therein shall be assigned. However, the interest in a lease lot ~~(or mooring site)~~ may be transferred, including by will or intestate succession upon the death of the leaseholder, after submission of a \$50.00 transfer fee and the application for transfer of a lease lot if the director determines that it is in the best interest of the department to transfer the lease lot. In determining whether it is in the best interest of the department, the director shall consider all relevant factors, including safety, whether the lease lot poses a nuisance or a hazard, whether the leaseholder has repeated violations of the rules or lease agreement, or whether significant illegal activity has or is occurring on the lease lot. The director shall consult with the bureau of reclamation and the president of the lease lot association prior to denying a transfer request. The application for transfer of a lease lot shall be a form provided by the division that includes the park where the lease lot is located; the area, block and lot number of the lease lot; the name, mailing address, telephone number and signature of the leaseholder; and the name, mailing address, telephone number and signature of the individual to whom the lease shall be transferred. The division shall respond to all transfer requests by approving, denying or requesting additional information within 30 days of receipt of the request, provided the application for transfer is complete and the transfer fee is properly submitted. If the division does not respond within the 30 days the request shall be deemed approved. The director shall not unreasonably withhold a transfer, or place any unreasonable

conditions or unreasonable modifications on a lease agreement as a condition of approval. After approval by the ~~[Department]~~ director of the transfer, the new leaseholder shall enter into a lease agreement with the department. The director shall not approve a transfer if the leaseholder is not in compliance with the lease agreement and this part. If the director determines that it is appropriate to transfer the lease lot, ~~[The]~~ the leaseholder of the lease lot shall submit a certified survey of the lease lot performed by a professional surveyor registered by the state of New Mexico within ~~[nine]~~ twelve months prior to submission of the application for transfer. ~~[A leaseholder must be in compliance with the lease agreement and this Part in order for a transfer to be approved.]~~

[12-31-96; 19.5.4.18 NMAC - Rn & A, 19 NMAC 5.4.18, 12/31/02]

19.5.4.19 REVIEW OF DECISIONS BY THE DEPARTMENT:

In the event the director determines it is in the best interest of the department not to lease or to continue to lease a lease lot, not to transfer a lease lot or to terminate a lease for actions occurring on the lease lot that constitute a misdemeanor involving violence or a felony, the leaseholder may request review by the secretary of the decision. Such request shall be made in writing within 30 days of the receipt of the division's decision. The leaseholder shall provide a copy of the request to the director. The director and the leaseholder shall submit written statements to the secretary within 10 working days of the submission of the request for review, unless the secretary extends the time for submission of the written statements for good cause in writing. The secretary shall base his decision on the written statements unless the leaseholder or the director requests the opportunity to call witnesses or make oral arguments within 10 working days of the request for review. A request for hearing shall explain the need for any witness testimony or oral argument. If the leaseholder or director asks to make oral arguments or call witnesses, the secretary may set a hearing to be held within 10 working days of receiving that request and provide notice of the hearing date, time and location to the leaseholder and the director. The director or the leaseholder may request in writing that any hearing be scheduled more than 10 working days after the secretary receives the request for review, and the secretary may grant such request for good cause in writing. Oral testimony shall be made under oath. A tape or stenographic record shall be made of any oral argument or witness testimony. The secretary shall issue a written final decision, including

findings of fact within 10 working days, unless extended for 10 working days for good cause in writing, after the date for submission of written statements, or a hearing if any, and send copies to the leaseholder and the director. The secretary's decision may be challenged by filing a petition for a writ of certiorari with the district court and with the department pursuant to Rule 1-075 New Mexico Rules Annotated. [19.5.4.19 NMAC - N, 12/31/02]

~~[19.5.4.19]~~ 19.5.4.20

APPRAISAL: The division ~~[should]~~ may appraise lease lots at least once every ten years and may amend annual lease lot fees ~~[(Section 20)]~~ with no more than a two percent increase per year based on the appraisals.

[12-31-96; 19.5.4.20 NMAC - Rn & A, 19NMAC 5.4.19, 12/31/02]

~~[19.5.4.20]~~ 19.5.4.21 ANNUAL LEASE LOT FEES:

A. Elephant Butte Lake state park, Hot Springs Landing

- (1) Block A - Lots 1-10
\$775 each
- (2) Block B - Lots 1-7
\$775 each
- (3) Block C - Lots 1-8, 14
\$675 each
- (4) Block C - Lots 9-13
\$775 each
- (5) Block C - Lots 15-26
\$575 each
- (6) Block D - Lots 1, 3-17
\$775 each
- (7) Block E - Lots 1-4
\$675 each
- (8) Block E - Lots 5-6
\$775 each
- (9) Block E - Lots 7-12
\$675 each
- (10) Block F - Lots 1-12
\$675 each
- (11) Block G - Lot 1
\$675 each
- (12) Block G - Lots 2-23, 29
\$575 each
- (13) Block H - Lots 1-13
\$675 each
- (14) Block I - Lots 1-5
\$775 each
- (15) Block J - Lots 1-9, 11, 12
\$775 each
- (16) Block J - Lot 10
\$675 each
- (17) Block K - Lots 1-24
\$575 each
- (18) Block L - Lots 1-10
\$575 each
- (19) Block M - Lots 1, 6
\$675 each
- (20) Block M - Lots 2-5

\$575 each
 (21) Block M - 7-10
 \$500 each
 (22) Block N - Lots 1/6 - 10/11
 \$675 each
 (23) Block N - Lots 7-9
 \$775 each
 (24) Block O - Lots 1-5
 \$500 each
 (25) Block P- Lots 1-13
 \$500 each
 (26) Block Q - Lots 1-6
 \$675 each
 (27) Block R - Lots 1-3
 \$675 each
 (28) Block S - Lots 1-3
 \$775 each
 (29) Block S - Lots 4-6
 \$675 each
 (30) Block T - Lot 1
 \$775 each
 B. Elephant Butte Lake state park, Three Cedars Lost Canyon
 (1) Block A - Lots 1-8
 \$500 each
 (2) Block A - Lots 9-16
 \$475 each
 (3) Block B - Lots 1-3
 \$475 each
 (4) Block B - Lots 4-9
 \$500 each
 (5) Block C - Lots 1-8
 \$475 each
 (6) Block C - Lot 9
 \$500 each
 (7) Block D - Lots 1-6
 \$500 each
 (8) Biner - Lots 5-7
 \$375 each
 (9) Cow Camp - Lot 1
 \$775 each
 (10) Weather Station - Lot 12
 \$835 each
 C. Elephant Butte Lake state park, Three Sisters
 (1) Block A - Lots 1-4
 \$375 each
 (2) Block B - Lots 1-4
 \$375 each
 D. Elephant Butte Lake state park, Mitchell Point Area. Lots 1-9,
 \$375 each
 E. Elephant Butte Lake state park, Rock Canyon
 (1) Block A - Lots 1-2, 8
 \$500 each
 (2) Block A - Lots 3-7
 \$475 each
 (3) Block B - Lots 1-4
 \$500 each
 (4) Block C - Lots 1-9
 \$475 each
 (5) Block D - Lots 1-4
 \$500 each
 (6) Block E - Lot 1

\$475 each
 (7) Block E - Lots 2-4
 \$425 each
 (8) Block E - Lots 5-11
 \$475 each
 (9) Block E - Lots 12-18
 \$425 each
 (10) Block F - Lots 1-14
 \$500 each
 F. Elephant Butte Lake state park, Water Tank Hill
 (1) Lot 1
 \$835
 (2) Lot 3
 \$835
 (3) Lot 30
 \$835
 G. Caballo Lake state park
 (1) Block A - Lots 1-18
 \$373 each
 (2) Block A - Lots 19-36
 \$423 each
 (3) Block B - Lots 1-4
 \$373 each
 (4) Block B - Lots 5-7, 19
 \$423 each
 (5) Block B - Lots 8-18
 \$373 each
 (6) Block C - Lots 1-15
 \$373 each
~~H. Ute Lake state park (mooring sites)~~
~~(1) Sites 1-35~~
 \$100 each
 (2) Site 3014
 \$100 each
 (3) Site 2012
 \$100 each
~~(4) Site 4015-4016~~
~~\$100 each~~
 (5) Site 3003
 \$100 each
~~(6) Site 4025-4026~~
~~\$100 each~~
~~(7) Site 3006~~
~~\$100 each~~
 [2-15-73...4-1-87, 4-1-87; 19.5.4.21 NMAC - Rn & A, 19 NMAC 5.4.20, 12/31/02]
19.5.4.22 MOORING SITES: All mooring site leases are terminated effective December 31, 2002. Leaseholders shall remove houseboats and personal property by January 31, 2003.
 [19.5.4.22 NMAC - N, 12/31/02]
History of 19.5.4 NMAC:
 Pre NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.
 SPRD 73-1, Rule 61-1, Increase in Cabin Site Rental Fees for the Locations Listed, 02-15-73;
 NRD 85-1, Cabin Site Rental Fees, 03-21-

85;
 NRD 85-2, Attachment A, Park and Recreation Division Leasehold Regulations Recreational Lot Lease, 05-03-85.

History of Repealed Material:
 [RESERVED]

Other History:
 NRD 85-1, Cabin Site Rental Fees, filed 03-21-85 and NRD 85-2, Attachment A, Park and Recreation Division Leasehold Regulations Recreational Lot Lease, filed 05-03-85 were **renumbered, reformatted and replaced** by 19 NMAC 5.4, Lease Lot and [mooring site] Provisions and Fees, filed 12-17-96.
 19 NMAC 5.4, Lease Lot and [mooring site] Provisions and Fees, filed 12-17-96, was **renumbered, reformatted, amended and replaced** by 19.5.4 NMAC, Lease Lot Provisions; effective 12/31/02.

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

This is an amendment to 19.5.5 sections 2, 5, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, and 19. 19.5.5 NMAC was also renumbered and reformatted from 19 NMAC 5.5 to conform to the current NMAC requirements.

19.5.5.2 SCOPE: This Part applies to any person conducting commercial activity within the state parks system and to any person who proposes to conduct commercial activity within the state parks system. Friends groups, park support groups and other tax-exempt organizations, which conduct commercial activity within the state parks system, ~~must~~ **shall** comply with this Part. This Part does not apply to repair or assistance services hired by the public for personal property assistance or repair within a state park. This Part does not apply to contractors hired by the division to perform construction or other services for the division within the state parks system.

[12-31-96, A, 12-31-98; 19.5.5.2 NMAC - Rn & A, 19 NMAC 5.5.2, 12/31/02]

19.5.5.5 EFFECTIVE DATE: December 31, 1996, unless a later date is cited at the end of a Section ~~[or paragraph]. This Part was amended effective May 15, 1997.~~

[12-31-96, 5-15-97, A, 12-31-98; 19.5.5.5 NMAC - Rn & A, 19 NMAC 5.5.5, 12/31/02]

19.5.5.7 DEFINITIONS: See 19.5.1 NMAC for definitions.

~~[A. "Capital improvement" means a construction project by a concessionaire to the concession premises which is not maintenance, repair or remodeling and which costs at least \$1,000.00 or more.~~

~~B. See also 19 NMAC 5-1 [now 19.5.1 NMAC] for definitions [12-31-96, 5-15-97; 19.5.5.7 NMAC - Rn & A, 19 NMAC 5.5.7, 12/31/02]~~

19.5.5.8 SUBMITTAL OF PROPOSALS FOR CONCESSION CONTRACT:

A. Any interested person seeking to operate a concession within a state park or any concessionaire within a state park who wishes to expand services beyond those authorized by his/her concession contract may send a proposal summary describing the proposed concession to the superintendent at the state park where the concession is proposed. The proposal summary shall consist of a brief description of the concession operation including the services to be offered, the proposed location of the concession within the state park and a description of how the concession will conform to the requirements of Subsection A of 19.5.5.9 NMAC.

B. The director should evaluate the proposal summary, with the understanding that new or replacement contracts should be awarded on a competitive basis to the extent practicable, and notify the interested person and existing concessionaire within 30 days of receipt of the proposal by the superintendent that:

(1) The proposal summary indicates the concession does not fit the criteria as listed in Subsection A of 19.5.5.9 NMAC; or

(2) A request for concession proposals will be issued, and the interested person may submit a proposal; or

(3) No request for proposals for the concession will be issued but the division will consider a proposal submitted by the interested person as described in Subsection D of 19.5.5.8 NMAC for the concession.

C. The division may request proposals when the division determines there is a concession opportunity within a state park, when a concession contract with an existing concessionaire has been terminated or expires or when an existing concessionaire no longer wishes to provide the services. The division ~~[with]~~ shall consider at least the following in deciding whether to issue a request for proposals for the concession:

(1) Location, remoteness and facility accommodations of the state park;

(2) Population of area surrounding the state park and similar services being offered within the area;

(3) Whether other persons have expressed an interest in providing the concession;

(4) Size of the proposed concession operation; and

(5) Whether an existing concession can provide the new and expanded service, as provided by existing contract.

D. The original of a proposal for a concession ~~[must]~~ shall be submitted to the concessions administrator at the division office in Santa Fe ~~[-An additional copy should be submitted to the superintendent at the park where the concession is to be located.]~~ through the superintendent at the perspective park where the concession is to be located. The proposal shall consist of a cover letter and proposal summary. ~~[and the following information, in separately numbered paragraphs corresponding to the following numbers:]~~ The proposal summary shall be bound with tab dividers indicating the separately numbered paragraphs corresponding to the following number and information.

(1) Business plan for the proposed concession that identifies:

(a) the type of business;

(b) the park in which the business will be located and the specific location of the business within the park;

(c) services to be offered;

(d) proposed concession fee;

(e) the percentage mark up of goods and services to be offered;

(f) a description of how the business will be operated;

(g) an assurance statement that all federal, state and local laws and regulations will be followed;

(h) a proposed maintenance schedule;

(i) a building and improvements schedule outlining any proposed capital improvements, including a plan for the financing of the capital improvements, if applicable;

(j) identification of all investors; and

(k) a current financial statement.

(2) A market analysis ~~[which]~~ that:

(a) defines the market area;

(b) identifies existing concessionaires and other similar ventures within the market area and an indication of their success;

(c) provides the results of any public demand survey; and

(d) estimates the economic impact to the park and neighboring community.

(3) Plan for advertising and promoting the proposed concession and the state park in which the proposed concession is located;

(4) Environmental evaluation of the effects of operating the proposed business. The environmental evaluation should address the following solid and liquid waste generation/removal; air quality; water quality; and compliance with all federal, state and local environmental laws;

(5) A cultural property evaluation, ~~[which]~~ that should include the identification of cultural properties in the project area and significance. Project impact on cultural properties and proposed impact mitigation should be outlined. Any evaluation should follow appropriate state or federal cultural property legislation, guidelines and standards, and should be coordinated with appropriate federal and state agencies, to include the New Mexico historic preservation division;

(6) Statement of the proposed terms and conditions relating to revenue generated to the state; term of agreement; and the proposed conditions of any sale, subcontract, management agreement, or ownership transfer of the rights granted by the proposed agreement;

(7) Identification of all required permits from all other jurisdictional agencies and authorization or pre-approval, as required; ~~[and]~~

(8) Description of past business or other experience ~~[which]~~ that demonstrates the ability to operate the concession; ~~[and]~~

(9) Projected revenue statement.

E. The division may not evaluate incomplete proposals. The division may request additional information from the proposer as necessary for the review and evaluation of the proposal.

F. The division may allow persons submitting proposals the opportunity to discuss the proposals with the division and revise the proposals. Revisions may be permitted after submittal of proposals and prior to acceptance by the division for the purpose of obtaining best and final offers. The division may conduct negotiations with persons who submit proposals found by the division to be reasonably likely to be selected.

G. The division should notify the proposer no later than 60 days after receipt of the proposal of its decision to accept or reject the proposal. During the review process, the division reserves the right to seek comment on a proposal from the public, federal and state agencies and other appropriate entities. If comments are requested, the division may take additional time to review and evaluate a proposal and

reach a decision to accept or reject the proposal.

H. When an existing concession contract expires, the existing concessionaire ~~will~~ shall not be given preference for selection. Prior performance and the amount of capital investment may be considered in the selection process.

[5-15-97, 12-31-98; 19.5.5.8 NMAC - Rn & A, 19 NMAC 5.5.8 12/31/02]

19.5.5.9 CRITERIA FOR GRANTING CONCESSION CONTRACTS: The secretary shall consider at least the following in determining whether or not to grant a concession contract:

A. Concessions shall:

(1) Provide a needed service, or a service in which park visitors have shown a substantial interest and the service is not adequately provided within the park or within the area;

(2) Provide services to the general public rather than a particular individual or group;

(3) Enhance, improve, protect and conserve park natural, historical and cultural resources;

(4) Provide reasonable revenue to the state in exchange for the privilege granted the concessionaire;

(5) Include facilities of a minimum size necessary to operate ~~which~~ that are harmonious in form, line, color and texture with the surrounding landscape; and

(6) Be consistent with the park management and development plan in effect for the state park in which the concession is to be located. New concession contracts ~~will~~ shall not be granted unless a park management and development plan ~~which~~ that identifies the concession development has been approved by the director and secretary.

B. Concessionaires shall:

(1) Provide evidence to the division that the concessionaire possesses a sufficient level of experience and adequate financial resources to operate the concession in an efficient and professional manner; and

(2) Not have past concession performance problems, such as repeated non-compliance with previous or current concession contracts or concession permits or this Part.

[5-15-97, 19.5.5.9 NMAC - Rn & A, 19 NMAC 5.5.9, 12/31/02]

19.5.5.10 CONCESSION CONTRACT PROVISIONS: Following the acceptance of a proposal, the division ~~will~~ shall enter into negotiations with the proposer for a concession contract to operate the concession or with a concessionaire to

amend an existing concession contract. To the extent section 10 of this Part contradicts any existing concession contract in effect on May 15, 1997. Section 10 ~~will~~ shall not apply to those contracts unless they are renegotiated or amended. The provisions of the concession contract shall be consistent with the following:

A. The term of a concession contract should be limited to the shortest period possible. The term shall not exceed five years unless justified by at least the following: the amount of a concessionaire's investment, the capital improvements to be made on the premises and the types of services offered. Under no circumstances shall the term of the concession contract exceed 30 years. Noncompliance with any provision of the concession contract or this Part may result in termination of the concession contract by the division.

B. Each concession contract shall include a legal description or a detailed map that defines the area in which the concession will operate.

C. A concession contract is subject to any limitations placed on the division by applicable federal and state agencies. The division reserves the right to install park facilities and utilities and to use the state park for authorized purposes. The division reserves the right to close the state park or the concessionaire's operations for reasonable law enforcement purposes or safety purposes.

D. A concession contract shall provide for the monthly payment by the concession to the division of a concession fee. The concession fee shall be a flat fee or a percentage of the concessionaire's net receipts from sales and services and shall be payable on a monthly basis. The concessionaire shall submit the concession fee and a monthly report detailing net receipts from sales and services on a form provided by the division to the concessions administrator at the division office in Santa Fe. The concession fee and monthly report ~~must~~ shall be postmarked no later than 5:00 p.m. on the 25th day of the month after the reporting month, unless the 25th falls on a Saturday, Sunday or state-recognized holiday in which case the concession fee and monthly report ~~must~~ shall be postmarked no later than 5:00 p.m. of the next business day. Failure to submit the concession fee and monthly report shall result in a penalty fee of ten percent of the concession fee for the month that is late or \$50.00, whichever is greater.

E. The concession contract shall include a schedule for all construction. If the schedule for construction includes improvements to publicly owned property, the division may authorize the

concessionaire in writing to expend any percentage of amounts due the division in lieu of remitting them to the division for construction and alterations to publicly owned property to benefit the park. All new improvements shall be reviewed by the division through the park project review process until the park management and development plan is developed. When the park management and development plan is completed all future improvements and proposed developments shall be consistent with the plan.

F. The concession contract shall require the concessionaire to have insurance prior to taking control of the concession premises, naming the state of New Mexico as co-insured, and indemnifying the United States, if required, for public liability, personal injury and property damage in amounts equal to or greater than the liability limits set forth in Section 41-4-19 NMSA 1978, as it may be amended from time to time.

G. The concession contract shall require the concessionaire, prior to taking control of the concession premises, to have:

(1) Financial assurance satisfactory to the division conditioned upon the faithful performance of the concession contract in a minimum amount of ten percent of the gross receipts from sales and services for the prior year; or

(2) Financial assurance satisfactory to the division conditioned upon the faithful performance of the concession contract in a minimum amount of \$5,000, whichever is greater. If the receipts are anticipated to be less than \$50,000, the division ~~will~~ shall consider the size and nature of the concession operation and may reduce the amount of financial assurance.

H. The concessionaire shall properly maintain all concession facilities and real property he/she intends to utilize in operating the concession and all capital improvements the concessionaire intends to make to the premises. All maintenance shall be done with due diligence, in a commercially reasonable manner, so as to insure the public health, safety and welfare of park visitors. The concessionaire ~~will~~ shall prepare an annual operation and maintenance plan ~~which will~~ that shall be approved by the superintendent. A copy of the approved operation and maintenance plan shall be submitted to the concessions administrator.

I. The concessionaire shall comply with all appropriate local, state and federal laws and shall comply with current applicable environmental regulations and building code requirements, including those for accessibility, historical preserva-

tion and cultural properties protection laws. The concessionaire shall obtain all applicable permits prior to the start of construction.

J. All concessions offering food services shall comply with federal, state and local laws regarding food sanitation.

K. All advertising and signs within the state park shall be subject to the prior written approval of the secretary, and the appropriate federal agency if applicable. Any approvals ~~will~~ shall become a part of the file maintained by the concessions administrator. All advertising through any media ~~will~~ including the internet shall acknowledge that the concession premises are within the state park in which the concession is located. Printed information using the logo of the division or a federal agency ~~must~~ shall receive prior written approval from the division or the federal agency.

L. No concession contract shall be amended except by written instrument executed by the parties and approved by the New Mexico board of finance, and any applicable state or federal agencies.

M. Either the division or a concessionaire may request to amend the concession contract provisions or to renegotiate the contract at any time during the term of the contract. A concessionaire should make such a request in writing to the superintendent. Within 30 days of receipt of such a request, the division should either notify the concessionaire of its decision or schedule a meeting with the concessionaire to negotiate the contract. If the concessionaire seeks to amend the contract provisions or to renegotiate the contract in order to expand services beyond those authorized by the concession contract, he/she ~~must~~ shall comply with Section 8 of this Part. A copy of any request for amendment shall be submitted to the concessions administrator.

N. There shall be no transfer, sale, subcontract, encumbrance, assignment, extension, renewal, assignment of management responsibilities, exchange of concession business or property, or any assignment of rights granted by a concession contract, without the prior written approval of the secretary. In addition, the above transactions may also require the approval of the New Mexico board of finance and the appropriate federal or state agency. All subcontracts shall be subject to the terms and provisions of the concession contract.

O. Upon expiration or termination of the concession contract, the concessionaire shall have 120 days to either sell the improvements ~~which~~ that have been placed on the concession premises with prior written approval by the secretary

as required in subsection N of 19.5.5.10 NMAC or remove the personal and movable property from the concession premises at the concessionaires own cost. After removing any improvements, the concessionaire shall restore the concession premises to a safe and natural condition.

P. A concessionaire must establish and maintain a system for record keeping that uses accepted system account classification codes. A concessionaire ~~will~~ shall submit a year-end financial statement ~~certified~~ prepared by a New Mexico independent certified public accountant ~~which~~ that includes an income statement, balance sheet, and statement of cash flows no later than 90 days after the end of the concession fiscal year to the concessions administrator at the division office in Santa Fe. The level of certified public accountant assurance certification may be either an audit, review or compilation of the financial statements. The amount of the concessionaire's gross receipts from sales and services and length of term of the concession contract will be considered when determining the level of certification required.

Q. The department shall have access to and may examine and audit all pertinent books, documents, papers and other records of a concessionaire related to the concession business operated pursuant to the concession contract during the term of the concession contract and for three years after the concession contract has expired. A concession shall make such records available at the concession operation or at the division's office in Santa Fe upon demand during usual business hours. Such records include but are not limited to financial, employer and equipment records.

R. If the state park in which the concession is located is operated by the division pursuant to a lease with a local, state or federal agency, the concession contract ~~will~~ shall be subject to the lease agreement between the division and the agency and may require approval by the appropriate agency.

S. The division may waive contract provisions required by this Part for concession contracts with friends groups or organizations as defined in Section 6-5A-1(A) NMSA 1978, which provide funds or property to the department.
[5-15-97, 12-31-98; 19.5.5.10 NMAC - Rn & A, 19 NMAC 5.5.10, 12/31/02]

19.5.5.12 ASSIGNMENT AND SUBCONTRACTS OF CONCESSION CONTRACTS:

A. The secretary may choose not to approve a transfer, sale, subcontract, encumbrance, assignment, exten-

sion, renewal, assignment of management responsibilities, exchange of concession business or property or any assignment of rights granted by a concession contract at his/her discretion or may place appropriate conditions on any approval, including modification of the terms and conditions of the concession contract as a condition of approval. The secretary ~~will~~ shall not unreasonably withhold a sale or transfer, or place any unreasonable conditions or unreasonable modifications on a concession contract as a condition of approval.

B. A concessionaire who seeks to subcontract services authorized by the concession contract ~~must~~ shall submit a proposed subcontract to the superintendent. The division may request additional information from the concession as necessary for the review and evaluation of the subcontract. The division ~~will~~ shall notify the concession no later than 30 days after receipt of the proposed subcontract of its decision to approve or reject the subcontract. The concession should submit the subcontract for approval at least 90 days prior to the intended effective date of the subcontract to allow for approval by the board of finance and the appropriate federal agency, if required.

[5-15-97; 19.5.5.12 NMAC Rn & A, 19 NMAC 5.5.12, 12/31/02]

19.5.5.13 REVIEW OF DECISIONS BY THE DEPARTMENT:

A. Requests for Review or Written Responses:

(1) In the event the division decides to terminate a concession contract for noncompliance with the terms of the contract, the division shall send a notice of termination to the concessionaire identifying the areas of noncompliance. The notice shall provide that termination shall be effective 30 days from receipt of the notice. The notice shall provide that the concessionaire may either request review by the secretary of the decision to terminate or respond in writing to the decision to terminate within 15 days of receipt of the notice of termination.

(2) In the event the division decides to terminate a concession contract immediately without notice due to a life endangering situation, the concessionaire may request review by the secretary or respond in writing within 15 days after termination.

(3) In the event a concessionaire is denied approval of a transfer, sale, subcontract or any other transaction requiring approval as set forth in Subsection A of 19.5.5.12 NMAC, the concessionaire may request review by the secretary or respond in writing within 15 days of receipt of

notice that the transfer is not approved.

B. Review by the secretary ~~[will]~~ shall consist of an informal oral response by the concessionaire in which the concessionaire may ~~[present his side of the story]~~ present justification, facts, etc. that support the operation of the concession. If the concessionaire requests review of a decision, the department shall meet with the concessionaire within 15 days of the request. The secretary may designate an employee of the department but not of the division to hear the concessionaires response.

C. The secretary shall take into consideration the concessionaires written or oral response. The secretary shall send a final notice to the concessionaire either affirming or withdrawing the decision within 15 days of receipt of the written response or within 15 days of the oral response.

[5-15-97; 19.5.5.13 NMAC - Rn & A, 19 NMAC 5.5.13, 12/31/02]

19.5.5.14 CONCESSION PERMITS:

A. A concession permit is valid for one year or less. The full term of a concession permit is from April 1st until March 31st each year. Each concession permit shall expire on March 31st unless indicated sooner regardless of the date it is issued.

B. Any person applying for a concession permit ~~[must]~~ shall obtain a concession permit application from the superintendent at the state park where the applicant intends to operate. The application should be completed and returned to the superintendent along with the concession permit fee see 19.5.6 NMAC. The division may waive concession permit fees for friends groups. All applications for concession permits received ~~[will]~~ shall be reviewed and processed within 30 days. An application for a concession permit ~~[must]~~ shall be submitted to the superintendent by March 1st if the applicant intends to hold a concession permit for the full permit term beginning April 1st.

C. The superintendent ~~[will]~~ shall review the application and determine whether the service or activity meets the following criteria:

(1) Does not significantly adversely impact an existing concessionaire's operation;

(2) Provides a needed service to park visitors or a service in which the public has shown a substantial interest;

(3) Enhances, improves or protects park resources; and

(4) Meets the definition of a concession permit. The superintendent ~~[will]~~

shall contact the applicant within ten days if the application is incomplete. The superintendent may request additional information from the applicant as necessary for the review and evaluation of the application. Applications ~~[which meet approval of]~~ approved by the superintendent and regional manager ~~[will]~~ shall be submitted to the concessions administrator for processing and review by the division and final approval by the secretary.

D. Concession permittees, their employees and their clients are subject to all applicable fees associated with use of a state park. See 19.5.6 NMAC.

E. A concession permit is valid only within the state park for which it is issued. However, a single concession permit may be used for Heron Lake state park/El Vado Lake state park and Elephant Butte Lake state park/Caballo Lake state park.

F. No concession permit shall be issued until the applicant has provided proof of insurance or bond. The division may waive this requirement for friends groups.

G. Concession permittees, their employees and their clients are subject to all appropriate state and federal regulations.

H. Concession permits are not transferable. A permit cannot be sold or transferred for any reason. The department will not refund any portion of the permit fee if the permittee ceases business during the permit year.

I. The director may limit the number and type of concession permits issued for any state park in order to protect park resources. The director may prescribe special requirements and conditions for concession permits when it is in the best interests of the state to do so. Special requirements may include but are not limited to: limitations on use of park resources, grounds and facilities; designation of a specific area within a state park in which a concession permittee is allowed to operate; designation of specific days or hours during which a concession permittee is allowed to operate; limitations on prices charged by the concession permittee; requirements for submission of ~~[usage]~~ use and price data; and training requirements.

J. No permittee shall violate any condition or restriction of the concession permit or this Part. Violation of the concession permit or this Part may result in the immediate cancellation of the permit.

K. Outfitters and Guides:

(1) An outfitter may apply for one concession permit and purchase guide cards for guides employed by the outfitter who will be conducting guided fishing, boating

or rafting trips. The outfitter shall provide the superintendent with a list of guides and request the number of guide cards the outfitter wishes to purchase at the time the outfitter submits a concession permit application and fee. The fee for a guide card shall be the same as the fee for a concession permit. See 19.5.6 NMAC.

(2) The number of guides on the permittee's guide list may exceed the number of guide cards purchased by the permittee. However, at no time may the number of guides conducting commercial activity in a state park exceed the number of guide cards issued to the permittee. Only guides whose names appear on the permittee's guide list may conduct guided trips.

(3) Each guide ~~[must]~~ shall be able to present a guide card to a state park official at all times when he/she is conducting commercial activity in a state park.

(4) The permittee is responsible for all guide cards issued to the permittee and for updating the guide list as necessary and providing the updated guide list to the superintendent.

(5) Each outfitter ~~[must]~~ shall submit an annual report ~~[which]~~ that provides information concerning the outfitter's activities for the preceding year to the superintendent by March 15th. Annual reports shall include: dates of guided trips, number of trips on each date and total number of clients on each date; or a statement that no trips were made during the year.

L. Special Requirements for the San Juan river located in Navajo Lake state park:

(1) A permittee or guide may not take more than three clients on a wade trip or more than three clients on a float boat at one time.

(2) Permittees and guides are subject to boat safety inspections at all times while boating.

(3) Boats shall not be anchored to fishing piers and shall be anchored well away from fishing piers.

(4) Commercial boat use is allowed only from the Texas hole downstream.

(5) Permittees and guides shall ready their boats before launching. After launching, permittees and guides shall remove all vehicles and trailers from the launching area or park the vehicles and trailers in designated parking areas. All vehicle use is restricted to launching and retrieving roads. Vehicle use on all other roads or trails inside gated areas is prohibited.

(6) Access to restricted or special use areas is granted to permittees and guides for launching and loading boats. Permittees, guides and employees or agents

of permittees ~~will~~ shall close gates upon leaving those areas when no other boaters are using or waiting to use the launching/loading areas.

(7) Permittees shall identify their boats with the permittee's company name prominently and clearly printed on the vessel. Lettering shall be at least three inches in height.

(8) Annual day use permits for outfitters and guides ~~will~~ shall be marked with a code number specifically assigned to each outfitter. When purchasing annual passes, permittees and guides ~~must~~ shall advise division personnel that they represent an outfitter.

(9) Permittees are required to submit a Navajo Lake state park San Juan river trip ticket for all commercial trips taken on the San Juan river. The superintendent ~~will~~ shall provide permittees with trip tickets. The permittee, his guide or agent is required to complete this form on the day of each commercial trip and deposit the completed form in a state park self pay tube on the same day a trip is made. Self pay tubes are available on the San Juan river for this purpose. A self pay tube is also available at the Navajo Lake state park visitor center.

(10) All permittees and guides operating on the San Juan river ~~must~~ shall have a current red cross or american heart association CPR certificate and a current red cross or american heart association basic first aid certificate. Permittees ~~must~~ shall submit certificates to the superintendent.

(11) Permittees are responsible for training guides in safe boating and wading operations and proper fishing etiquette. [12-31-96, 12-31-98; 19.5.5.14 NMAC - Rn & A, 19 NMAC 5.5.14, 12/31/02]

19.5.5.15 PROHIBITED COMMERCIAL ACTIVITIES: The following commercial activities are prohibited within the state parks system:

A. Commercial activity without written authorization pursuant to a concession contract, concession permit or special use permit;

B. Services or activities not benefitting the experience of the park visitor;

C. Services or activities ~~which~~ that may threaten the public's health or safety;

D. Services or activities ~~which~~ that may threaten or damage park resources;

E. Sale of goods or services outside of a specifically-defined location designated for a concession; and

F. Solicitation of unwanted business.

[12-31-96, 12-31-98; 19.5.5.15 NMAC - Rn & A, 19 NMAC 5.5.15, 12/31/02]

19.5.5.17 INSPECTIONS:

A. Concessionaires ~~will~~ shall be subject, with prior notice, to inspection of the concession premises by a state park official for reasons of public safety and health and to monitor compliance with the concession contract and operation and maintenance plan. Concessionaires shall always maintain a safe and healthy environment for the public and the concessionaire's employees. The division shall conduct an inspection of each concession at least once a year.

B. The department shall have the right to close down a concession operation at any time without prior notice in order to protect the safety and health of park and recreation areas, visitors and staff.

C. Concession operations shall comply with all applicable codes and regulations of all applicable authorities.

[12-31-96, 5-15-97; 19.5.5.17 NMAC - Rn & A, 19 NMAC 5.5.17, 12/31/02]

19.5.5.18 CONCESSION CONTRACTS OR CONCESSION PERMITS WITH CERTAIN TAX-EXEMPT ORGANIZATIONS:

A concession contract or concession permit with an organization as defined in Section 6-5A-1(A) NMSA 1978, which provides funds or property to the department ~~must~~ shall include the provisions provided in Section 6-5A-1(B) NMSA 1978.

[12-31-96; 19.5.5.18 NMAC - Rn & A, 19 NMAC 5.5.18, 12/31/02]

19.5.5.19 PREFERENCES FOR BLIND PERSONS:

The department shall comply with Section 22-14-27 NMSA 1978 in assuring that blind persons licensed by the commission for the blind ~~will~~ shall be given a preference in the establishment and operation of vending machines within the state parks system when vending machines may be properly and satisfactorily operated by blind persons.

[12-31-96, A, 12-31-98; 19.5.5.19 NMAC - Rn & A, 19 NMAC 5.5.19, 12/31/02]

NEW MEXICO HIGHWAY AND TRANSPORTATION DEPARTMENT

The New Mexico State Highway and Transportation Department will repeal 7 NMAC 32.20, Policies, Procedures, and Standards for New Mexico's Driving While Impaired (DWI) Schools, filed 12-17-96 effective January 1, 2003.

NEW MEXICO HIGHWAY AND TRANSPORTATION DEPARTMENT

The New Mexico State Highway and Transportation Department will repeal the following rules effective January 1, 2003: 18 NMAC 20.3, New Mexico's Driver Education Schools, filed 6-16-98; 18 NMAC 20.8, Driver Improvement/Defensive Driving Schools, filed 6-16-98; and 18 NMAC 20.11, Minimum Standards for Breath Alcohol Ignition Interlock Devices, filed 11-2-99.

NEW MEXICO HIGHWAY AND TRANSPORTATION DEPARTMENT

**TITLE 7 HEALTH AND DRUG ABUSE
CHAPTER 32 ALCOHOL AND
PART 20 DRIVING WHILE
IMPAIRED (DWI) SCHOOLS**

7.32.20.1 ISSUING AGENCY: New Mexico State Highway and Transportation Department.

[7.32.20.1 NMAC - Rp, 7 NMAC 32.20.1, 1-1-03]

7.32.20.2 SCOPE: This rule applies to all persons seeking to operate DWI schools, or serve as DWI facilitators for DWI programs offered, in New Mexico.

[7.32.20.2 NMAC - Rp, 7 NMAC 32.20.2, 1-1-03]

7.32.20.3 STATUTORY AUTHORITY: NMSA 1978, Section 9-1-5, 66-7-512, and 66-8-102.

[7.32.20.3 NMAC - Rp, 7 NMAC 32.20.3, 1-1-03]

7.32.20.4 DURATION: Permanent.

[7.32.20.4 NMAC - Rp, 7 NMAC 32.20.4, 1-1-03]

7.32.20.5 EFFECTIVE DATE: January 1, 2003, unless a later date is cited at the end of a section.

[7.32.20.5 NMAC - Rp, 7 NMAC 32.20.5, 1-1-03]

7.32.20.6 OBJECTIVE: The purpose of this rule is to provide minimum and uniform standards for the issuance, renewal, and revocation of DWI school licenses and DWI facilitator certificates and to establish requirements for the operation of DWI schools.

[7.32.20.6 NMAC - Rp, 7 NMAC 32.20.6,

1-1-03]

7.32.20.7 DEFINITIONS:

A. ADA means the Americans with Disabilities Act, 42 U.S.C.S Section 12101 et seq.

B. Bureau means the Traffic Safety Bureau (TSB) of the New Mexico State Highway and Transportation Department.

C. certificate means a document issued by the Bureau authorizing a person to serve as a DWI facilitator.

D. clean driving record means a person has no more than six (6) points on his/her driver's license, and has not within the last ten (10) years had his/her driver's license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been convicted in any jurisdiction of an alcohol or drug-related driving offense.

E. convicted or conviction has the meaning given in NMSA 1978, Section 66-8-102.

F. credit hour means fifty (50) minutes of instruction and 10 minutes of break time.

G. designee means a person authorized to perform certain specified duties on behalf of the Bureau.

H. DWI program or program means a driver rehabilitation program approved by the Bureau pursuant to NMSA 1978, Section 66-8-102.

I. DWI school or school or licensee means a person licensed by the Bureau to offer DWI programs.

J. DWI facilitator or facilitator means a person certified by the Bureau as qualified and trained to conduct DWI programs.

K. enrolled means a student has registered for a DWI program and the sentencing court has acknowledged the student as enrolled.

L. extension site means a location other than the main school site where a licensed DWI school offers DWI programs.

M. Implied Consent Act means NMSA 1978 Sections 66-8-105 through 66-8-112.

N. limited history driving record means a driving record from the Motor Vehicle Division of the Taxation and Revenue Department that includes drivers' license revocations pursuant to the Implied Consent Act.

O. license means the document issued by the Bureau authorizing a person to operate a DWI school.

P. moral turpitude means behavior that gravely violates the accepted moral standards of the community.

Q. person means an individual, firm, partnership, association, corporation, or other legal entity.

R. revocation or revoked means the involuntary permanent termination of a license or certificate by the Bureau for cause.

S. student means a person who has enrolled in a DWI program.

T. suspended or suspension means the involuntary termination of a license or certificate by the Bureau for cause for a specified period of time.

[7.32.20.7 NMAC - Rp, 7 NMAC 32.20.7, 1-1-03]

7.32.20.8 DWI SCHOOL NEEDS ASSESSMENT: The Bureau shall have ultimate responsibility for assessing the need for a DWI school in a particular community and may conduct a needs assessment on its own initiative. The Bureau shall find that a need exists for a DWI school if:

A. the existing DWI school license in that community will expire on June 30 of that year and the owner has not applied to renew the license or the Bureau has decided not to renew the license, the DWI school license has been revoked for cause by the Bureau, or the DWI school has ceased operations; or

B. community needs are not being adequately served by existing DWI schools and the number of students from the community in a given time period would be sufficient to make a DWI school economically self-sustaining; or

C. the distance to the nearest licensed DWI school would create safety problems.

[7.32.20.8 NMAC - Rp, 7 NMAC 32.20.8, 1-1-03]

7.32.20.9 REQUEST FOR DWI SCHOOL APPLICATIONS: Whenever the Bureau determines that there is a need for a DWI school in a community, the Bureau shall publish a request for applications for a license to operate a DWI school in that community. The request for applications shall be published once in a newspaper of general circulation in the community. The Bureau shall accept applications for DWI school licenses for the period of time specified in the request, but for not less than thirty (30) days.

[7.32.20.9 NMAC - Rp, 7 NMAC 32.20.9, 1-1-03]

7.32.20.10 APPLICATION FOR DWI SCHOOL LICENSE:

A. License required. No person may operate a DWI school without first having obtained a license from the

Bureau.

B. Application form. A person wishing to obtain a license to operate a DWI school must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

C. Contents of application. An application for a DWI school license shall contain:

(1) the applicant's name, mailing address, telephone number, and, if the applicant has one, the applicant's e-mail address;

(2) a photocopy of the Certificate of Maximum Occupant Load issued by the state or local Fire Marshal stating the maximum occupancy allowed by the fire code for each room at the main school site and each extension site, if applicable, that will be used as a classroom;

(3) a list of all extension sites to be used for conducting DWI programs;

(4) a list of all facilitators who will conduct DWI programs;

(5) a schedule of fees applicable to students who enroll in a DWI program;

(6) the proposed curriculum, handouts, videos, and final examination questions for the DWI program;

(7) the name, address, and telephone number of three (3) character and employment references who are not family members; and

(8) the applicant's resume or curriculum vitae.

D. Completeness. When the Bureau receives an application for a DWI school license, the Bureau shall check the application for completeness.

(1) If the application is not complete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

[7.32.20.10 NMAC - Rp, 7 NMAC 32.20.9, 1-1-03]

7.32.20.11 ISSUANCE OF INITIAL DWI SCHOOL LICENSE:

A. Review by the Bureau. In reviewing applications for DWI schools, the Bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to operate a DWI school;

(3) the community's needs will be adequately served;

(4) the proposed DWI school can certify that its facilities meet the accessibility requirements of the ADA; and

(5) the persons who will serve as DWI facilitators meet the requirements of

this rule;

B. Issuance of initial license. If the Bureau determines that an applicant meets the standards prescribed in subsection A, the Bureau shall issue a license upon:

(1) payment of the \$50.00 license fee;

(2) payment of the \$35.00 extension site fee for each extension site, if applicable; and

(3) posting of a surety bond with the Bureau in the amount of \$5,000 issued by a company authorized to transact surety business in New Mexico. The surety bond shall be continuous and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records.

C. Interim licenses. The Bureau may issue an interim license to a DWI school for a term to expire on June 30 of the year in which the interim license is issued in order to provide a replacement for a school that has ceased operations or had its license revoked.

D. Denial of license. If the Bureau determines that an applicant does not meet the standards prescribed in subsection A of this section, the Bureau will issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time.

[7.32.20.11 NMAC - Rp, 7 NMAC 32.20.9, 1-1-03]

7.32.20.12 TERM OF DWI SCHOOL LICENSE:

A. Term. A license shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial licenses shall be valid from the date of issuance to the next June 30. Renewal licenses shall be valid from July 1 of the year of renewal to June 30 of the following year.

B. License renewal. A licensee must file an application for renewal of its license with the Bureau on or before June 1st of each year to ensure license renewal by July 1. A licensee who files an application for renewal after June 1st shall pay a late fee of \$25.00. The Bureau will review applications for renewal in the order in which they are received.

(1) The Bureau will renew a license for a period of one (1) year if:

(a) the Bureau or its designee finds that the DWI school is in compliance with the requirements of this rule;

(b) the licensee has submitted all required reports to the Bureau; and

(c) the licensee pays the \$50.00 annual license fee and, if applicable, the \$35.00 extension site fee for each extension

site and the \$25.00 late fee if the application was filed after June 1st.

(2) The Bureau shall not renew the license of any DWI school not in compliance with the requirements of this rule.

C. Probation. The Bureau may place a licensee on probation if the Bureau finds that the DWI school is not in compliance with one or more of the requirements of this rule. The Bureau shall send a notice of probation to the licensee specifying the provisions of this rule with which the licensee is not in compliance. The Bureau shall determine the period of probation depending on the number and severity of the violations. The Bureau will review the licensee's operations periodically during the probation period.

D. Early termination.

(1) A license shall automatically terminate if a DWI school ceases operation.

(2) The Bureau may suspend or revoke a license for cause as provided in this rule.

E. Restriction on sale of license. A DWI school license may not be sold or transferred.

[7.32.20.12 NMAC - Rp, 7 NMAC 32.20.9 and 32.20.23, 1-1-03]

7.32.20.13 CLASSROOM COURSE REQUIREMENTS: A licensee shall:

A. engage as DWI facilitators only those persons who have been certified by the Bureau. A licensee may not serve as a facilitator unless the licensee has been certified by the Bureau as a facilitator

B. enroll no fewer than four (4) students and no more than twenty-five (25) students or the maximum occupancy allowed by the fire code, whichever is less, in a DWI program, unless prior written approval is obtained from the Bureau.

C. not charge a student more than \$150.00, including tax, for enrolling in a DWI program.

D. display the license issued by the Bureau in an appropriate and visible location.

E. display the placard issued by the Fire Marshal stating the maximum occupancy of each classroom in an appropriate and visible location in the classroom.

F. use classroom facilities that:

(1) have adequate space, lighting, heating, and ventilation;

(2) have seats and stable writing surfaces for each student in the class; and

(3) comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities.

G. ensure that the learning

environment is conducive to learning and free from discrimination, intimidation, and harassment. No person shall engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others.

H. use only the curriculum, handouts, videos, and final examination questions approved by the Bureau.

I. accommodate the special needs of hearing impaired students. Whenever a DWI school becomes aware that an enrollee is hearing impaired, the school shall inform the hearing impaired student in writing that if a friend or family member of the enrollee cannot perform sign language interpretation for the student, the school will contact the Bureau to arrange for sign language interpretation. The DWI school shall contact the Bureau at least twenty (20) days before the scheduled date of the DWI program.

J. accommodate the special needs of non-English speaking students. Whenever a DWI school becomes aware that an enrollee does not speak English, the school will make reasonable efforts to provide interpreter services. The DWI school shall first inquire if a friend or family member of the enrollee can interpret for the student. If that is not possible, the DWI school will make reasonable efforts to find a DWI facilitator or other person to interpret for the student during the DWI program.

K. provide at least twelve (12) program hours for each DWI program, divided into no fewer than three (3) four-hour segments scheduled at least one (1) week apart.

L. offer classes as frequently as necessary to accommodate the number of students in the community, but no less frequently than once every three (3) months.

M. not permit a student to attend any DWI classes until the student has received written information stating all fees, including incidental costs, charged for the course, school policies for passing and failing, refund and reschedule policies, and attendance requirements.

[7.32.20.13 NMAC - Rp, 7 NMAC 32.20.10 and 32-20-23, 1-1-03]

7.32.20.14 OPERATING REQUIREMENTS: A licensee:

A. shall adhere strictly to the requirements of this rule;

B. shall notify the Bureau at least thirty (30) days in advance if the DWI school intends to cease operations;

C. shall make all DWI school records available for inspection by the Bureau or its designee at any time; A

licensee shall maintain its records in ink for a minimum of three (3) years for each student receiving instruction, including students who passed, failed, withdrew, cancelled, or transferred to another school. The records shall be updated for each lesson.

D. shall, within thirty (30) days of the end of each DWI program:

(1) provide the Bureau with a copy of the class roster which shall contain, at a minimum, the name of the facilitator, and each student's name, date of birth, and date of program completion; and

(2) submit a \$25.00 per student fee to the Bureau, unless other arrangements have been made with the Bureau in advance.

E. shall have a written refund policy and a written reschedule policy which must be issued to each student upon enrollment.

F. shall notify the Bureau of:

(1) any changes in address ten (10) days before opening for business at the new location;

(2) the addition or closing of extension sites within ten (10) days of their opening or closing; and

(3) the addition or deletion of facilitators within ten (10) days of their hiring or leaving.

G. shall conduct all school operations in a professional and courteous manner.

H. shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations.

I. shall notify the sentencing court or other appropriate agency in writing within five (5) working days if a student fails to attend any session of the program or fails to complete the program within three (3) months of enrollment.

J. may use the phrases "licensed by the Traffic Safety Bureau" or "curriculum approved by the Traffic Safety Bureau" but may not otherwise use the word "approved" or any of its synonyms in its advertising or promotional materials.

[7.32.20.14 NMAC - Rp, 7 NMAC 32.20.10, 1-1-03]

7.32.20.15 EVALUATION OF DWI SCHOOLS:

A. Responsibility. The Bureau or its designee shall conduct periodic evaluations of DWI schools using criteria developed by the Bureau. The Bureau shall prepare a written evaluation and shall provide a copy of the evaluation to the licensee upon request. The Bureau may in its discretion conduct evaluations of a DWI school on its own initiative at any time and

for any reason or in response to complaints from any person. The Bureau shall document, investigate, and discuss all complaints with the DWI school.

B. Relevant factors. In conducting its evaluations, the Bureau shall consider:

(1) the number and nature of any comments or complaints received from students, facilitators, judges, law enforcement officers, and others;

(2) whether the DWI school consistently meets the requirements of this rule; and

(3) on-site quality assurance visits by the Bureau or its designee. On-site visits may address the adequacy of classroom facilities, facilitators' traffic safety knowledge and teaching techniques, learning environment, quality of the curriculum, class materials, and examination questions, and customer service.

[7.32.20.15 NMAC - Rp, 7 NMAC 32.20.11, 1-1-03]

7.32.20.16 INITIAL CERTIFICATION OF DWI FACILITATORS:

A. Certification required. No person or licensee may serve as a DWI facilitator without first having obtained a certificate from the Bureau.

B. Application requirements. A person wishing to obtain a certificate as a DWI facilitator must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

C. Contents of application. The application must be accompanied by:

(1) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau;

(2) a state police background check dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety at least sixty (60) days before the date the application is filed with the Bureau;

(3) a copy of the applicant's health certificate signed by a physician and dated no earlier than sixty (60) days before the date the application is filed with the Bureau stating that the applicant is free from all communicable diseases;

(4) the name, address, and telephone number of three (3) character and employment references who are not family members;

(5) the applicant's resume or curriculum vitae; and

(6) transcripts from any post secondary educational or training institutions the applicant has attended.

D. Completeness check. When the Bureau receives an application for certification as a DWI facilitator, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

E. Standards for issuance of DWI facilitator certificate. In reviewing applications for DWI facilitators, the Bureau shall consider whether:

(1) the information provided is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to be a DWI facilitator;

(3) the applicant is at least twenty-one (21) years of age;

(4) the applicant has a high school diploma or equivalent;

(5) the applicant holds a valid driver's license;

(6) the applicant has not been convicted of a crime involving moral turpitude; and

(7) the applicant has a clean driving record.

F. Approval for training.

(1) If the Bureau determines that the applicant meets the standards in subsection E of this section, the Bureau shall grant approval to proceed with facilitator training. Each applicant for a certificate as a DWI facilitator must:

(a) satisfactorily complete the New Mexico DWI facilitator training course, as verified by the Bureau;

(b) attend a DWI trial in a court in the community, as verified by the clerk of the court;

(c) observe a minimum of one complete twelve-hour DWI program, as verified by the certified DWI facilitator conducting the program; and

(d) co-facilitate at least six (6) hours of a DWI program under the direct supervision of a certified DWI school facilitator, as verified by that facilitator.

(2) If the Bureau determines that the applicant does not meet the standards in subsection E of this section, the Bureau shall issue a letter stating the reasons it is not granting approval to proceed with facilitator training.

G. Final review.

(1) If the Bureau determines that

an applicant has successfully completed the facilitator training program and is otherwise fit, the Bureau will issue a certificate upon payment of the \$50.00 facilitator certification fee.

(2) If the Bureau determines that an applicant has not successfully completed the facilitator training program or is otherwise not fit, the Bureau shall issue a letter stating its reasons for denial of certification.

H. Term. A DWI facilitator certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year.

[7.32.20.16 NMAC - Rp, 7 NMAC 32.20.12, 32.20.13, 32.20.14, and 32-20.23, 1-1-03]

7.32.20.17 RECERTIFICATION OF DWI FACILITATORS:

A. Certificate renewal.

(1) A DWI facilitator must file an application for renewal of his or her certificate with the Bureau on or before June 1 each year to ensure certificate renewal by July 1. A DWI facilitator who files an application for renewal after June 1st shall pay a late fee of \$25.00.

(2) A person may obtain an application for renewal by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

(3) The application for renewal shall be accompanied by the documents specified in subsection C of this section.

(4) The Bureau will review applications for renewal in the order in which they are received.

B. Continuing education requirements.

(1) DWI facilitators must complete a minimum of twelve (12) credit hours of continuing education each year to qualify for annual recertification.

(2) A DWI facilitator can satisfy this requirement in whole or in part by attending Bureau sponsored:

- (a) DWI School Workshops;
- (b) Traffic Safety Issues Forums;
- (c) Community DWI Prevention Program Workshops; or
- (d) any traffic safety related courses or workshops.

(3) The Bureau may, in its discretion, approve continuing education credit on the basis of one continuing education credit hour for every hour of attendance at the following types of programs if a copy of the workshop agenda or course curriculum is submitted to the Bureau:

- (a) Drug or alcohol workshops;
- (b) Counseling or treatment

workshops; or

(c) Education courses or workshops.

(4) The Bureau shall grant one continuing education credit hour for each hour spent observing a DWI school facilitator from the Bureau's approved list but not from the same school, up to a maximum of four (4) credit hours in one year.

C. Approval/disapproval of application for certificate renewal.

(1) The Bureau will renew the certificate of a DWI facilitator for a period of one year if the DWI facilitator:

(a) pays the \$50.00 annual certification fee;

(b) meets the standards specified in subsection E of 7.32.20.16 NMAC;

(c) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the Bureau or its designee in the preceding year; and

(d) has completed twelve (12) credit hours of continuing education in the year preceding the application for renewal.

(2) The Bureau shall not renew the license of any DWI facilitator who:

(a) fails to complete twelve (12) hours of continuing education in the year preceding the application for renewal; or

(b) fails to meet the standards specified in subsection E of 7.32.20.16 NMAC.

[7.32.20.17 NMAC - Rp, 7 NMAC 32.20.15, 32.20.16 and 32.20.17, 1-1-03]

7.32.20.18 SUSPENSION OR REVOCATION OF A LICENSE OR CERTIFICATE:

A. Grounds. The Bureau may suspend or revoke the license or certificate of a licensee or DWI facilitator:

(1) who makes a false statement on an application;

(2) who fails to follow the approved curriculum;

(3) who poses an immediate danger to the physical or mental safety or health of a student;

(4) who is convicted of any alcohol or drug-related driving offense;

(5) who has refused to submit to or failed chemical tests pursuant to the Implied Consent Act;

(6) whose New Mexico driver's license is suspended or revoked;

(7) who fails to notify the Bureau in writing within ten (10) days that his/her driver's license has been suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or that he/she been convicted in any jurisdiction of an alcohol or drug-related driving offense or an offense involving moral turpitude;

tude;

(8) whose conduct in the performance of official duties is unethical, including but not limited to, verbal abuse or sexual harassment of students;

(9) who fails to comply with any requirement of this rule or any lawful order of the Bureau;

(10) who becomes employed or remains employed by a DWI school whose license has been revoked pursuant to this rule;

(11) who employs or continues to employ a DWI facilitator whose certificate has been revoked pursuant to this rule;

(12) who fails to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 et seq. or any rule implementing that Act; or

(13) who fails to forward the \$25.00 per-student fee to the Bureau within 30 days after the end of the program unless other arrangements have been made with the Bureau.

B. Procedure. The Bureau shall use the procedures prescribed in the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 et seq., in all suspension and revocations proceedings held pursuant to this rule.

C. Consequences of suspension or revocation.

(1) A DWI school shall not offer or conduct any DWI programs if its license is suspended or revoked.

(2) A DWI facilitator shall not conduct any DWI programs if his or her certificate is suspended or revoked.

D. Notice of suspension or revocation.

(1) The Bureau shall immediately notify by certified mail, return receipt requested, each DWI facilitator employed by a DWI school whose license has been suspended or revoked that the DWI school's license has been suspended or revoked and that the DWI facilitator may not conduct any DWI programs for that DWI school unless and until the license is reinstated by the Bureau.

(2) The Bureau shall immediately notify by certified mail, return receipt requested, each DWI school that employs a DWI facilitator whose certificate is suspended or revoked that the DWI facilitator's certificate has been suspended or revoked and that the DWI school may not employ that DWI facilitator unless and until the certificate is reinstated by the Bureau.

(3) The Bureau will notify all Motor Vehicle Division field offices that the DWI school's license or the DWI facilitator's certificate has been revoked or suspended.

(4) The Bureau will notify all state courts that the DWI school's license has been revoked or suspended and that the DWI school is no longer an approved school.

[7.32.20.18 NMAC - Rp, 7 NMAC 32.20.24, 32.20.25, and 32.20.29, 1-1-03]

7.32.20.19 IMMEDIATE SUSPENSION OF A LICENSE OR CERTIFICATE:

A. Grounds. The Bureau may immediately suspend the license of a DWI school or the certificate of a DWI facilitator if the Bureau finds that the licensee or DWI facilitator poses an immediate danger to the physical or mental safety or health of a student.

B. Notice of immediate suspension. The Bureau shall commence proceedings to immediately suspend a license or certificate by issuing a written notice of immediate suspension to the licensee or DWI facilitator, which shall contain at least the following information:

(1) the name and last known address of the licensee or DWI facilitator whose license or certificate the bureau is immediately suspending.

(2) a statement that the Bureau is immediately suspending the DWI school's license or DWI facilitator's certificate for a period of thirty (30) days and the effective date of the immediate suspension.

(3) a general description of the facts alleging that the licensee or DWI facilitator poses an immediate danger to the physical or mental safety or health of a student that warrants immediate suspension. The description shall be in sufficient detail to apprise a person of ordinary intelligence of the nature of the violation.

(4) a statement that the licensee or DWI facilitator has ten (10) days from the date of receipt of the notice of immediate suspension to request a hearing. The licensee or DWI facilitator may request a hearing by mailing, certified and return receipt requested, or hand-delivering a letter to the Bureau.

(5) the street and post office addresses of the Bureau where requests for a hearing may be made.

C. Hearing. The Bureau shall grant a timely request for a hearing.

(1) The State Highway and Transportation Department shall appoint a hearing examiner.

(2) The hearing shall be held as soon as possible, but not later than thirty (30) days from the effective date of the immediate suspension.

(3) The immediate suspension will remain in effect until the conclusion of the hearing.

(4) The hearing may be held telephonically if both parties agree.

D. Hearing purpose. The hearing is for the sole purpose of determining if the Bureau has reasonable grounds to believe that the licensee or DWI facilitator poses an immediate danger to the physical or mental safety or health of a student.

(1) If the hearing examiner finds that no immediate danger exists, the Bureau will withdraw the immediate suspension but may initiate revocation proceedings pursuant to 18.20.8.18 NMAC.

(2) If the hearing examiner finds that an immediate danger exists, the Bureau shall initiate revocation proceedings pursuant to 18.20.8.18 NMAC within ten (10) days of the end of the hearing. The immediate suspension will remain in effect until the conclusion of the revocation procedure.

E. Grounds for withdrawal of immediate suspension.

(1) The Bureau shall withdraw an immediate suspension if:

(a) a hearing is timely requested and the Bureau has not held the hearing within thirty (30) days of the effective date of the immediate suspension, unless the licensee or facilitator requests a later hearing date and agrees in writing that the immediate suspension will remain in effect until the conclusion of the later hearing;

(b) the hearing examiner finds that an immediate danger does exist but the Bureau does not initiate revocation proceedings pursuant to 18.20.8.18 NMAC within ten (10) days of the ruling; or

(c) the licensee or DWI facilitator does not request a hearing and the Bureau does not initiate revocation proceedings pursuant to 18.20.8.18 NMAC within thirty (30) days of the effective date of the immediate suspension.

(2) The Bureau may, in its discretion, withdraw an immediate suspension for any reason but shall document its decision in writing.

[7.32.20.19 NMAC - Rp, 7 NMAC 32.20.26, 32.20.27, and 32.20.28, 1-1-03]

7.32.20.20 EXEMPTION OR VARIANCE:

A. Any school may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the school and its customers, and on its competitors and their customers, if the exemption or variance is not

granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the Traffic Safety Act; and

(5) state why the proposed alternative is in the public interest and is better than the requirement in the rule.

B. Such petition may include a motion that the Bureau stay the affected portion of this rule for the transaction specified in the motion.

C. Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the licensee or other person with authority to bind the licensee.

D. The Bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[7.32.20.20 NMAC - N, 1-1-03]

HISTORY OF 7.32.20 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center and Archives as SHTD Rule 87-1, Driving While Intoxicated (DWI) Rehabilitation Schools, on 12-3-87.

Repealed material.

7 NMAC 32.20, Policies, Procedures, and Standards for New Mexico's Driving While Impaired (DWI) Schools, filed 12-17-96, repealed 1-1-03.

NMAC history.

7 NMAC 32.20, Policies, Procedures, and Standards for New Mexico's Driving While Impaired (DWI) Schools, filed 12-17-96.

NEW MEXICO HIGHWAY AND TRANSPORTATION DEPARTMENT

**TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 20 TRAFFIC SAFETY
PART 3 DRIVER EDUCATION SCHOOLS**

18.20.3.1 ISSUING AGENCY: New Mexico State Highway and Transportation Department.
[18.20.3.1 NMAC - Rp, 18 NMAC 20.3.1, 1-1-03]

18.20.3.2 SCOPE: This rule applies to all persons seeking to operate driver education schools, or serve as instructors for driver education courses offered, in New Mexico.
[18.20.3.2 NMAC - Rp, 18 NMAC 20.3.2, 1-1-03]

18.20.3.3 STATUTORY

AUTHORITY: NMSA 1978, Sections 66-10-1 through 66-10-12.

[18.20.3.3 NMAC - Rp, 18 NMAC 20.3.3, 1-1-03]

18.20.3.4 DURATION:

Permanent.

[18.20.3.4 NMAC - Rp, 18 NMAC 20.3.4, 1-1-03]

18.20.3.5 EFFECTIVE DATE:

January 1, 2003, unless a later date is cited at the end of a section.

[18.20.3.5 NMAC - Rp, 18 NMAC 20.3.5, 1-1-03]

18.20.3.6 OBJECTIVE:

The purpose of this rule is to provide minimum and uniform standards for the issuance, renewal, and revocation of driver education school licenses and driver education instructor certificates and to establish requirements for the operation of driver education schools.

[18.20.3.6 NMAC - Rp, 18 NMAC 20.3.6, 1-1-03]

18.20.3.7 DEFINITIONS:

A. ADA means the Americans with Disabilities Act, 42 U.S.C.S Section 12101 et seq.

B. Bureau means the Traffic Safety Bureau (TSB) of the New Mexico State Highway and Transportation Department.

C. certificate means a document issued by the Bureau authorizing a person to serve as a driver education school instructor.

D. clean driving record means a person has no more than six (6) points on his/her driver's license, and has not within the last ten (10) years had his/her driver's license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been convicted in any jurisdiction of an alcohol or drug-related driving offense.

E. convicted or conviction has the meaning given in NMSA 1978, Section 66-8-102.

F. correspondence course means a driver education course approved by the Bureau in which a student independently studies written materials and submits written assignments for review by a driver education instructor.

G. course or credit hour means fifty (50) minutes of instruction and ten (10) minutes of break time.

H. designee means a person authorized to perform certain specified duties on behalf of the Bureau.

I. diploma means a document evidencing that a person has completed a Driver Education Instructor Training Course or Refresher Driver Education Instructor Training Course conducted by the Bureau.

J. driver education course or course means a course of instruction approved by the Bureau pursuant to NMSA 1978, Section 66-10-11 and includes correspondence courses.

K. driver education school or school or licensee means a person licensed by the Bureau to offer driver education courses.

L. driver education instructor or instructor means a person certified by the Bureau as qualified and trained to conduct driver education courses.

M. driving simulator means a computer-based simulator unit and program that reproduces driving situations likely to occur in actual driving performance on the street which require the student to evaluate risk, make decisions, and respond appropriately to the driving situation presented.

N. enrolled means that a student has attended the first day of a scheduled course and will continue until the course is completed.

O. extension site means a location other than the main school site where a licensed driver education school offers driver education courses.

P. for-profit driver education school means a person who is not exempt from the Driving School Licensing Act pursuant to NMSA 1978 Section 66-10-8.

Q. Implied Consent Act means NMSA 1978 Sections 66-8-105 through 66-8-112.

R. limited history driving record means a driving record from the Motor Vehicle Division of the Taxation and Revenue Department that includes driver's license revocations pursuant to the Implied Consent Act.

S. license means the document issued by the Bureau authorizing a person to operate a driver education school.

T. moral turpitude means behavior that gravely violates the accepted moral standards of the community.

U. on-range training means a student is in control of a motor vehicle on an off-street facility where one or more students may be operating a motor vehicle simultaneously under the direction of one or more instructors who are outside the vehicle.

V. on-street training means a student is in control of a motor vehicle on a public highway in real and varied traffic situations and an instructor is in

the front passenger seat next to the student.

W. person means an individual, firm, partnership, association, corporation, or other legal entity.

X. proctored exam means an exam monitored by a driver education instructor.

Y. revocation or revoked means the involuntary permanent termination of a license or certificate by the Bureau for cause.

Z. student means a person who has enrolled in a driver education course.

AA. suspended or suspension means the involuntary termination of a license or certificate by the Bureau for cause for a specified period of time.

[18.20.3.7 NMAC - Rp, 18 NMAC 20.3.7, 1-1-03]

18.20.3.8 STUDENT ELIGIBILITY:

A. A driver education school shall not enroll a person as a student unless the person will be fifteen (15) years of age on or before the date the classroom portion of the driver education course will be completed.

B. A correspondence course shall not enroll a person as a student unless the person will be fifteen (15) years of age on or before the date the correspondence course will be completed and:

(1) the person is home schooled in all other junior high school or high school subjects. The school must obtain a letter from the person's parents or legal guardian stating that the person is home schooled in all subjects; or

(2) the person has obtained prior written approval from the Bureau.

[18.20.3.8 NMAC - N, 1-1-03]

18.20.3.9 APPLICATION FOR FOR-PROFIT DRIVER EDUCATION SCHOOL LICENSE:

A. License required. No person may operate a driver education school without first having obtained a license from the Bureau.

B. Application form. A person wishing to obtain a license to operate a for-profit driver education school must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

C. Contents of application. An application for a for-profit driver education school license shall contain:

(1) the applicant's name, mailing address, telephone number, and, if the applicant has one, the applicant's e-mail address;

(2) a photocopy of the Certificate

of Maximum Occupant Load issued by the state or local Fire Marshal stating the maximum occupancy allowed by the fire code for each room at the main school site and each extension site, if applicable, that will be used as a classroom;

(3) a list of all extension sites to be used for conducting driver education courses;

(4) a list of all instructors who will conduct driver education courses;

(5) a schedule of fees applicable to students who enroll in a driver education course;

(6) the proposed curriculum, handouts, videos, and final examination questions for the driver education course;

(7) the name, address, and telephone number of three (3) character and employment references who are not family members; and

(8) the applicant's resume or curriculum vitae.

D. Completeness. When the Bureau receives an application for a driver education school license, the Bureau shall check the application for completeness.

(1) If the application is not complete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application. [18.20.3.9 NMAC - Rp, 18 NMAC 20.3.8, 1-1-03]

18.20.3.10 ISSUANCE OF INITIAL FOR-PROFIT DRIVER EDUCATION SCHOOL LICENSE:

A. Review by the Bureau. In reviewing applications for driver education schools, the Bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to operate a driver education school;

(3) the proposed driver education school can certify that its facilities meet the accessibility requirements of the ADA; and

(4) the persons who will serve as driver education instructors meet the requirements of this rule.

B. Issuance of initial license. If the Bureau determines that an applicant meets the standards prescribed in subsection A, the Bureau shall issue a license upon:

(1) payment of the \$400.00 license fee;

(2) payment of the \$35.00 extension site fee for each extension site, if applicable;

(3) submittal of a certificate of insurance that meets the requirements of subsection C of 18.20.3.13 NMAC for each vehicle used for driver training; and

(4) posting of a surety bond with the Bureau in the amount of \$5,000 issued by a company authorized to transact surety business in New Mexico. The surety bond shall be continuous and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records.

C. Denial of license. If the Bureau determines that an applicant does not meet the standards prescribed in subsection A of this section, the Bureau will issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time.

[18.20.3.10 NMAC - Rp, 18 NMAC 20.3.9 and 20.3.16, 1-1-03]

18.20.3.11 TERM OF FOR-PROFIT DRIVER EDUCATION SCHOOL LICENSE:

A. Term. A license shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial licenses shall be valid from the date of issuance to the next June 30. Renewal licenses shall be valid from July 1 of the year of renewal to June 30 of the following year.

B. License renewal. A licensee must file an application for renewal of its license with the Bureau on or before June 1 of each year to ensure license renewal by July 1. A licensee who files an application for renewal after June 1 shall pay a late fee of \$25.00. The Bureau will review applications for renewal in the order in which they are received.

(1) The Bureau will renew a license for a period of one (1) year if:

(a) the Bureau or its designee finds that the driver education school is in compliance with the requirements of this rule;

(b) the licensee has submitted all required reports to the Bureau;

(c) the licensee has submitted a certificate of insurance that meets the requirements of subsection C of 18.20.3.13 NMAC for each vehicle used for driver training; and

(d) the licensee pays the \$400.00 annual license fee and, if applicable, the \$35.00 extension site fee for each extension site and the \$25.00 late fee if the application was filed after June 1.

(2) The Bureau shall not renew the license of any driver education school not in compliance with the requirements of this rule.

C. Probation. The Bureau may place a licensee on probation if the Bureau finds that the driver education school is not in compliance with one or more of the requirements of this rule. The Bureau shall send a notice of probation to the licensee specifying the provisions of this rule with which the licensee is not in compliance. The Bureau shall determine the period of probation depending on the number and severity of the violations. The Bureau will review the licensee's operations periodically during the probation period.

D. Early termination.

(1) A license shall automatically terminate if a driver education school ceases operation.

(2) The Bureau may suspend or revoke a license for cause as provided in this rule.

E. Restriction on sale of license. A driver education school license may not be sold or transferred.

[18.20.3.11 NMAC - Rp, 18 NMAC 20.3.10 and 20.3.16, 1-1-03]

18.20.3.12 CLASSROOM COURSE REQUIREMENTS FOR FOR-PROFIT DRIVER EDUCATION SCHOOLS: A licensee providing classroom instruction shall:

A. engage as driver education instructors only those persons who have been certified by the Bureau. A licensee may not serve as an instructor unless the licensee has been certified by the bureau as an instructor.

B. enroll no more than forty (40) students or the maximum occupancy allowed by the fire code, whichever is less, in a driver education course.

C. not charge a student more than \$400.00, including tax, for enrolling in a driver education course.

D. display the license issued by the Bureau in an appropriate and visible location.

E. display the placard issued by the Fire Marshal stating the maximum occupancy of each classroom in an appropriate and visible location in the classroom.

F. use classroom facilities that:

(1) have adequate space, lighting, heating, and ventilation;

(2) have seats and stable writing surfaces for each student in the class;

(3) have a whiteboard, blackboard, or flipchart;

(4) have a monitor of sufficient size for all students to see, if videos are used; and

(5) comply with all federal, state, and local laws relating to persons with dis-

abilities, public health, safety, and sanitation, including restroom facilities.

G. ensure that the learning environment is conducive to learning and free from discrimination, intimidation, and harassment. No person shall engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others.

H. use only the curriculum, handouts, videos, and final examination questions approved by the Bureau.

I. accommodate the special needs of hearing impaired students. Whenever a driver education school becomes aware that an enrollee is hearing impaired, the school shall inform the hearing impaired student in writing that if a friend or family member of the enrollee cannot perform sign language interpretation for the student, the school will contact the Bureau to arrange for sign language interpretation. The driver education school shall contact the Bureau at least twenty (20) days before the scheduled date of the driver education course.

J. accommodate the special needs of non-English speaking students. Whenever a driver education school becomes aware that an enrollee does not speak English, the school will make reasonable efforts to provide interpreter services. The driver education school shall first inquire if a friend or family member of the enrollee can interpret for the student. If that is not possible, the driver education school will make reasonable efforts to find a driver education instructor or other person to interpret for the student during the driver education course.

K. provide at least thirty (30) course hours of classroom instruction for each driver education course if the school also provides behind-the-wheel training, or fifty-six (56) hours of classroom instruction for each driver education course if the school does not provide behind-the-wheel training. At least six (6) hours of classroom instruction shall be devoted to DWI prevention and education and shall include information on organ donation and the Uniform Anatomical Gifts Act, NMSA 1978 Sections 24-6A-1 et seq.

(1) When school is in session, a licensee shall conduct the course over a minimum four week period, with no more than three (3) hours of classroom instruction on days when classes are held, and no more than four (4) hours of classroom instruction on days when classes are not held.

(2) During summer vacation, Christmas vacation, and spring break, a licensee may conduct the course over a minimum two (2) week period, with no more than four (4) hours per day of classroom

instruction.

L. have a proctored final exam with a minimum of fifty (50) questions. A student must correctly answer at least seventy percent (70%) of the questions to pass the final exam. The exam shall require students to list, define, describe, identify, demonstrate, explain, compare, predict, estimate, or solve driving-related terms, signs, and situations.

M. use completion certificates purchased from the Bureau at a cost of \$1.00 per certificate.

N. not permit a student to attend any driver education classes until the student has received written information stating all fees, including incidental costs, charged for the course, school policies for passing and failing, refund and reschedule policies and attendance requirements.

[18.20.3.12 NMAC - Rp, 18 NMAC 20.3.11 and 20.3.16, 1-1-03]

18.20.3.13 BEHIND - THE - WHEEL TRAINING:

A. Hours requirement.

(1) A for-profit driver education school shall provide at least seven (7) hours of behind-the-wheel training to each student. At least four (4) of the seven (7) hours shall be on-street training.

(2) A for-profit driver education school may meet up to three (3) hours of the behind-the-wheel training requirement:

(a) with on-range training; or

(b) with prior written approval from the Bureau, by using a driving simulator approved by the Bureau, provided that two (2) hours of instruction using a driving simulator shall be equivalent to one (1) hour of on-street training.

(3) On days when classes are held, a licensee shall provide no more than one (1) hour per day of behind-the-wheel training per student. On days when classes are not held, a licensee shall provide no more than two (2) hours per day of behind-the-wheel training per student.

(4) Driving time shall not include time spent driving to pick up or drop off students unless the route meets the objective of the drive lesson.

B. Pre-driving classroom instruction. Before a licensee schedules students for on-street training, the licensee shall provide classroom instruction on:

(1) approaching the vehicle with awareness;

(2) orientation to controls;

(3) basic rules of the road;

(4) use of vision to control the vehicle;

(5) proper use of the steering wheel, accelerator, and brake;

(6) turning left and right; and

(7) signs, signals, and road markings.

C. Vehicle insurance required. A licensee shall provide to the Bureau a certificate showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to transact insurance business in New Mexico on Uniform Filing Form E evidencing public liability insurance on all vehicles used for behind-the-wheel driving instruction. The certificate shall list the make, model, and year of each vehicle and shall have the following minimum limits of coverage:

(1) \$500,000 per occurrence for bodily injury to or death of all persons injured or killed;

(2) \$250,000 per person for bodily injury to or death of a person injured or killed;

(3) \$10,000 per person for medical payments;

(4) \$100,000 per occurrence for property damage; and

(5) \$50,000 per person for uninsured motorist coverage.

D. Other requirements.

(1) The number of students in a motor vehicle being used for behind-the-wheel instruction shall not exceed the number of operational seatbelts in the vehicle. Only the instructor and driver education student may occupy the front seat. Only a student, parent or guardian of a student, instructor, translator, licensee, or person training to become a driver education instructor may occupy a rear seat.

(2) A for-profit driver education school shall maintain a driving log for each student. The driving log shall include the student's name, permit number, home telephone number, the name and telephone number of an emergency contact person, the instructor's name, the date and start and end time of each drive, the skills taught that day, the instructor remarks, the student's initials for each drive, the student's final behind-the-wheel grade, total driving time for the student.

(3) No instructor or student shall use a cell phone while a student is driving except in an emergency.

E. Disabled and special education students.

(1) When providing behind-the-wheel driving instruction to disabled students, a for-profit driver education school shall use:

(a) only those instructors certified by the Bureau who also hold the Certified Driver Rehabilitation Specialist credential from the Association of Driver Educators for the Disabled, or an equivalent credential from an organization recognized by the

Bureau; and

(b) whatever special equipment is required to train the disabled student.

(2) When providing behind-the-wheel driving instruction to disabled and special education students, a for-profit driver education school shall provide individualized instruction for each student based on the nature and severity of the student's disability or special needs.

F. Car and equipment specifications. A for-profit driver education school shall maintain all motor vehicles it uses for behind-the-wheel training in safe operating condition and shall equip them with the following:

- (1) a passenger side brake;
- (2) right and left side mirrors;
- (3) an inside rear view mirror for the instructor;
- (4) operational seatbelts for all occupants;
- (5) adjustable front seats;
- (6) a first aid kit;
- (7) safe tires; and
- (8) signs on both sides and on the rear of the vehicle indicating the name of the driver education school, "student driver" or "driver education vehicle." The background and letters of the sign shall be in contrasting colors, the letters shall be at least three inches (3") high, and the sign shall be safely secured to the vehicle.

G. Reports of moving violations and crashes. A for-profit driver education school shall report to the Bureau:

(1) within twenty-four (24) hours, all crashes that result in injury or death that involve students driving driver education school vehicles; and

(2) within ten (10) working days of their occurrence, all other crashes and all moving violations that involve students driving driver education school vehicles.

[18.20.3.13 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03]

18.20.3.14 CORRESPONDENCE COURSE REQUIREMENTS. A licensee offering correspondence courses shall:

A. enroll only those New Mexico students who are eligible pursuant to subsection B of 18.20.3.8 NMAC.

B. use only the curriculum, handouts, videos, and final exam questions approved by the Bureau.

C. provide fifty-six (56) or more hours of coursework, based on an average person completion time.

D. have a final exam with a minimum of fifty (50) questions. A student must correctly answer at least seventy percent (70%) of the questions to pass the final exam.

E. use completion certificates purchased from the Bureau at a cost of \$1.00 per certificate.

F. specify at least one (1) certified instructor to act as liaison with the Bureau.

[18.20.3.14 NMAC - N, 1-1-03]

18.20.3.15 OPERATING REQUIREMENTS FOR FOR-PROFIT DRIVER EDUCATION SCHOOLS: A licensee:

A. shall adhere strictly to the requirements of this rule;

B. shall notify the Bureau at least thirty (30) days in advance if the driver education school intends to cease operations;

C. shall make all driver education school records available for inspection by the Bureau or its designee at any time; A licensee shall maintain its records in ink for a minimum of three (3) years for each student receiving instruction, including students who passed, failed, withdrew, cancelled, or transferred to another school. The records shall be updated for each lesson.

D. shall, on a quarterly basis, provide the Bureau with a copy of the class roster for each driver education course conducted which shall contain, at a minimum, the name of the instructor, and each student's name, date of birth, date of course completion, final exam test score, and completion certificate number.

E. shall have a written refund policy and a written reschedule policy which must be issued to each student upon enrollment.

F. shall notify the Bureau of:

(1) any changes in address ten (10) days before opening for business at the new location;

(2) the addition or closing of extension sites within ten (10) days of their opening or closing; and

(3) the addition or deletion of instructors within ten (10) days of their hiring or leaving.

G. shall conduct all school operations in a professional and courteous manner.

H. shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations.

I. shall not publish, advertise, or insinuate in any way that a student is assured of obtaining a driver's license if they take the course offered by the licensee.

J. may use the phrases "licensed by the Traffic Safety Bureau" or "curriculum approved by the Traffic Safety

Bureau" but may not otherwise use the word "approved" or any of its synonyms in its advertising or promotional materials.

[18.20.3.15 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03]

18.20.3.16 EVALUATION OF FOR-PROFIT DRIVER EDUCATION SCHOOLS:

A. Responsibility. The Bureau or its designee shall conduct periodic evaluations of driver education schools using criteria developed by the Bureau. The Bureau shall prepare a written evaluation and shall provide a copy of the evaluation to the licensee upon request. The Bureau may in its discretion conduct evaluations of a driver education school on its own initiative at any time and for any reason or in response to complaints from any person. The Bureau shall document, investigate, and discuss all complaints with the driver education school.

B. Relevant factors. In conducting its evaluations, the Bureau shall consider:

(1) the number and nature of any comments or complaints received from students, instructors, judges, law enforcement officers, and others;

(2) whether the driver education school consistently meets the requirements of this rule; and

(3) on-site quality assurance visits by the Bureau or its designee. On-site visits may address the adequacy of classroom facilities, instructors' traffic safety knowledge and teaching techniques, learning environment, quality of the curriculum, class materials, and examination questions, and customer service.

[18.20.3.16 NMAC - Rp, 18 NMAC 20.3.12, 1-1-03]

18.20.3.17 CERTIFICATION OF JUNIOR HIGH SCHOOL AND HIGH SCHOOL DRIVER EDUCATION INSTRUCTORS:

A. Diploma required. No teacher may serve as a driver education instructor in a school without first having obtained a diploma from the Bureau. The Bureau may in its discretion temporarily waive this requirement upon request of the school principal or superintendent, contingent on the teacher attending a Driver Education Instructor Training Course offered by the Bureau within twelve (12) months. A teacher certified pursuant to this section shall not be certified to teach driver education in a for-profit driver education school unless he or she obtains instructor certification pursuant to 18.20.3.18 NMAC.

B. Application requirements. A junior high school or high school

teacher wishing to obtain approval from the Bureau to teach driver education at school shall send a letter on school letterhead, signed by the school principal or superintendent, containing the following information:

- (1) the name of the teacher;
- (2) a copy of the teacher's State Board of Education teaching license or waiver to teach pending licensure;
- (3) a copy of the teacher's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the letter is filed with the Bureau;
- (4) the date the teacher will attend the Bureau's Driver Education Instructor Training Course.

C. Standards for certification. Prior to approving the teacher to attend training, the Bureau shall consider whether the teacher:

- (1) is at least twenty-one (21) years of age;
- (2) holds a valid driver's license; and
- (3) has a clean driving record.

D. Approval for training. If the Bureau determines that the teacher meets the standards in subsection C of this section, the Bureau shall grant approval for the teacher to attend the forty (40) hour classroom portion of the Bureau's Driver Education Instructor Training Course.

E. Term of certification. A diploma from the classroom portion of the Bureau's Driver Education Instructor Training Course shall certify the teacher to teach in a school for five (5) years from the date of completion of training.

F. Renewal of certification. A teacher may renew his/her certification to teach driver education in a school by taking the Refresher Driver Education Instructor Training Course before his/her diploma expires. A diploma from the Bureau's Refresher Driver Education Instructor Training Course shall certify the teacher to teach in a school for five (5) years from the date of completion of refresher training. If the teacher does not complete the Refresher Driver Education Instructor Training Course within the five-year period, the teacher's certification will lapse. [18.20.3.17 NMAC - N, 1-1-03]

18.20.3.18 CERTIFICATION OF FOR-PROFIT DRIVER EDUCATION INSTRUCTORS:

A. Certification required. No person or licensee may serve as a driver education instructor without first having obtained a certificate from the Bureau.

B. Application requirements. A person wishing to obtain a cer-

tificate as a driver education instructor must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

C. Contents of application. The application must be accompanied by:

(1) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau;

(2) a state police background check dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety at least sixty (60) days before the date the application is filed with the Bureau;

(3) a copy of the applicant's health certificate signed by a physician and dated no earlier than sixty (60) days before the date the application is filed with the Bureau stating that the applicant is free from all communicable diseases. If the applicant will provide behind-the-wheel training, the health certificate must also state that the applicant is free of any ailment, disease, or physical defect that causes momentary or prolonged lapses of consciousness or control, which is or may become chronic, and that the applicant is not must suffering from a physical or mental disability or disease that prevents reasonable and ordinary control over a motor vehicle or that could impair the applicant's ability to drive safely or instruct student drivers. Correspondence school instructor applicants do not need to submit a health certificate.

(4) a copy of a teaching certificate from the State Board of Education, a copy of a diploma or official transcript evidencing a bachelor's degree from an accredited college or university, or a resume with verifiable employment history showing a minimum of three years of experience in driver training or a related field;

(5) the name, address, and telephone number of three (3) character and employment references who are not family members; and

(6) the applicant's resume or curriculum vitae.

D. Completeness check. When the Bureau receives an application for certification as a driver education instructor, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

E. Standards for issuance of driver education instructor certificate. In reviewing applications for driver education instructors, the Bureau shall consider whether:

(1) the information provided is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to be a driver education instructor;

(3) the applicant is at least twenty-one (21) years of age;

(4) the applicant has a bachelor's degree from an accredited college or university, has a license as a teacher from the State Board of Education, or has a minimum of three (3) years of experience in driver training or a related field;

(5) the applicant holds a valid driver's license;

(6) the applicant has not been convicted of a crime involving moral turpitude; and

(7) the applicant has a clean driving record. [07-01-98]

F. Approval for training.

(1) If the Bureau determines that the applicant meets the standards in subsection E of this section, the Bureau shall grant approval to proceed with instructor training.

(a) If the applicant will teach only the classroom portion of the driver education course, the applicant must complete the forty (40) hour classroom portion of the Bureau's Driver Education Instructor Training Course.

(b) If the applicant will teach the behind-the-wheel portion of the driver education course, the applicant must complete both the forty (40) hour classroom portion and the 40-hour behind-the-wheel portion of the Bureau's Driver Education Instructor Training Course.

(c) If the applicant is not a licensed teacher, the applicant must complete a Bureau sponsored or approved Instructor Training Course designed to teach instructional strategies, classroom management, or acquisition of teaching competencies.

(d) The Bureau shall issue a diploma upon satisfactory completion of the classroom and/or behind-the-wheel portions of the course, which shall be valid for five (5) years from the date of completion.

(2) If the Bureau determines that the applicant does not meet the standards in subsection E of this section, the Bureau shall issue a letter stating the reasons it is not granting approval to proceed with instructor training.

G. Final review.

(1) If the Bureau determines that an applicant has successfully completed all applicable portions of the Driver Education Instructor Training Course and is otherwise fit, the Bureau will issue a certificate upon payment of the \$50.00 instructor certification fee. The Bureau may in its discretion issue a temporary certificate to an applicant, contingent on the applicant attending the next Driver Education Instructor Training Course offered by the Bureau.

(2) If the Bureau determines that an applicant has not successfully completed the Driver Education Instructor Training Course or is otherwise not fit, the Bureau shall issue a letter stating its reasons for denial of certification.

H. Term. A driver education instructor certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year.

[18.20.3.18 NMAC - Rp, 18 NMAC 20.3.13, 20.3.14, 20.3.15 and 20.3.16, 1-1-03]

18.20.3.19 RECERTIFICATION OF FOR-PROFIT DRIVER EDUCATION INSTRUCTORS:

A. Certificate renewal.

(1) A driver education instructor must file an application for renewal of his or her certificate with the Bureau on or before June 1 each year to ensure certificate renewal by July 1. A driver education instructor who files an application for renewal after June 1 shall pay a late fee of \$25.00.

(2) A person may obtain an application for renewal by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

(3) The application for renewal shall be accompanied by the documents specified in subsection C of 18.20.3.18 NMAC.

(4) The Bureau will review applications for renewal in the order in which they are received.

B. Continuing education requirements.

(1) Driver education instructors must complete a minimum of sixteen (16) credit hours of continuing education each year to qualify for recertification.

(2) A driver education instructor can satisfy this requirement in whole or in part by attending Bureau sponsored:

(a) traffic safety issues forums and workshops; and

(b) education courses and workshops.

(3) The Bureau may, in its discre-

tion, approve continuing education credit on the basis of one continuing education credit hour for every hour of attendance at the following types of programs if a copy of the workshop agenda or course curriculum is submitted to the Bureau:

(a) drug or alcohol workshops; or
(b) education courses or workshops.

(4) Every five (5) years after completing the Bureau's Driver Education Instructor Training Course, the driver education instructor must satisfactorily complete the Bureau's eight (8) hour Driver Education Refresher Course, which will renew the driver education instructor's diploma for another five (5) years and meet the driver education instructor's continuing education requirement for that year.

C. Approval/disapproval of application for certificate renewal.

(1) The Bureau will renew the certificate of a driver education instructor for a period of one year if the driver education instructor:

(a) pays the \$50.00 annual certification fee;

(b) meets the standards specified in subsection E of 18.20.3.18 NMAC;

(c) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the Bureau or its designee in the preceding year; and

(d) has completed sixteen (16) hours of continuing education in the year preceding the application for renewal.

(2) The Bureau shall not renew the license of any driver education instructor who:

(a) fails to complete sixteen (16) hours of continuing education in the year preceding the application for renewal; or

(b) fails to meet the standards specified in subsection E of 18.20.3.18 NMAC.

[18.20.3.19 NMAC - Rp, 18 NMAC 20.3.15 and 20.3.16, 1-1-03]

18.20.3.20 SUSPENSION OR REVOCATION OF A LICENSE OR CERTIFICATE:

A. Grounds. The Bureau may suspend or revoke the license or certificate of a licensee or driver education instructor:

(1) who makes a false statement on an application;

(2) who fails to follow the approved curriculum;

(3) who poses an immediate danger to the physical or mental safety or health of a student;

(4) who is convicted of any alcohol or drug-related driving offense;

(5) who has refused to submit to

or failed chemical tests pursuant to the Implied Consent Act;

(6) whose New Mexico driver's license is suspended or revoked;

(7) who fails to notify the Bureau in writing within ten days that his/her driver's license has been suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or that he/she been convicted in any jurisdiction of an alcohol or drug-related driving offense or an offense involving moral turpitude;

(8) whose conduct in the performance of official duties is unethical, including but not limited to, verbal abuse, intimidation, or sexual harassment of students;

(9) who fails to comply with any requirement of this rule or any lawful order of the Bureau;

(10) who becomes employed or remains employed by a driver education school whose license has been revoked pursuant to this rule;

(11) who employs or continues to employ a driver education instructor whose certificate has been revoked pursuant to this rule; or

(12) who fails to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 et seq. or any rule implementing that Act.

B. Procedure. The Bureau shall use the procedures prescribed in the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 et seq., in all suspension and revocations proceedings held pursuant to this rule.

C. Consequences of suspension or revocation.

(1) A driver education school shall not offer or conduct any driver education courses if its license is suspended or revoked.

(2) A driver education instructor shall not conduct any driver education courses if his or her certificate is suspended or revoked.

D. Notice of suspension or revocation.

(1) The Bureau shall immediately notify by certified mail, return receipt requested, each driver education instructor employed by a driver education school whose license has been suspended or revoked that the driver education school's license has been suspended or revoked and that the driver education instructor may not conduct any driver education courses for that driver education school unless and until the license is reinstated by the Bureau.

(2) The Bureau shall immediately notify by certified mail, return receipt requested, each driver education school that

employs a driver education instructor whose certificate is suspended or revoked that the driver education instructor's certificate has been suspended or revoked and that the driver education school may not employ that driver education instructor unless and until the certificate is reinstated by the Bureau.

(3) The Bureau will notify all Motor Vehicle Division field offices that the driver education school's license or the driver education instructor's certificate has been revoked or suspended.

(4) The Bureau will notify all state, metropolitan, magistrate, and municipal courts that the driver education school's license has been revoked or suspended and that the driver education school is no longer an approved school.

[18.20.3.20 NMAC - Rp, 18 NMAC 20.3.17, 20.3.18, and 20.3.22, 1-1-03]

18.20.3.21 IMMEDIATE SUSPENSION OF A LICENSE OR CERTIFICATE:

A. Grounds. The Bureau may immediately suspend the license of a driver education school or the certificate of a driver education instructor if the Bureau finds that the licensee or driver education instructor poses an immediate danger to the physical or mental safety or health of a student.

B. Notice of immediate suspension. The Bureau shall commence proceedings to immediately suspend a license or certificate by issuing a written notice of immediate suspension to the licensee or driver education instructor, which shall contain at least the following information:

(1) the name and last known address of the licensee or driver education instructor whose license or certificate the bureau is immediately suspending.

(2) a statement that the Bureau is immediately suspending the driver education school's license or driver education instructor's certificate for a period of thirty (30) days and the effective date of the immediate suspension.

(3) a general description of the facts alleging that the licensee or driver education instructor poses an immediate danger to the physical or mental safety or health of a student that warrants immediate suspension. The description shall be in sufficient detail to apprise a person of ordinary intelligence of the nature of the violation.

(4) a statement that the licensee or driver education instructor has ten (10) days from the date of receipt of the notice of immediate suspension to request a hearing. The licensee or driver education instructor may request a hearing by mailing, certified

and return receipt requested, or hand-delivering a letter to the Bureau.

(5) the street and post office addresses of the Bureau where requests for a hearing may be made.

C. Hearing. The Bureau shall grant a timely request for a hearing.

(1) The State Highway and Transportation Department shall appoint a hearing examiner.

(2) The hearing shall be held as soon as possible, but not later than thirty (30) days from the effective date of the immediate suspension.

(3) The immediate suspension will remain in effect until the conclusion of the hearing.

(4) The hearing may be held telephonically if both parties agree.

D. Hearing purpose. The hearing is for the sole purpose of determining if the Bureau has reasonable grounds to believe that the licensee or driver education instructor poses an immediate danger to the physical or mental safety or health of a student.

(1) If the hearing examiner finds that no immediate danger exists, the Bureau will withdraw the immediate suspension but may initiate revocation proceedings pursuant to 18.20.3.20 NMAC.

(2) If the hearing examiner finds that an immediate danger exists, the Bureau shall initiate revocation proceedings pursuant to 18.20.3.20 NMAC within ten (10) days of the end of the hearing. The immediate suspension will remain in effect until the conclusion of the revocation procedure.

E. Grounds for withdrawal of immediate suspension.

(1) The Bureau shall withdraw an immediate suspension if:

(a) a hearing is timely requested and the Bureau has not held the hearing within thirty (30) days of the effective date of the immediate suspension, unless the licensee or instructor requests a later hearing date and agrees in writing that the immediate suspension will remain in effect until the conclusion of the later hearing;

(b) the hearing examiner finds that an immediate danger does exist but the Bureau does not initiate revocation proceedings pursuant to 18.20.3.20 NMAC within ten (10) days of the ruling; or

(c) the licensee or driver education instructor does not request a hearing and the Bureau does not initiate revocation proceedings pursuant to 18.20.3.20 NMAC within thirty (30) days of the effective date of the immediate suspension.

(2) The Bureau may, in its discretion, withdraw an immediate suspension for any reason but shall document its decision in writing.

[18.20.3.21 NMAC - Rp, 18 NMAC 20.3.19 and 20.3.20, 1-1-03]

18.20.3.22 EXEMPTION OR VARIANCE:

A. Any school may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the school and its customers, and on its competitors and their customers, if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the Driving School Licensing Act; and

(5) state why the proposed alternative is in the public interest and is better than the requirement in the rule.

B. Such petition may include a motion that the Bureau stay the affected portion of this rule for the transaction specified in the motion.

C. Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the licensee or other person with authority to bind the licensee.

D. The Bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[18.20.3.22 NMAC - N, 1-1-03]

HISTORY OF 18.20.3 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center and Archives as SHTD Rule 93-1, Minimum Standards for Driver Education for Commercial Driving Schools, filed 9-3-93.

Repealed material.

18 NMAC 20.3, New Mexico's Driver Education Schools, filed 6-16-98 repealed 1-1-03.

NMAC history.

18 NMAC 20.3, New Mexico's Driver Education Schools, filed 6-16-98.

**NEW MEXICO HIGHWAY
AND TRANSPORTATION
DEPARTMENT**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 20 TRAFFIC SAFETY
PART 8 DRIVING SAFETY
SCHOOLS**

18.20.8.1 ISSUING AGENCY:
New Mexico State Highway and
Transportation Department.
[18.20.8.1 NMAC - Rp, 18 NMAC 20.8.1,
1-1-03]

18.20.8.2 SCOPE: This rule
applies to all persons seeking to operate
driving safety schools, or serve as instruc-
tors for driving safety courses offered, in
New Mexico.
[18.20.8.2 NMAC - Rp, 18 NMAC 20.8.2,
1-1-03]

**18.20.8.3 S T A T U T O R Y
AUTHORITY:** NMSA 1978, Sections 66-
10-1 through 66-10-12.
[18.20.8.3 NMAC - Rp, 18 NMAC 20.8.3,
1-1-03]

18.20.8.4 D U R A T I O N :
Permanent.
[18.20.8.4 NMAC - Rp, 18 NMAC 20.8.4,
1-1-03]

18.20.8.5 EFFECTIVE DATE:
January 1, 2003, unless a later date is cited
at the end of a section.
[18.20.8.5 NMAC - Rp, 18 NMAC 20.8.5,
1-1-03]

18.20.8.6 OBJECTIVE: The
purpose of this rule is to provide minimum
and uniform standards for the issuance,
renewal, and revocation of driving safety
school licenses and driving safety instructor
certificates and to establish requirements
for the operation of driving safety schools.
[18.20.8.6 NMAC - Rp, 18 NMAC 20.8.6,
1-1-03]

18.20.8.7 DEFINITIONS:

A. ADA means the
Americans with Disabilities Act, 42
U.S.C.S Section 12101 et seq.

B. Bureau means the
Traffic Safety Bureau (TSB) of the New
Mexico State Highway and Transportation
Department.

C. certificate means a
document issued by the Bureau authorizing
a person to serve as a driving safety school
instructor.

D. clean driving record
means a person has no more than six (6)
points on his/her driver's license, and has
not within the last ten (10) years had his/her
driver's license suspended or revoked as a
result of a DWI conviction or refusal to sub-
mit to or failure of chemical tests pursuant
to the Implied Consent Act, or been con-
victed in any jurisdiction of an alcohol or
drug-related driving offense.

**E. convicted or convic-
tion** has the meaning given in NMSA 1978,
Section 66-8-102.

F. course or credit hour
means fifty (50) minutes of instruction and
ten (10) minutes of break time.

G. designee means a per-
son authorized to perform certain specified
duties on behalf of the Bureau.

**H. distance learning
course** means a web-based driving safety
course.

**I. driving safety course
or course** means a course of instruction
approved by the Bureau pursuant to NMSA
1978, Section 66-10-11 and includes dis-
tance learning courses.

**J. driving safety school
or school or licensee** means a person
licensed by the Bureau to offer driving safe-
ty courses.

**K. driving safety instruc-
tor or instructor** means a person certified
by the Bureau as qualified and trained to
conduct driving safety courses.

L. extension site means a
location other than the main school site
where a licensed driving safety school
offers driving safety courses.

M. Implied Consent Act
means NMSA 1978 Sections 66-8-105
through 66-8-112.

**N. limited history driving
record** means a driving record from the
Motor Vehicle Division of the Taxation and
Revenue Department that includes driver's
license revocations pursuant to the Implied
Consent Act.

O. license means the docu-
ment issued by the Bureau authorizing a
person to operate a driving safety school.

P. moral turpitude
means behavior that gravely violates the
accepted moral standards of the community.

Q. person means an indi-
vidual, firm, partnership, association, cor-
poration, or other legal entity.

R. proctored exam means
an exam monitored by a person or by elec-
tronic or other means to ensure that the per-
son taking the exam is the person who will
get credit for passing the exam.

S. revocation or revoked
means the involuntary permanent termina-
tion of a license or certificate by the Bureau

for cause.

T. student means a person
who has enrolled in a driving safety course.

**U. suspended or suspen-
sion** means the involuntary termination of a
license or certificate by the Bureau for
cause for a specified period of time.

[18.20.8.7 NMAC - Rp, 18 NMAC 20.8.7,
1-1-03]

**18.20.8.8 APPLICATION FOR
DRIVING SAFETY SCHOOL
LICENSE:**

A. License required. No
person may operate a driving safety school
without first having obtained a license from
the Bureau.

B. Application form. A
person wishing to obtain a license to oper-
ate a driving safety school must file an
application with the Bureau. A person may
obtain an application by contacting the
Bureau or accessing the Bureau's website at
<http://www.nmshtd.state.nm.us>.

**C. Contents of applica-
tion.** An application for a driving safety
school license shall contain:

(1) the applicant's name, mailing
address, telephone number, and, if the appli-
cant has one, the applicant's e-mail address;

(2) a photocopy of the Certificate
of Maximum Occupant Load issued by the
state or local Fire Marshal stating the maxi-
mum occupancy allowed by the fire code
for each room at the main school site and
each extension site, if applicable, that will
be used as a classroom;

(3) a list of all extension sites to
be used for conducting driving safety cours-
es;

(4) a list of all instructors who
will conduct driving safety courses;

(5) a schedule of fees applicable
to students who enroll in a driving safety
course;

(6) the proposed curriculum,
handouts, videos, and final examination
questions for the driving safety course;

(7) the name, address, and tele-
phone number of three (3) character and
employment references who are not family
members; and

(8) the applicant's resume or cur-
riculum vitae.

D. Completeness. When
the Bureau receives an application for a
driving safety school license, the Bureau
shall check the application for complete-
ness.

(1) If the application is not com-
plete, the Bureau shall contact the applicant
for additional information.

(2) If the application is complete,
the Bureau shall review the application.
[18.20.8.8 NMAC - Rp, 18 NMAC 20.8.8,

1-1-03]

18.20.8.9 REVIEW BY THE BUREAU:

A. Standards for issuance of initial driving safety school license. In reviewing applications for driving safety schools, the Bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to operate a driving safety school;

(3) the proposed driving safety school can certify that its facilities meet the accessibility requirements of the ADA; and

(4) the persons who will serve as driving safety instructors meet the requirements of this rule.

B. Issuance of initial license. If the Bureau determines that an applicant meets the standards prescribed in subsection A, the Bureau shall issue a license upon:

(1) payment of the \$400.00 license fee;

(2) payment of the \$35.00 extension site fee for each extension site, if applicable; and

(3) posting of a surety bond with the Bureau in the amount of \$5,000 issued by a company authorized to transact surety business in New Mexico. The surety bond shall be continuous and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records.

C. Denial of license. If the Bureau determines that an applicant does not meet the standards prescribed in subsection A of this section, the Bureau will issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time.

[18.20.8.9 NMAC - Rp, 18 NMAC 20.8.9, 1-1-03]

18.20.8.10 TERM OF DRIVING SAFETY SCHOOL LICENSE:

A. Term. A license shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial licenses shall be valid from the date of issuance to the next June 30. Renewal licenses shall be valid from July 1 of the year of renewal to June 30 of the following year.

B. License renewal. A licensee must file an application for renewal of its license with the Bureau on or before June 1 of each year to ensure license renewal by July 1. A licensee who files an appli-

cation for renewal after June 1 shall pay a late fee of \$25.00. The Bureau will review applications for renewal in the order in which they are received.

(1) The Bureau will renew a license for a period of one (1) year if:

(a) the Bureau or its designee finds that the driving safety school is in compliance with the requirements of this rule;

(b) the licensee has submitted all required reports to the Bureau; and

(c) the licensee pays the \$400.00 annual license fee and, if applicable, the \$35.00 extension site fee for each extension site and the \$25.00 late fee if the application was filed after June 1.

(2) The Bureau shall not renew the license of any driving safety school not in compliance with the requirements of this rule.

C. Probation. The Bureau may place a licensee on probation if the Bureau finds that the driving safety school is not in compliance with one or more of the requirements of this rule. The Bureau shall send a notice of probation to the licensee specifying the provisions of this rule with which the licensee is not in compliance. The Bureau shall determine the period of probation depending on the number and severity of the violations. The Bureau will review the licensee's operations periodically during the probation period.

D. Early termination. A license shall automatically terminate if a driving safety school ceases operation. The Bureau may suspend or revoke a license for cause as provided in this rule.

E. Restriction on sale of license. A driving safety school license may not be sold or transferred. [18.20.8.10 NMAC - Rp, 18 NMAC 20.8.10, 1-1-03]

18.20.8.11 CLASSROOM COURSE REQUIREMENTS: A licensee shall:

A. engage as driving safety instructors only those persons who have been certified by the Bureau. A licensee may not serve as an instructor unless the licensee has been certified by the Bureau as an instructor.

B. enroll no more than forty (40) students or the maximum occupancy allowed by the fire code, whichever is less, in a driving safety course.

C. not charge a student more than \$150.00, including tax, for enrolling in a driving safety course.

D. display the license issued by the Bureau in an appropriate and visible location.

E. display the placard issued by the Fire Marshal stating the max-

imum occupancy of each classroom in an appropriate and visible location in the classroom.

F. use classroom facilities that:

(1) have adequate space, lighting, heating, and ventilation;

(2) have seats and stable writing surfaces for each student in the class;

(3) have a whiteboard, blackboard, or flipchart;

(4) have a monitor of sufficient size for all students to see, if videos are used; and

(5) comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities.

G. ensure that the learning environment is conducive to learning and free from discrimination, intimidation, harassment, or any other disturbing influence. No person shall engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others.

H. use only the curriculum, handouts, videos, and final examination questions approved by the Bureau.

I. accommodate the special needs of hearing impaired students. Whenever a driving safety school becomes aware that an enrollee is hearing impaired, the school shall inform the hearing impaired student in writing that if a friend or family member of the enrollee cannot perform sign language interpretation for the student, the school will contact the Bureau to arrange for sign language interpretation. The driving safety school shall contact the Bureau at least twenty (20) days before the scheduled date of the driving safety course.

J. accommodate the special needs of non-English speaking students. Whenever a driving safety school becomes aware that an enrollee does not speak English, the school will make reasonable efforts to provide interpreter services. The driving safety school shall first inquire if a friend or family member of the enrollee can interpret for the student. If that is not possible, the driving safety school will make reasonable efforts to find a driving safety instructor or other person to interpret for the student during the driving safety course.

K. provide at least six (6) course hours of instruction for each driving safety course.

L. have a proctored final exam with a minimum of twenty (20) questions. A student must correctly answer at least seventy percent (70%) of the questions to pass the final exam.

M. use completion certifi-

icates purchased from the Bureau at a cost of \$1.00 per certificate.

N. not permit a student to attend any driving safety classes until the student has received written information stating all fees, including incidental costs, charged for the course, school policies for passing and failing, refund and reschedule policies, and attendance requirements.

[18.20.8.11 NMAC - Rp, 18 NMAC 20.8.11 and 20.8.16, 1-1-03]

18.20.8.12 S U S P E N D E D

LICENSE COURSE: This course is required only for students whose driver's license has been suspended by the Motor Vehicle Division of the Taxation and Revenue Department based on the point system. A licensee must obtain the prior approval of the Bureau to conduct a suspended license driving safety course. Such a course must meet all the requirements of 18.20.8.11 NMAC, except that a licensee shall provide at least eight (8) course hours of instruction for each suspended license driving safety course.

[18.20.8.12 NMAC - N, 1-1-03]

18.20.8.13 DISTANCE LEARNING COURSE REQUIREMENTS: A licensee offering distance-learning courses shall:

A. use only the curriculum, handouts, videos, and final exam questions approved by the Bureau.

B. provide six (6) or more hours of coursework, based on an average person completion time.

C. ask at least ten content questions randomly throughout each chapter or give a quiz with at least ten content questions at the end of each chapter. A student shall not be permitted to move on to the next chapter until the student successfully answers at least eight (8) out of ten (10) of the chapter content questions.

D. have a proctored final exam with a minimum of fifty (50) questions. A student must correctly answer at least thirty-five (35) questions to pass the final exam.

E. have a toll-free telephone number or e-mail help line available to students at all times and respond to students' questions within twenty-four (24) hours.

F. use completion certificates purchased from the Bureau at a cost of \$1.00 per certificate.

G. specify at least one certified instructor to act as liaison with the Bureau.

[18.20.8.13 NMAC - N, 1-1-03]

18.20.8.14 O P E R A T I N G

REQUIREMENTS: A licensee:

A. shall adhere strictly to the requirements of this rule;

B. shall notify the Bureau at least thirty (30) days in advance if the driving safety school intends to cease operations;

C. shall make all driving safety school records available for inspection by the Bureau or its designee at any time; A licensee shall maintain its records in ink for a minimum of three (3) years for each student receiving instruction, including students who passed, failed, withdrew, cancelled, or transferred to another school.

D. shall, on a quarterly basis, provide the Bureau with a copy of the class roster for each driving safety course conducted which shall contain, at a minimum, the name of the instructor, and each student's name, date of birth, date of course completion, final exam test score, and completion certificate number.

E. shall have a written refund policy which must be issued to each student upon enrollment.

F. shall notify the Bureau of:

(1) any changes in address ten (10) days before opening for business at the new location;

(2) the addition or closing of extension sites within ten (10) days of their opening or closing; and

(3) the addition or deletion of instructors within ten (10) days of their hiring or leaving.

G. shall conduct all school operations in a professional and courteous manner.

H. shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations.

I. may use the phrases "licensed by the Traffic Safety Bureau" or "curriculum approved by the Traffic Safety Bureau" but may not otherwise use the word "approved" or any of its synonyms in its advertising or promotional materials.

[18.20.8.14 NMAC - Rp, 18 NMAC 20.8.11, 1-1-03]

18.20.8.15 EVALUATION OF DRIVING SAFETY SCHOOLS:

A. **Responsibility.** The Bureau or its designee shall conduct periodic evaluations of driving safety schools using criteria developed by the Bureau. The Bureau shall prepare a written evaluation and shall provide a copy of the evaluation to the licensee upon request. The Bureau may in its discretion conduct evaluations of a driving safety school on its own initiative at any time and for any reason or in response

to complaints from any person. The Bureau shall document, investigate, and discuss all complaints with the driving safety school.

B. **Relevant factors.** In conducting its evaluations, the Bureau shall consider:

(1) the number and nature of any comments or complaints received from students, instructors, judges, law enforcement officers, and others;

(2) whether the driving safety school consistently meets the requirements of this rule; and

(3) on-site quality assurance visits by the Bureau or its designee. On-site visits may address the adequacy of classroom facilities, instructors' traffic safety knowledge and teaching techniques, learning environment, quality of the curriculum, course materials, and examination questions, and customer service.

[18.20.8.15 NMAC - Rp, 18 NMAC 20.8.12, 1-1-03]

18.20.8.16 INITIAL CERTIFICATION OF DRIVING SAFETY INSTRUCTORS:

A. **Certification required.** No person or licensee may serve as a driving safety instructor without first having obtained a certificate from the Bureau.

B. **Application requirements.** A person wishing to obtain a certificate as a driving safety instructor must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

C. **Contents of application.** The application must be accompanied by:

(1) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau;

(2) a state police background check dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety at least sixty (60) days before the date the application is filed with the Bureau;

(3) a copy of the applicant's health certificate signed by a physician and dated no earlier than sixty (60) days before the date the application is filed with the Bureau stating that the applicant is free from all communicable diseases. Distance learning driving safety instructor applicants do not need to submit a health certificate.

(4) the name, address, and tele-

phone number of three (3) character and employment references who are not family members; and

(5) the applicant's resume or curriculum vitae.

(6) transcripts from any post secondary educational or training institutions the applicant has attended.

D. Completeness check.

When the Bureau receives an application for certification as a driving safety instructor, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

E. Standards for issuance of driving safety instructor certificate. In reviewing applications for driving safety instructors, the Bureau shall consider whether:

(1) the information provided is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to be a driving safety instructor;

(3) the applicant is at least twenty-one (21) years of age;

(4) the applicant has a high school diploma or equivalent;

(5) the applicant holds a valid driver's license;

(6) the applicant has not been convicted of a crime involving moral turpitude; and

(7) the applicant has a clean driving record.

F. Approval for training.

(1) If the Bureau determines that the applicant meets the standards in subsection E of this section, the Bureau shall grant approval to proceed with instructor training. An applicant must complete a Bureau sponsored or approved Instructor Training Course designed to teach instructional strategies, classroom management, or acquisition of teaching competencies.

(2) If the Bureau determines that the applicant does not meet the standards in subsection E of this section, the Bureau shall issue a letter stating the reasons it is not granting approval to proceed with instructor training.

G. Final review.

(1) If the Bureau determines that an applicant has successfully completed the instructor training course and is otherwise fit, the Bureau will issue a certificate upon payment of the \$50.00 instructor certification fee.

(2) If the Bureau determines that an applicant has not successfully completed

the instructor training course or is otherwise not fit, the Bureau shall issue a letter stating its reasons for denial of certification.

H. Term. A driving safety instructor certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year.

[18.20.8.16 NMAC - Rp, 18 NMAC 20.8.13, 20.8.14, and 20.8.15, 1-1-03]

18.20.8.17 RECERTIFICATION OF DRIVING SAFETY INSTRUCTORS:

A. Certificate renewal.

(1) A driving safety instructor must file an application for renewal of his or her certificate with the Bureau on or before June 1 each year to ensure certificate renewal by July 1. A driving safety instructor who files an application for renewal after June 1 shall pay a late fee of \$25.00.

A person may obtain an application for renewal by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

(2) The application for renewal shall be accompanied by the documents specified in paragraphs (1), (2), and (3) of subsection C of 18.20.8.16 NMAC.

(3) The Bureau will review applications for renewal in the order in which they are received.

B. Continuing education requirements.

(1) Driving safety instructors must complete a minimum of eight (8) credit hours of continuing education each year to qualify for recertification.

(2) A driving safety instructor can satisfy this requirement in whole or in part by attending Bureau sponsored:

(a) traffic safety issues forums and workshops; and

(b) education courses and workshops.

(3) The Bureau may, in its discretion, approve continuing education credit on the basis of one continuing education credit hour for every hour of attendance at the following types of programs if a copy of the workshop agenda or course curriculum is submitted to the Bureau:

(a) drug or alcohol workshops;

(b) counseling or treatment workshops; or

(c) education courses or workshops.

C. Approval/disapproval of application for certificate renewal.

(1) The Bureau will renew the certificate of a driving safety instructor for a

period of one year if the driving safety instructor:

(a) pays the \$50.00 annual certification fee;

(b) meets the standards specified in subsection E of 18.20.8.16 NMAC;

(c) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the Bureau or its designee in the preceding year; and

(d) has completed eight (8) credit hours of continuing education in the year preceding the application for renewal.

(2) The Bureau shall not renew the license of any driving safety instructor who:

(a) fails to complete eight (8) hours of continuing education in the year preceding the application for renewal; or

(b) fails to meet the standards specified in subsection E of 18.20.8.16 NMAC.

[18.20.8.17 NMAC - N, 1-1-03]

18.20.8.18 SUSPENSION OR REVOCATION OF A LICENSE OR CERTIFICATE:

A. Grounds. The Bureau may suspend or revoke the license or certificate of a licensee or driving safety instructor:

(1) who makes a false statement on an application;

(2) who fails to follow the approved curriculum;

(3) who poses an immediate danger to the physical or mental safety or health of a student;

(4) who is convicted of any alcohol or drug-related driving offense;

(5) who has refused to submit to or failed chemical tests pursuant to the Implied Consent Act;

(6) whose New Mexico driver's license is suspended or revoked;

(7) who fails to notify the Bureau in writing within ten days that his/her driver's license has been suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or that he/she been convicted in any jurisdiction of an alcohol or drug-related driving offense or an offense involving moral turpitude;

(8) whose conduct in the performance of official duties is unethical, including but not limited to, verbal abuse, intimidation, or sexual harassment of students;

(9) who fails to comply with any requirement of this rule or any lawful order of the Bureau;

(10) who becomes employed or remains employed by a driving safety school whose license has been revoked pursuant to this rule;

(11) who employs or continues to employ a driving safety instructor whose certificate has been revoked pursuant to this rule; or

(12) who fails to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 et seq. or any rule implementing that Act.

B. Procedure. The Bureau shall use the procedures prescribed in the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 et seq., in all suspension and revocations proceedings held pursuant to this rule.

C. Consequences of suspension or revocation.

A driving safety school shall not offer or conduct any driving safety courses if its license is suspended or revoked.

A driving safety instructor shall not conduct any driving safety courses if his or her certificate is suspended or revoked.

D. Notice of suspension or revocation.

(1) The Bureau shall immediately notify by certified mail, return receipt requested, each driving safety instructor employed by a driving safety school whose license has been suspended or revoked that the driving safety school's license has been suspended or revoked and that the driving safety instructor may not conduct any driving safety courses for that driving safety school unless and until the license is reinstated by the Bureau.

(2) The Bureau shall immediately notify by certified mail, return receipt requested, each driving safety school that employs a driving safety instructor whose certificate is suspended or revoked that the driving safety instructor's certificate has been suspended or revoked and that the driving safety school may not employ that driving safety instructor unless and until the certificate is reinstated by the Bureau.

(3) The Bureau will notify all Motor Vehicle Division field offices that the driving safety school's license or the driving safety instructor's certificate has been revoked or suspended.

(4) The Bureau will notify all state, metropolitan, magistrate, and municipal courts that the driving safety school's license has been revoked or suspended and that the driving safety school is no longer an approved school.

[18.20.8.18 NMAC - Rp, 18 NMAC 20.8.17, 20.8.18, and 20.8.22, 1-1-03]

18.20.8.19 IMMEDIATE SUSPENSION OF A LICENSE OR CERTIFICATE:

A. Grounds. The Bureau may immediately suspend the license of a

driving safety school or the certificate of a driving safety instructor if the Bureau finds that the licensee or driving safety instructor poses an immediate danger to the physical or mental safety or health of a student.

B. Notice of immediate suspension. The Bureau shall commence proceedings to immediately suspend a license or certificate by issuing a written notice of immediate suspension to the licensee or driving safety instructor, which shall contain at least the following:

(1) the name and last known address of the licensee or driving safety instructor whose license or certificate the bureau is immediately suspending.

(2) a statement that the Bureau is immediately suspending the driving safety school's license or driving safety instructor's certificate for a period of thirty (30) days and the effective date of the immediate suspension.

(3) a general description of the facts alleging that the licensee or driving safety instructor poses an immediate danger to the physical or mental safety or health of a student that warrants immediate suspension. The description shall be in sufficient detail to apprise a person of ordinary intelligence of the nature of the violation.

(4) statement that the licensee or driving safety instructor has ten (10) days from the date of receipt of the notice of immediate suspension to request a hearing. The licensee or driving safety instructor may request a hearing by mailing, certified and return receipt requested, or hand-delivering a letter to the Bureau.

(5) the street and post office addresses of the Bureau where requests for a hearing may be made.

C. Hearing. The Bureau shall grant a timely request for a hearing.

(1) The State Highway and Transportation Department shall appoint a hearing examiner.

(2) The hearing shall be held as soon as possible, but not later than thirty (30) days from the effective date of the immediate suspension.

(3) The immediate suspension will remain in effect until the conclusion of the hearing.

(4) The hearing may be held telephonically if both parties agree.

D. Hearing purpose. The hearing is for the sole purpose of determining if the Bureau has reasonable grounds to believe that the licensee or driving safety instructor poses an immediate danger to the physical or mental safety or health of a student.

(1) If the hearing examiner finds that no immediate danger exists, the Bureau will withdraw the immediate suspension but

may initiate revocation proceedings pursuant to 18.20.8.18 NMAC.

(2) If the hearing examiner finds that an immediate danger exists, the Bureau shall initiate revocation proceedings pursuant to 18.20.8.18 NMAC within ten (10) days of the end of the hearing. The immediate suspension will remain in effect until the conclusion of the revocation procedure.

E. Grounds for withdrawal of immediate suspension.

(1) The Bureau shall withdraw an immediate suspension if:

(a) a hearing is timely requested and the Bureau has not held the hearing within thirty (30) days of the effective date of the immediate suspension, unless the licensee or instructor requests a later hearing date and agrees in writing that the immediate suspension will remain in effect until the conclusion of the later hearing;

(b) the hearing examiner finds that an immediate danger does exist but the Bureau does not initiate revocation proceedings pursuant to 18.20.8.18 NMAC within ten (10) days of the ruling; or

(c) the licensee or driving safety instructor does not request a hearing and the Bureau does not initiate revocation proceedings pursuant to 18.20.8.18 NMAC within thirty (30) days of the effective date of the immediate suspension.

(2) The Bureau may, in its discretion, withdraw an immediate suspension for any reason but shall document its decision in writing.

[18.20.8.19 NMAC - Rp, 18 NMAC 20.8.19, 20.8.20, and 20.8.21, 1-1-03]

18.20.8.20 EXEMPTION OR VARIANCE:

A. Any school may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the school and its customers, and on its competitors and their customers, if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the Driving School Licensing Act; and

(5) state why the proposed alternative is in the public interest and is better than the requirement in the rule.

B. Such petition may include a motion that the Bureau stay the affected portion of this rule for the transac-

tion specified in the motion.

C. Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the licensee or other person with authority to bind the licensee.

D. The Bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.
[18.20.8.20 NMAC - N, 1-1-03]

HISTORY OF 18.20.8 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center and Archives as SHTD Rule 93-2, Minimum Standards for Regulating Driver Improvements/Defensive Driving Schools, on 9-3-93.

Repealed material.

18 NMAC 20.8, Driver Improvement/Defensive Driving Schools, filed 6-16-98 repealed 1-1-03.

Other history.

18 NMAC 20.8, Driver Improvement/Defensive Driving Schools, filed 6-16-98.

NEW MEXICO HIGHWAY AND TRANSPORTATION DEPARTMENT

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 20 TRAFFIC SAFETY PART 11 IGNITION INTER- LOCK DEVICES

18.20.11.1 ISSUING AGENCY: New Mexico State Highway and Transportation Department.
[18.20.11.1 NMAC - Rp, 18 NMAC 20.11.1, 1-1-03]

18.20.11.2 SCOPE: This rule applies to the usage of ignition interlock devices in New Mexico pursuant to NMSA 1978 Sections 66-5-35 and 66-8-102 and to all manufacturers, service center operators, and installers of such ignition interlock devices.
[18.20.11.2 NMAC - Rp, 18 NMAC 20.11.2, 1-1-03]

18.20.11.3 STATUTORY AUTHORITY: NMSA 1978 Sections 66-5-35 and 66-8-102.
[18.20.11.3 NMAC - Rp, 18 NMAC 20.11.3, 1-1-03]

18.20.11.4 DURATION: Permanent.
[18.20.11.4 NMAC - Rp, 18 NMAC 20.11.4, 1-1-03]

18.20.11.5 EFFECTIVE DATE: January 1, 2003, unless a later date is cited at the end of a section.
[18.20.11.5 NMAC - Rp, 18 NMAC 20.11.5, 1-1-03]

18.20.11.6 OBJECTIVE: The purpose of this rule is to implement the ignition interlock program mandated by NMSA 1978 Sections 66-5-35 and 66-8-102.
[18.20.11.6 NMAC - Rp, 18 NMAC 20.11.6, 1-1-03]

18.20.11.7 DEFINITIONS: As used in this rule:

A. alveolar breath means an air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of the alcohol concentration in the breath from which the breath alcohol concentration can be determined. A minimum volume of 1200 milliliters is required to represent alveolar breath. ("Alveolar" refers to the alveoli, the smallest air passages in the lungs, which are surrounded by capillary blood vessels through which an interchange of gases occurs during respiration.)

B. appropriate authorities means the sentencing court, an assigned probation officer, the Bureau or its designee, the Motor Vehicle Division of the Taxation and Revenue Department, and/or the New Mexico Department of Finance and Administration.

C. bogus breath sample means any gas sample other than an unaltered, undiluted, and unfiltered alveolar breath sample from a driver.

D. breath alcohol concentration (BAC) means the amount of alcohol in a person's breath, determined by chemical analysis and measured in grams of alcohol per 210 liters of breath.

E. Bureau means the Traffic Safety Bureau of the New Mexico State Highway and Transportation Department.

F. calibrate means to test and adjust an ignition interlock device so that it accurately measures breath alcohol concentration.

G. circumventing means an overt, conscious attempt to use a bogus or filtered breath sample or an electronic bypass mechanism to start a vehicle, or to push start or hot wire a vehicle, without taking and passing an initial breath test.

H. certificate means a document issued by the Bureau authorizing

a person to install and remove ignition interlock devices and, where applicable, to train installers.

I. clean driving record means a person has no more than six (6) points on his/her driver's license, and has not within the last three (3) years had his/her driver's license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been convicted in any jurisdiction of an alcohol or drug-related driving offense.

J. driver means a person who operates a vehicle in which an ignition interlock device has been installed pursuant to NMSA 1978 Section 66-5-35 or 66-8-102.

K. filtered breath sample means a breath sample which has been filtered through a substance such as, but not limited to, silica gel, drierite, cat litter, cigarette filters, water filters, or cotton, in an attempt to remove alcohol from the sample

L. ignition interlock device or device means an electronic breath alcohol analyzer with microcomputer logic and an internal memory connected to the ignition and other control systems of a vehicle that measures breath alcohol concentration and prevents a driver from starting the vehicle if the driver's BAC exceeds a specified limit.

M. independent laboratory means a testing laboratory or analytical chemist not affiliated with a manufacturer of ignition interlock devices that is qualified to test ignition interlock devices or reference samples and is approved by the Bureau.

N. initial breath test means a breath test required to start a vehicle to ensure that the driver's BAC is below the maximum allowable level before a driver can start a vehicle.

O. installer means a person certified by the Bureau to install and remove ignition interlock devices in New Mexico.

P. instructor-installer means an installer who has successfully completed the manufacturer's installation instructor training program, as verified by the manufacturer.

Q. license means the document issued by the Bureau authorizing a person to operate a service center.

R. limited history driving record means a driving record from the Motor Vehicle Division of the Taxation and Revenue Department that includes driver's license revocations pursuant to the Implied Consent Act.

S. manufacturer means a person who produces or assembles ignition

interlock devices.

T. random retest means a breath test required within randomly variable intervals while a driver is driving a vehicle to ensure that the driver's BAC remains below the maximum allowable level.

U. reference sample means either a dry gas sample or a wet bath solution containing a known concentration of alcohol at a known temperature that is used to calibrate an ignition interlock device.

V. revocation means the permanent withdrawal of the Bureau's approval of a device, license of a service center, or certificate of an installer for cause.

W. sentenced driver means a person required by law to have an ignition interlock device installed in all vehicles the person operates.

X. service means to calibrate, maintain, download data from, and inspect ignition interlock devices for evidence of tampering or circumventing, and to report information to the appropriate authorities.

Y. service center means the physical location in New Mexico where ignition interlock devices are installed, serviced, and removed, and includes mobile service units.

Z. service center operator or licensee means a person approved by a manufacturer and licensed by the Bureau to operate a service center and service ignition interlock devices in New Mexico.

AA. service technician means an employee of a service center operator who is trained by a manufacturer or service center operator to service ignition interlock devices.

BB. suspension means the withdrawal of the Bureau's approval of a device, license of a service center, or certificate of an installer for cause for a specified period of time.

CC. tampering means an overt, conscious attempt to physically alter or disable an ignition interlock device, or disconnect it from its power source, or remove, alter or deface physical anti-tampering measures, so a driver can start the vehicle without taking and passing an initial breath test.

[18.20.11.7 NMAC - Rp, 18 NMAC 20.11.7, 1-1-03]

18.20.11.8 APPLICATION FOR APPROVAL OF IGNITION INTERLOCK DEVICES:

A. Approval required. No person shall provide ignition interlock devices for installation without first having obtained approval of the device from the

Bureau in accordance with the requirements of this rule.

B. Contents of application. A manufacturer seeking approval of an ignition interlock device shall submit an application to the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>. The application shall include:

(1) the manufacturer's name, address, telephone number, fax number and e-mail address.

(2) the name and telephone number of a contact person.

(3) the name and number of the model or class of the device for which approval is sought.

(4) a list of other states in which the same device has been approved for use, and the name, address and telephone number of the authorizing agency in each state.

(5) a precise set of specifications describing the features of the device.

(6) detailed operating instructions for each device.

(7) a detailed description of the reference sample to be used for calibrating the device.

(8) the name and address of any independent laboratory that has tested the device or reference sample for which approval is sought.

(9) the territory in which the manufacturer proposes to operate. A manufacturer shall choose one or more of the following options:

(a) New Mexico State Highway District 1;

(b) New Mexico State Highway District 2;

(c) New Mexico State Highway District 4;

(d) New Mexico State Highway District 6;

(e) New Mexico State Highway Districts 3 and 4;

(f) New Mexico State Highway Districts 5 and 6;

(g) Statewide.

(10) the number, location, and type (fixed-site or mobile unit) of service centers the manufacturer proposes to establish in New Mexico, the nature of the relationship between the manufacturer and the service center operator (i.e., employee or independent contractor), and a plan for providing service within one hundred (100) miles or two (2) hours, whichever is less, of any sentenced driver's residence or place of business.

(11) a notarized statement or affidavit from an independent laboratory stating the name, address and phone number of the independent laboratory and the name of

the person who tested:

(a) the device, certifying that each model or class of ignition interlock device for which the manufacturer seeks approval from the Bureau was tested in accordance with the Testing Specifications for Ignition Interlock Devices adopted by the Bureau and meets or exceeds the requirements of this rule. The manufacturer shall pay all costs of such testing.

(b) the reference sample, certifying that the reference sample to be used by the manufacturer's service center operators to calibrate the device is satisfactory for that purpose.

C. Completeness check. When the Bureau receives an application for approval of a device, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

D. Approval and qualifying provisions. The Bureau shall notify the manufacturer in writing of its approval or disapproval of the device for use in New Mexico. The Bureau may deny approval of a device if the device or the manufacturer fails to meet the requirements of this rule. Within thirty (30) days of receipt of a notice of approval, a manufacturer shall submit to the Bureau:

(1) proof of product liability insurance from an insurance company licensed to do business in New Mexico covering defects in product design, materials, and manufacturing of ignition interlock devices, with minimum liability limits of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. The proof of insurance shall include a statement from the insurance company that it will notify the Bureau thirty (30) days before canceling the insurance.

(2) a surety bond for the benefit of the state of New Mexico in the amount of ten thousand dollars (\$10,000) issued by a surety company licensed to do business in New Mexico to ensure replacement of the manufacturer's ignition interlock devices pursuant to paragraph 3 of subsection N of 18.20.11.9 NMAC or subsection D of 18.20.11.24 NMAC.

(3) a signed statement that the manufacturer shall indemnify and hold harmless the state of New Mexico, the Bureau and its officers, employees and agents from all claims, demands and actions resulting from damage, death, or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer relating to the installation, service, repair, use or removal of an

ignition interlock device.

(4) a signed statement that the manufacturer shall comply with all requirements of this rule.

(5) a signed statement that each of the manufacturer's service center operators is a representative of the manufacturer for the purpose of accepting service of process and that service of process on one of the manufacturer's service center operators shall constitute service of process on the manufacturer.

[18.20.11.8 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03]

18.20.11.9 RESPONSIBILITIES OF MANUFACTURERS: A manufacturer shall:

A. develop written instructions for the installation, servicing, and removal of ignition interlock devices approved for use in New Mexico and supply those instructions to all service centers authorized by the manufacturer and licensed by the Bureau to install ignition interlock devices in New Mexico.

B. develop a user reference and problem-solving guide in English and Spanish which shall:

(1) include information on the location of service centers, servicing procedures, emergency procedures and a strong warning that the device detects non-compliance, circumvention, and tampering;

(2) provide written instructions on how to clean and care for the ignition interlock device;

(3) describe the type of vehicle malfunctions or repairs that might affect the ignition interlock device and inform a driver what to do when such repairs are necessary; and

(4) advise the driver that he or she may contact the Bureau at 1-800-541-7952 if he or she has a complaint about the device or the service the driver receives from the service center operator.

C. train each service center operator that uses its ignition interlock devices to service the device and certify to the Bureau in writing that the service center operator has been trained.

D. train at least one installer at each service center to install and remove ignition interlock devices and certify to the Bureau in writing that an installer has been trained.

E. notify the Bureau in writing within thirty (30) days after the manufacturer receives notice that a device approved for use in New Mexico is or ever has been suspended, revoked or denied in another state, whether such action occurred before or after approval in New Mexico and whether or not such action is or has been

appealed in the other state.

F. employ or contract with only those persons whom the Bureau has licensed as service center operators or certified as installers, except for administrative staff.

G. disseminate information about its ignition interlock device to the public. A manufacturer of an approved device may state that its device has been "approved by the Traffic Safety Bureau for use in New Mexico" in its advertising or promotional materials.

H. not make any modification in design or operational concept of a device to be used in New Mexico that materially affects the way the device measures alcohol or records data without the prior written approval of the Bureau. The Bureau may require a manufacturer to reapply for approval of a device the manufacturer intends to significantly modify. Modification does not include repair or replacement of parts to maintain the device in working order or software changes that do not modify the functionality of the device.

I. affix a label to each device warning against tampering, circumvention, or misuse of the device.

J. provide expert or other required testimony in any civil or criminal proceedings regarding the manufacture and functioning of its device, or the interpretation of recorded data.

K. reimburse the Bureau for any costs incurred if a manufacturer requests the Bureau to provide testimony in any civil or criminal procedures involving the approval or use of an ignition interlock device in New Mexico.

L. ensure that disposable mouthpieces with saliva traps are always available to service center operators.

M. ensure that reference samples to be used in calibrating devices are always available to service center operators.

N. be responsible for providing uninterrupted service of its installed devices if one of its service centers moves more than ten (10) miles from its location or goes out of business. A manufacturer shall notify the Bureau within ten (10) business days if one of its service centers is moving or going out of business and shall indicate whether or not it will replace the service center.

(1) If the manufacturer replaces the service center, the manufacturer shall make all reasonable efforts to obtain driver records and data from the original service center and provide them to the new service center.

(2) If the manufacturer does not replace the service center, the manufacturer

shall make all reasonable efforts to obtain driver records and data from the original service center, maintain them at its main business office, and provide them to the appropriate authorities as required by this rule.

(3) A manufacturer shall be responsible for removing its devices and shall bear the cost of having them replaced with approved devices from another manufacturer if:

(a) the manufacturer can no longer provide service within one hundred (100) miles or two (2) hours, whichever is less, of the sentenced driver's residence or place of business; and

(b) the other manufacturer has a service center no more than one hundred (100) miles or two (2) hours, whichever is less, from the driver's residence or place of business than the original service center.

(4) A manufacturer shall notify all drivers of the change of service center or replacement of the device as soon as possible but no later than thirty (30) days before the change or replacement will occur.

(5) If a manufacturer cannot comply with paragraph (3) of this subsection, the manufacturer shall notify all drivers and the appropriate authorities that service will be terminated within sixty (60) days and shall remove the devices at no cost to the drivers.

[18.20.11.9 NMAC - N, 1-1-03]

18.20.11.10 PERFORMANCE STANDARDS FOR IGNITION INTERLOCK DEVICES:

All ignition interlock devices must be based on alcohol-specific electro-chemical fuel cell sensor technology and must meet the National Highway Traffic Safety Administration specifications published in Federal Register Volume 57, Number 67, pages 11772-11787, dated Tuesday, April 7, 1992 and the requirements of this rule. An ignition interlock device shall:

A. detect a BAC of 0.025 grams of alcohol per 210 liters of breath, with an accuracy of plus or minus 0.005 grams of alcohol per 210 liters of breath.

B. prevent the vehicle from starting ninety-five (95) percent of the time when it detects a BAC above 0.025 grams of alcohol per 210 liters of breath.

C. assure that the breath sample collected is essentially alveolar.

D. detect attempts to tamper with or circumvent the device.

E. not have any form of bypass device that would permit a driver to start a vehicle without taking an initial breath test.

F. be usable by a person of average intelligence with minimum incon-

venience;

G. operate at all temperatures between -10° Fahrenheit and 110° Fahrenheit.

H. operate at all altitudes between 2500 feet and 13,000 feet.

I. not be significantly affected by humidity, dust, electromagnetic interference, or normal automobile vibration. The device shall meet the requirements of subsections A and B of this section when subjected to simple harmonic motion (vibrations) having an amplitude of:

(1) 0.38mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2 1/2 minutes, then decreased at a uniform rate to 10 Hz in 2 1/2 minutes; and

(2) 0.19mm (0.0075 inches) applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2 1/2 minutes, then decreased at a uniform rate to 30 Hz in 2 1/2 minutes.

J. not be affected by normal fluctuations of power source voltage resulting from operation of the vehicle and other electronic devices installed in the vehicle.

K. allow the vehicle to be restarted without requiring an additional breath test for three (3) minutes after the ignition has been turned off or the vehicle has stalled, except when the driver has failed to take a random retest.

L. display device responses or label the light-up buttons on the device, as applicable, in English or Spanish as requested by the sentenced driver.

M. provide audible and visual warning signals, and written, spoken, or visual instructions in English or Spanish when an initial breath test or random retest is required;

N. not indicate a breath test failure when testing an alcohol-free sample or a sample containing endogenously produced substances capable of being present in the breath.

O. automatically cleanse or remove from the device a previous breath sample or other contaminant containing alcohol before allowing a subsequent breath test to be taken.

P. retain data for a minimum of three thousand (3,000) driving events or a period of sixty-five (65) days before requiring servicing.

Q. retain its electronic tamper detection capabilities when the device is disconnected from the vehicle's power supply, or record that the device was disconnected.

R. provide a service visit reminder if the device's internal memory reaches ninety percent (90%) of capacity.

S. not report false passes of a breath test more than five (5) percent of the time

T. not report false failures of a breath test more than five (5) percent of the time.

U. issue an audible or visual warning that the vehicle needs to be serviced within five (5) days:

(1) whenever the driver is scheduled for a service visit;

(2) the driver has failed an initial breath test six (6) times within a period of three (3) hours;

(3) the driver has failed initial breath tests or random retests ten (10) times within a period of thirty (30) days;

(4) the device detects evidence of circumventing or tampering.

V. not permit the vehicle to be started if the sentenced driver fails to appear for a service visit within the five (5) day warning period. The vehicle shall not be operable until a service center operator or service technician has serviced the device.

W. be calibrated at a calibration set point of 0.05 grams of alcohol per 210 liters of breath using the known concentration of an approved reference sample, and remain stable in the field for at least sixty-five (65) days.

X. not impede the safe operation of the vehicle.

[18.20.11.10 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03]

18.20.11.11 STANDARDS FOR DETECTING BREATH ALCOHOL CONCENTRATION:

A. Initial breath test. An ignition interlock device shall:

(1) indicate by audible or visual means when a sufficient sample of breath has been collected.

(2) indicate the results of the breath test by the use of pass/fail signals and not by displaying a numerical BAC level.

(3) prevent a driver from starting a vehicle when:

(a) it detects a BAC of 0.025 or more grams of alcohol per 210 liters of breath.

(b) a driver fails to appear for a scheduled or violation service visit within the five day warning period.

(4) require a driver to wait five (5) minutes before attempting to start the vehicle a second or third time if the driver's BAC on the initial breath test exceeded 0.025 grams per 210 liters of breath.

(5) require a driver to wait thirty (30) minutes before attempting to start the vehicle a fourth or subsequent time if the driver's BAC on the second breath test exceeded 0.025 grams per 210 liters of

breath.

(6) allow a driver to start the vehicle for three (3) minutes after successful completion of an initial breath test.

B. Random retests. An ignition interlock device shall require random retests.

(1) The device shall require the driver to take a random retest within a randomly variable interval ranging from three (3) to ten (10) minutes after a driver has passed an initial breath test and started the vehicle.

(2) The device shall use an audible or visual warning to alert the driver that a random retest is required and the driver will have five (5) minutes to take the random retest.

(3) If a driver fails to take a random retest within five (5) minutes of the warning, or the device detects a BAC of 0.025 or more grams of alcohol per 210 liters of breath, the horn shall sound repeatedly until the vehicle is turned off. The device shall not allow the driver to:

(a) restart the vehicle within three (3) minutes after the ignition has been turned off without taking an initial breath test; or

(b) take an initial breath test for five (5) minutes after the vehicle is turned off.

(4) For the duration of travel, the device shall require additional random retests at random intervals ranging from thirty (30) to sixty (60) minutes after the previous test.

(5) If the vehicle is intentionally turned off or accidentally stalls after or during the warning of an impending random retest, but before the driver takes the random retest, the driver shall not be able to start the vehicle without taking an initial breath test.

[18.20.11.11 NMAC - Rp, 18 NMAC 20.11.8 and 20.11.9, 1-1-03]

18.20.11.12 DATA RECORDING REQUIREMENTS FOR IGNITION INTERLOCK DEVICES:

A. An ignition interlock device shall record the following driving events:

(1) all attempts to circumvent the device;

(2) all attempts to tamper with the device;

(3) all attempt to start the vehicle without first taking an initial breath test;

(4) all attempts to continue driving the vehicle without taking a random retest;

(5) the date, time, BAC of the driver, and success or failure of each attempt to start the vehicle;

(6) the date, time, BAC of the driver, and success or failure of each random retest;

(7) the total number of events recorded by the data recorder since the last service visit; and

(8) the number of vehicle starts.

B. An ignition interlock device data recorder shall be incorporated into a module that cannot be detached and shall have a backup system to protect the security of all recorded data in the event the power supply to the device is interrupted or the sample head is disengaged or disconnected.

[18.20.11.12 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03]

18.20.11.13 LICENSING OF SERVICE CENTERS:

A. License required. No person may operate a service center without first having obtained a license from the Bureau in accordance with the requirements of this rule.

B. Application required. A person wishing to obtain a license to operate a service center must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>. The application shall include:

(1) the applicant's name, address, telephone number, fax number and e-mail address.

(2) the name, address, and telephone of three (3) character and employment references who are not family members.

(3) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau.

(4) a state police background check on the applicant dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the Department of Public Safety at least sixty (60) days before the date the application is filed with the Bureau.

(5) the applicant's resume or curriculum vitae.

(6) a copy of the standard agreement between the service center and sentenced drivers regarding the device. The agreement may require the sentenced driver to notify the service center operator if:

(a) the vehicle in which the device is installed is sold, stolen, repossessed, damaged beyond repair, permanently moved out of the service center opera-

tor's territory, or impounded and not to be returned; or

(b) the sentenced driver becomes disabled or dies.

(7) a copy of the agreement between the manufacturer and the service center.

(8) a fee schedule setting forth the cost a sentenced driver will pay for:

(a) installation of the device;

(b) monthly leasing of the device;

(c) a thirty (30) or sixty (60) day scheduled service visit;

(d) a violation service visit; and

(e) removal of the device.

C. Completeness. When the Bureau receives an application for a service center license, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

D. Standards for issuance of service center license. In reviewing applications for service center licenses, the Bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report favorably on the applicant's character or employment experience;

(3) the applicant is at least eighteen (18) years of age;

(4) the applicant has not been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device.

E. Issuance of license. If the Bureau determines that the applicant meets the standards in subsection D of this section, the Bureau will notify the applicant in writing that the Bureau has approved the application. The Bureau shall issue a license if, within thirty (30) days of approval, the applicant submits to the Bureau:

(1) the physical location of and type (fixed site or mobile unit) of service center the applicant will operate;

(2) the name of the manufacturer and the model or class of ignition interlock device to be installed;

(3) the name and address of the manufacturer, and the type (dry gas or wet bath) of reference sample to be used to calibrate the device.

(4) proof of garagemen's public liability insurance from an insurance company licensed to do business in New Mexico covering injury, death or property damage resulting from the installation, servicing, or removal of ignition interlock

devices in an aggregate amount of not less than one million dollars (\$1,000,000). The proof of insurance shall include a statement from the insurance company that it will notify the Bureau thirty (30) days before canceling the insurance.

(5) a signed statement that the applicant shall indemnify and hold harmless the state of New Mexico, the Bureau and its officers, employees and agents from all claims, demands and actions resulting from damage, death, or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the service center operator or installer relating to the installation, servicing, or removal of an ignition interlock device.

(6) a signed statement that the applicant shall comply with all requirements of this rule.

F. Denial of license. If the Bureau determines that the applicant does not meet the standards in subsection D of this section, the Bureau shall issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time.

G. Term. A service center license shall be valid until:

(1) the service center ceases operations;

(2) the manufacturer terminates its agreement with the service center;

(3) the Bureau suspends or revokes the license for cause as provided in this rule; or

(4) the Bureau requires license renewal for any reason.

H. Restriction on sale of license. A service center license may not be sold or transferred.

[18.20.11.13 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.14 RESPONSIBILITIES OF SERVICE CENTER OPERATORS:

A service center operator shall:

A. provide the tools, test equipment, and manuals needed for installing, inspecting, downloading, calibrating, repairing, maintaining, servicing and removing ignition interlock devices.

B. ensure that all devices are installed and removed in a workmanlike manner in accordance with accepted trade practices by properly trained and certified installers.

C. ensure that all devices are serviced in a workmanlike manner in accordance with accepted trade practices by a properly trained and certified service center operator or service technician.

D. maintain sufficient staff to ensure an acceptable level of service; the service center must be staffed with at least

one certified installer during all posted hours of operation.

E. report to the Bureau in writing within ten (10) business days any changes in location, fee schedule, or other matters that may affect the service center operator's ability to comply with the requirements of this rule.

F. provide expert or other required testimony in any civil or criminal proceedings regarding the installation, servicing, and removal of devices or the interpretation of recorded data.

G. reimburse the Bureau for any costs incurred if the service center operator requests the Bureau to provide testimony in any civil or criminal procedures involving the installation, servicing, and removal of an ignition interlock device.

H. not reveal any personal and medical information provided by drivers to any person other than the appropriate authorities or employees of the manufacturer of service center operator on an as-needed basis.

I. provide information to interested drivers concerning the device and costs of installation, leasing, servicing, and removal. An installer may state that the installer is "licensed by the Traffic Safety Bureau" and may state that the device the installer provides is "approved by the Traffic Safety Bureau for use in New Mexico" in its advertising or promotional materials.

J. provide to each driver at the time the device is installed a form prescribed by the Bureau on which the driver shall self-certify the number of vehicles he or she drives.

K. ensure that ignition interlock devices are installed on all vehicles driven by the driver within ten (10) business days of the date requested by a sentenced driver.

L. inquire of the sentenced driver whether the sentenced driver has a driver's license or state-issued identification card. If so, the installer shall affix the state-prescribed indicator on the card indicating that the sentenced driver is prohibited from driving any vehicle that does not have an ignition interlock device installed.

M. take adequate security measures to prevent drivers or other unauthorized persons from accessing secured materials in service centers such as tamper seals, installation instructions, computer disks, and any other material used to install, service, or remove the device.

N. provide a certificate of installation to a driver upon request.

O. submit a copy of the certificate of installation and the driver's self-certification to the appropriate authori-

ties within ten (10) business days of completion of each installation.

P. collect all fees and costs associated with installing, leasing, servicing and removing ignition interlock devices.

Q. ensure that no driver or other unauthorized person witnesses the installation, servicing or removal of an ignition interlock device.

R. use only reference samples certified by an independent laboratory and approved by the Bureau to calibrate ignition interlock devices. If wet bath reference samples are to be used to calibrate ignition interlock devices from mobile service centers, the service center operator shall ensure that:

(1) the reference samples provided to the mobile service center can be maintained within the temperature limits specified by the manufacturer of the reference sample for accuracy of results; or

(2) that substitute devices are pre-calibrated at the fixed site service center and exchanged for the devices needing calibration at the mobile service center.

S. comply with all requirements of this rule.
[18.20.11.14 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.15 INITIAL CERTIFICATION OF INSTALLERS:

A. Certification required. No person or licensee may install or remove ignition interlock devices without first having obtained a certificate from the Bureau.

B. Application required. A person wishing to obtain a certificate as an installer must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>. The application shall contain:

(1) the applicant's name, address, telephone number, fax number and e-mail address.

(2) the name, address, and telephone number of three (3) character and employment references who are not family members.

(3) the name and location of the service center employing or contracting with the applicant;

(4) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau; and

(5) a state police background check on the applicant dated no earlier than

sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the Department of Public Safety at least sixty (60) days before the date the application is filed with the Bureau.

(6) the applicant's resume or curriculum vitae.

C. Completeness. When the Bureau receives an application for certification as an installer, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

D. Standards for issuance of installer license. In reviewing applications for certification, the Bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report favorably on the applicant's character and employment experience;

(3) the applicant is at least eighteen (18) years of age;

(4) the applicant has experience with vehicle electrical systems or a certificate of satisfactory completion from an automotive mechanics training program;

(5) the applicant holds a valid driver's license;

(6) the applicant has a clean driving record.

(7) the applicant has not been convicted of:

(a) a crime involving moral turpitude;

(b) any alcohol or drug-related offense within the last three (3) years;

(c) two (2) or more alcohol or drug-related offenses in the last five (5) years;

(d) probation violation;

(e) perjury, forgery, or sworn falsification; or

(f) any crime substantially related to the qualifications, functions, and duties required to install or remove devices.

(8) the applicant has not had a driver's license or professional certification suspended, revoked or denied for violation of a motor vehicle safety equipment law.

(9) the applicant has not been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device.

E. Approval for training.

(1) If the Bureau determines that the applicant meets the standards in subsection D of this section, the Bureau shall grant

approval to proceed with training as an installer. The applicant must successfully complete an ignition interlock device installation training program conducted either by the manufacturer or an instructor-installer.

(2) If the Bureau determines that the applicant does not meet the standards in subsection D of this section, the Bureau shall issue a letter stating the reasons it is not granting approval to proceed with training as an installer.

F. Final review.

(1) Upon receipt of verification from a manufacturer or instructor-installer that an applicant has successfully completed training as an installer, the Bureau will notify the applicant in writing that it has approved the application. The Bureau shall issue a certificate if the applicant signs a statement that the applicant will comply with all requirements of this rule. The certificate shall specify, by manufacturer's name and class or model number, which ignition interlock devices the installer is certified to install and remove and whether the applicant is qualified as an instructor-installer.

(2) If the Bureau does not receive verification from a manufacturer or instructor-installer that an applicant has successfully completed training as an installer, the Bureau shall issue a letter stating its reasons for denial of certification. The applicant may attend further ignition interlock device training courses.

G. Term. An installer certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year.

[18.20.11.15 NMAC - N, 1-1-03]

18.20.11.16 RECERTIFICATION OF INSTALLERS:

A. Certificate renewal.

(1) An installer must file an application for renewal of his or her certificate with the Bureau on or before May 1 each year to ensure certificate renewal by July 1. An installer who files an application for renewal after May 1 shall pay a late fee of \$25.00.

(2) A person may obtain an application for renewal by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

(3) The application shall be accompanied by:

(a) a copy of the installer's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application if filed with the

Bureau; and

(b) a state police background check on the installer dated no earlier than sixty (60) days before the date the application if filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the Department of Public Safety at least sixty (60) days before the date the application if filed with the Bureau.

B. Approval/disapproval of renewal.

(1) The Bureau will renew the certificate of an installer for a period of one year if the installer:

(a) has filed the required documents;

(b) meets the standards specified in subsection D of 18.20.11.14 NMAC; and

(c) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the Bureau or its designee during the preceding year.

(2) The Bureau shall not renew the certificate of any installer who:

(a) fails to file the required documents;

(b) receives an overall rating of unsatisfactory in the periodic evaluations conducted by the Bureau or its designee during the preceding year; or

(c) fails to meet the standards specified in subsection D of 18.20.11.14 NMAC.

[18.20.11.16 NMAC - N, 1-1-03]

18.20.11.17 RESPONSIBILITIES OF INSTALLERS: An installer shall

A. provide expert or other required testimony in any civil or criminal proceedings regarding the installation, servicing, and removal of devices or the interpretation of recorded data.

B. reimburse the Bureau for any costs incurred if the installer requests the Bureau to provide testimony in any civil or criminal procedures involving the installation, servicing, and removal of an ignition interlock device.

C. not reveal any personal and medical information provided by drivers to any person other than the appropriate authorities or employees of the manufacturer or service center operator on an as-needed basis.

D. use only reference samples certified by an independent laboratory and approved by the Bureau to calibrate ignition interlock devices. If an installer uses wet bath reference samples to calibrate ignition interlock devices from a mobile service center, the installer shall:

(1) maintain the reference samples within the temperature limits specified by the manufacturer of the reference sample for accuracy of results; or

(2) pre-calibrate substitute devices at the fixed site service center and exchange them for the devices needing calibration at the mobile service center.

E. comply with all requirements of this rule.

[18.20.11.17 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.18 INSTALLATION OF IGNITION INTERLOCK DEVICES:

A. An installer shall:

(1) not install an ignition interlock on a vehicle unless the sentenced driver is at the service center.

(2) ensure that no driver or other unauthorized person witnesses the installation or removal of an ignition interlock device.

(3) inspect all vehicles prior to installation to determine that mechanical and electrical parts of the vehicle affected by an ignition interlock device are in acceptable condition and not install a device unless and until the vehicle is in acceptable condition.

(4) follow a manufacturer's written instructions for the installation, servicing and removal of its ignition interlock devices.

(5) install the following physical anti-tampering measures:

(a) solder (hard wire) all connections between an ignition interlock device and a vehicle.

(b) place all connections between a device and a vehicle under the dash or in an inconspicuous area of the vehicle.

(c) cover with a unique and easily identifiable seal, epoxy, resin, wire, sheathing, or tape:

(i) any portion of an ignition interlock device that can be disconnected;

(ii) all wires used to install the device that are not inside a secured enclosure;

(iii) all exposed electrical connections.

(d) mark points likely to be accessed when attempting to tamper with the device, such as battery post terminals, wire to starter solenoid, wire to ignition, dash screws, etc.) with a special mark, seal, paint, epoxy, resin, or other material unless the device is capable of recording such attempts to tamper with it.

B. A service center operator or service technician shall calibrate each device at a calibration set point of 0.05 using the known concentration of an approved reference sample before the device is installed in a vehicle.

[18.20.11.18 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.19 DRIVER ORIENTATION AND SUPPORT: A service center operator or service technician shall:

A. thoroughly train drivers on the proper use of the ignition interlock device.

B. provide a user reference and problem-solving guide in English or Spanish to drivers when a device is installed.

C. be available to answer all questions and handle any problems relating to the device, or repair or replace an inoperable or malfunctioning device, during all posted hours of operation.

D. provide a twenty-four (24) hour toll-free emergency telephone number to all drivers.

E. respond to all service inquiries within twenty-four (24) hours of the initial contact.

F. service, repair, or replace an ignition interlock device within forty-eight (48) hours of initial contact at a service center located within one hundred (100) miles or two (2) hours, whichever is less, of a sentenced driver's residence or place of business.

[18.20.11.19 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.20 SERVICING OF IGNITION INTERLOCK DEVICES.

A. A service center operator or service technician shall:

(1) service a device within thirty (30) days after the initial installation and every sixty (60) days thereafter, unless otherwise specified by court order.

(2) ensure that another device is substituted whenever an installer removes a device for any reason.

(3) calibrate every installed device at least every sixty (60) days.

B. At each service visit, service center operator or service technician shall:

(1) perform a calibration confirmation test to verify that the device measures an approved reference sample within plus or minus 0.005 grams per 210 liters of the known concentration of the reference sample.

(a) If the result of the calibration confirmation test is not within plus or minus 0.005 grams per 210 liters of the known concentration of the approved reference sample, the service center operator shall recalibrate the device.

(b) If the device fails the calibration confirmation test after being recalibrated, the service center operator shall ensure that a new device is installed.

(2) check that the device will per-

mit a driver to restart a vehicle within three (3) minutes without taking another breath test after the vehicle has stalled or been turned off.

(3) check the device for evidence of tampering and circumvention. A service center operator or service technician shall document and photograph any perforations, cuts, or other evidence of possible tampering.

(4) download all recorded information from the device and prepare a report in the format prescribed by the Bureau. The report shall include:

(a) the date, time, BAC of the driver, and success or failure of each attempt to start the vehicle;

(b) the date, time, BAC of the driver, and success or failure of each random retest;

(c) all attempts to tamper with the ignition interlock device;

(d) all attempts to avoid taking a random retest;

(e) all attempts to circumvent the device;

(f) the total number of events recorded by the data recorder since the last service visit; and

(g) the number of vehicle starts.

(5) record the vehicle odometer reading and calculate the number of miles driven since the last service visit.

(6) check that the device continues to meet the requirements of this rule. If at any time the device fails to meet the requirements of this rule, the device shall be recalibrated, repaired, or replaced.

[18.20.11.20 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.21 RECORDKEEPING AND REPORTING REQUIREMENTS:

A manufacturer or service center operator:

A. shall maintain for a period of three (3) years and make available to the appropriate authorities upon request:

(1) records on every driver, including the results of every service visit;

(2) service, calibration, repair, and replacement records on each device installed; and

(3) records of all complaints received and corrective actions taken by the service center operator. The report shall be categorized by:

(a) customer error or operation.

(b) faulty automotive equipment.

(c) apparent misuse or attempt to tamper with or circumvent the device.

(d) device failure.

B. shall within five (5) business days of a service visit, report to the appropriate authorities, in the format prescribed by the Bureau:

(1) any evidence of circumventing, removing, or tampering with the device.

(2) any failure to appear for a service visit within the five (5) day warning period.

(3) the failure of six (6) initial breath tests within a period of three (3) hours.

(4) the failure of ten (10) initial breath tests or random retests in any thirty (30) day period.

C. shall submit to the Bureau upon request statistical data regarding driver and equipment performance, without identifying individual drivers.

D. may maintain required records electronically.

[18.20.11.21 NMAC - N, 1-1-03]

18.20.11.22 REMOVAL OF IGNITION INTERLOCK DEVICES:

A. An installer shall remove an ignition interlock device, permanently reconnect all severed wires and insulate them with heat shrink tubing or its equivalent, and otherwise return a vehicle to normal operating condition:

(1) for devices installed pursuant to NMSA 1978 Section 66-8-102:

(a) upon expiration of the term specified in the judgment and sentence;

(b) one year from the date of installation if the judgment and sentence does not specify a term; or

(c) upon lawful order of the court.

(2) for devices installed pursuant to NMSA 1978 Section 66-5-35:

(a) upon expiration of the limited license; or

(b) upon lawful order of the court.

B. A service center operator shall notify the appropriate authorities and may petition the sentencing court for authorization to remove an ignition interlock device if:

(1) the vehicle in which the device is installed is sold, stolen, damaged beyond repair, repossessed, permanently moved out of the service center operator's territory, or impounded and not to be returned to the owner;

(2) if the sentenced driver becomes disabled or dies; or

(3) the sentenced driver fails or refuses to pay fees for so long that the device will not function until it is serviced.

[18.20.11.22 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.23 RESPONSIBILITIES OF THE BUREAU:

A. The Bureau shall establish and maintain a list of ignition interlock devices approved for use in New Mexico by

manufacturer and model or class.

B. The Bureau or its designee shall have the right to periodically evaluate:

- (1) the technical competency and reliability of installers;
- (2) service centers, service center operators, and service technicians;
- (3) the installation, servicing, and removal of ignition interlock devices; and
- (4) a manufacturer's training of installers.

[18.20.11.23 NMAC - N, 1-1-03]

18.20.11.24 SUSPENSION OR REVOCATION OF APPROVAL OF AN IGNITION INTERLOCK DEVICE:

A. The Bureau may suspend or revoke its approval of an ignition interlock device if:

- (1) the Bureau has evidence of repeated device failure due to gross defects in design, materials, or manufacture.
- (2) the manufacturer's product liability insurance or surety bond has been cancelled or terminated.
- (3) the manufacturer has failed to abide by its plan to provide service within forty-eight (48) hours at a service center located within one hundred (100) miles or two (2) hours, whichever is less, of a driver's residence or place of business.
- (4) the manufacturer requests the Bureau to remove a device from the list of approved devices.
- (5) the Bureau finds that the device does not meet the requirements of this rule.
- (6) the Bureau has reasonable cause to believe the device was inaccurately represented to meet the requirements of this rule.

(7) the manufacturer has failed to reimburse the Bureau for costs incurred in providing testimony requested by the manufacturer in a civil or criminal proceeding involving the approval or use of an ignition interlock device.

(8) the Bureau determines that changes in ignition interlock device technology are such that continued approval of the device would not be in the best interests of New Mexico.

(9) the manufacturer fails to pay all required fees for the interlock device ("indigency") fund to the New Mexico Department of Finance and Administration.

B. The suspension or revocation shall be effective thirty (30) days after notice is sent to the manufacturer via certified mail, return receipt requested, except in cases where the Bureau determines immediate suspension or revocation is necessary for the safety and welfare of the citizens of New Mexico.

C. A manufacturer may

request a review of a suspension or revocation. This request shall be submitted to the Bureau in writing within thirty (30) days of the suspension or revocation. The Bureau shall conduct such review in accordance with the procedures prescribed in the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 et seq.

D. Upon suspension, revocation, or voluntary surrender of an approval, a manufacturer shall notify each of its service center operators in New Mexico that the service center operator shall:

(1) not install that model or class of device in any driver's vehicle after the effective date of the suspension, revocation, or voluntary surrender; and

(2) shall remove all such devices from drivers' vehicles. A manufacturer shall be responsible for all costs connected with removing such devices and installing new devices from the Bureau's list of approved devices.

[18.20.11.24 NMAC - N, 1-1-03]

18.20.11.25 SUSPENSION OR REVOCATION OF A SERVICE CENTER LICENSE OR AN INSTALLER CERTIFICATE:

A. Service center license. The Bureau may suspend or revoke the license of a service center operator if:

(1) the service center operator's garagemen's liability insurance or surety bond has been cancelled or terminated.

(2) the service center operator has failed to reimburse the Bureau for costs incurred in providing testimony requested by the service center operator in a civil or criminal proceeding involving the installation, servicing, or removal of an ignition interlock device.

(3) the service center operator has failed to pay all required fees for the interlock device ("indigency") fund to the New Mexico Department of Finance and Administration.

(4) the Bureau finds that the service center operator has not complied with the requirements of this rule.

(5) the service center operator has permitted an installer to install a device that is not on the list of Bureau-approved devices.

(6) the service center operator has permitted a person who is not a Bureau-certified installer to install or remove a device.

(7) the service center operator has permitted any person other than a service technician to service a device.

B. Installer certificate. The Bureau may suspend or revoke the certificate of an installer if:

(1) the Bureau finds that the installer has not complied with the require-

ments of this rule.

(2) the installer has demonstrated unreliability or incompetence.

(3) the installer has been convicted of:

(a) any alcohol or drug-related offense within the last three (3) years;

(b) two or more alcohol or drug-related offense in the past five (5) years;

(c) perjury, forgery, or sworn falsification;

(d) circumventing or tampering with an ignition interlock device; or

(e) any other crime substantially related to the installation, servicing and removal of devices.

C. Effective date. The suspension or revocation shall be effective thirty (30) days after notice is sent to the service center operator or installer via certified mail, return receipt requested, except in cases where the Bureau determines immediate suspension or revocation is necessary for the safety and welfare of the citizens of New Mexico.

D. Request for review. A service center operator or installer may request a review of suspension or revocation. This request shall be submitted to the Bureau, in writing, within thirty (30) days of the suspension or revocation. The Bureau shall conduct such review in accordance with the procedures prescribed in the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 et seq.

E. Notification. Upon suspension or revocation, a service center operator shall notify:

(1) the manufacturers of the models or classes of devices the service center operator has been providing; and

(2) the drivers of vehicles for whom the service center operator has provided a device.

[18.20.11.25 NMAC - N, 1-1-03]

18.20.11.26 EXEMPTION OR VARIANCE:

A. From the requirements of paragraph 9 of subsection B of 18.20.11.8 NMAC.

Manufacturers required to provide service in New Mexico Highway District 4 or 6 pursuant to paragraph 9 of subsection B of 18.20.11.8 NMAC may negotiate with each other to develop a plan for jointly providing service to those districts. The Bureau will consider approving a plan that does not require each manufacturer to provide service to the whole of highway district 4 or 6 if the plan provides for a fixed site in any city in the district with a population of ten thousand (10,000) or more and provides adequate coverage to the rest of the district. The Bureau may require a new plan if one or more manufacturers who is a party to the

plan ceases to do business in New Mexico and reserves the right to require coverage of highway district 4 or 6 from each manufacturer authorized to operate in highway district 3 or 5 if the Bureau determines that district 4 or 6 is not being adequately covered. Manufacturers requesting highway districts 3 and 4 or 5 and 6 shall file such a negotiated plan for highway districts 4 or 6 within thirty (30) days of Bureau approval of the manufacturer's device and territory.

B. From the requirements of any other provision of this rule.

(1) Any manufacturer, service center operator, or installer may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

(a) identify the section of this rule for which the exemption or variance is requested;

(b) describe the situation which necessitates the exemption or variance;

(c) describe the effect of complying with this rule on the manufacturer, service center operator, or installer and its customers, and on its competitors and their customers, if the exemption or variance is not granted;

(d) state how the exemption or variance will achieve the purposes of this rule and NMSA 1978 Sections 66-5-35 and 66-8-102; and

(e) state why the proposed alternative is in the public interest and is better than the requirement in the rule.

(2) Such petition may include a motion that the Bureau stay the affected portion of this rule for the transaction specified in the motion.

(3) Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the manufacturer, service center operator, or installer or other person with authority to bind the manufacturer, service center operator, or installer.

(4) The Bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[18.20.11.26 NMAC - N, 1-1-03]

HISTORY OF 18.20.11 NMAC

Pre NMAC history. None.

Repealed material.

18 NMAC 20.11, Minimum Standards for Breath Alcohol Ignition Interlock Devices, filed on 11-2-99, was repealed 1-1-03.

NMAC history.

18 NMAC 20.11, Minimum Standards for Breath Ignition Interlock Devices, filed on 6-17-99

18 NMAC 20.11, Minimum Standards for Breath Alcohol Ignition Interlock Devices, filed on 11-2-99.

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.100.180 NMAC, Section 10. This amendment describes the requirement for provision of advance notice to recipients by the Human Services Department prior to withholding, reducing, suspending, or terminating benefits.

8.100.180.10 [NOTICE ISSUES/HEARING REQUEST: Before any action to withhold an FA issuance or to reduce or terminate a client's medical, FS or FA benefits, the ISS must, except as exempted below, give the client timely and adequate advance notice before the adverse action is taken.] **NOTICE OF AN ADVERSE ACTION** Before any action to withhold a cash assistance payment or to reduce or terminate medical, Food Stamp or cash assistance benefits, the Department must issue timely and adequate advance notice of an adverse action.

A. Adverse Action Defined: Adverse action means an action taken by HSD that adversely affects eligibility or the amount of benefits a household or benefit group receives, including withholding, suspending, reducing or terminating benefits.

[A.] B. Timing: [An adverse action notice is mailed 13 days before taking the adverse action. If the 13th day falls on a weekend or holiday, the next working day is counted as the final day of the advance notice period. A concurrent notice is mailed by no later than the date the reduced benefit is or would have been mailed.] A notice shall be issued to the household or benefit group before taking and adverse action. Benefits will not be reduced until 13 days from the date on the adverse action notice. If the 13th day falls on a weekend or holiday, the next working day is counted as the last day of the 13-day adverse action notice period.

[B.] C. Contents

(1) **General:** An adverse action notice shall contain, in easily understood language:

(a) Reason for the proposed action, including the specific regulations supporting the action and the information on which the proposed action is based;

(b) Date the action will take place;

(c) Statement of the right to

request a fair hearing and how to request a fair hearing;

(d) Phone number of the [ISS, in case] caseworker in the event the client wants more information or wants to request a fair hearing; [on the proposed action;]

(e) Date by which the client must request a fair hearing to continue receiving assistance at the current rate;

(f) Liability of the recipient for any overissuance or overpayment;

(g) Right to be represented by legal counsel, friend or other spokesperson;

(h) [Phone number of any service providing information on the availability of free legal advice.] Notice that free legal help may be available to the household;

(i) The current benefit amount and proposed benefit amount after reduction for any reason.

[(2) Food Stamp Employment & Training Adverse Action: If there is a Food Stamp E&T, work or work registration/job search or voluntary quit disqualification, the adverse action notice must also include the following information:

(a) Proposed period of disqualification;

(b) Action necessary by household to end disqualification;

(c) Information that the household may reapply at the end of the disqualification period.]

(2) Specific:

(a) For a disqualification from participation in the Food Stamp Program, the notice must also include the disqualification period, as appropriate, and the action the disqualified individual must take to end ineligibility.

(b) For sanctions from cash assistance, the notice must also include the conciliation period, if applicable, and the sanction period, as appropriate, as well as the action the sanctioned individual must take to end ineligibility.

(c) For termination of cash assistance benefits due to reaching the TANF 60-month term limit, the notice must also include the actions the participant must take to apply for a hardship extension, found at 8.102.410.17 NMAC, and the availability of support services in the event the benefit group is not eligible for a hardship extension.

[(3) FA and MA Mass Change: A hearing is not available, nor are benefits continued, when automatic grant or services adjustment are required by state or federal law, unless the specific express basis for the individual hearing request is incorrect grant computation.]

[07/01/97, 04/01/98; 8.100.180.10 NMAC - Rn, 8 NMAC 3.ISD.181.3, 04/13/2001; A, 01/01/2003]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT**
INCOME SUPPORT DIVISION

This is an amendment to 8.100.970 NMAC, Sections 8 and 9. This amendment issues regulations related to the fair hearing process for applicants or recipients of Department programs.

8.100.970.8 FAIR HEARINGS:

A. HSD has established a hearing process ~~[which] that~~ provides for impartial review of HSD actions that adversely affect public assistance program applicants and recipients. For purposes of these regulations, an applicant or recipient requesting a hearing, whether as an individual or household, is referred to as a claimant.

B. ~~[In addition, for purposes of 8.100.970 NMAC, "authorized representative" means that for each hearing requested, a claimant has submitted a "Request for Access to Case Record" (Form ISD 121), which has been signed and dated by the claimant, thereby authorizing the individual named on the form ISD 121 to have access to the individual's case file for purposes of preparing for the hearing and to represent the claimant during the hearing process.]~~ For purposes of the fair hearing process, a claimant may seek the assistance of an authorized representative. For each hearing requested, a claimant shall be required to submit a "Request for Access to Case Record" (Form ISD 121), which has been signed and dated by the claimant, and authorizes the individual named on the form ISD 121 to have access to the claimant's case file for purposes of preparing for the hearing and to represent the claimant during the hearing process.

C. **Hearing Rights:** The right to a hearing includes the right:

(1) To be advised of the nature and availability of a hearing;

(2) To be represented by counsel or other authorized person of the claimant's choice;

(3) To receive needed help in completing procedures necessary to start the hearing process;

(4) To receive a copy of any document contained in the claimant's record in order to prepare for the hearing;

~~[(4)]~~ (5) To have a hearing which safeguards the claimant's opportunity to present a case;

~~[(5)]~~ To continue to receive the current level of benefit provided the request for hearing is received by HSD in a timely manner. If the claimant elects to continue to receive the same level of benefit pending

appeal, the claimant must also be informed that he/she may be liable to make restitution if the hearing decision is not in his/her favor. A hearing is not available, nor are benefits continued, when automatic grant or services adjustment are required by state or federal law, unless the specific, express basis for the individual hearing request is incorrect grant computation.]

(6) To continue to receive the current level of benefits provided the request for hearing is received by HSD in a timely manner. For the purpose of continuing benefits, "timely manner" means an oral or written request for a hearing has been received by the Department by the end of the 13th day after the date on the notice. A Claimant that elects to continue to receive the same level of benefit pending the hearing decision shall be informed that a hearing decision in favor of the Department may result in an overpayment of benefits and a requirement that the household repay the benefits.

~~[(6)]~~ (7) To have prompt notice and implementation of the hearing decision; and

~~[(7)]~~ (8) To be advised that judicial review may be invoked to the extent such review is available under state law.

D. **Representation, Hearing and Appeals Costs:** HSD does not provide representation or pay for any costs incurred by the claimant in program participation hearings or in judicial appeals.

E. **Notice of Rights:** ~~[At the time of application for assistance, an applicant is informed in writing (on the application form) of the right to request a hearing, the method by which a hearing may be requested (either orally or in writing), and that the claimant's presentation may be made by a household member or authorized representative, such as legal counsel, a relative, friend or other spokesperson. In addition, a written reminder of the right to request a hearing is provided any time a client or household expresses disagreement with an HSD adverse action. These rules are to be posted in each county office, and a copy is to be given upon request to any person who has requested a hearing. At the time of the hearing request, a claimant is also advised of any legal services available to provide representation at the hearing.]~~

(1) At the time of application for assistance, an applicant shall be informed in writing of the right to request a hearing and the method by which a hearing may be requested (either orally or in writing) if the applicant disagrees with an action taken by the Department.

(2) An applicant shall be informed that the claimant's presentation

may be made by the claimant, a household member or authorized representative, such as legal counsel, a relative, friend or other spokesperson.

(3) A written reminder of the right to request a hearing is provided any time a client or household expresses disagreement with an HSD adverse action.

(4) Notice of the right to a fair hearing shall be posted in each county office, and a copy shall be given upon request to any person who has requested a hearing.

(5) A claimant shall be informed that free legal assistance may be available to assist the household.

F. **Special Provisions Pertaining to Mass Changes:** Special provisions apply in situations involving mass changes. These provisions are contained ~~[in Paragraph 3, of Subsection B of 8.100.180.10 NMAC; Subsection B of 8.100.180.14 NMAC;]~~ at 8.100.180.15 NMAC and ~~[8.139.120.9]~~ 8.139.120.10.E NMAC.

G. **Continuing Benefit for NMW Cash Assistance:** If a hearing request is made in a timely manner by a NMW cash assistance benefit group, the amount of cash assistance and services issued prior to the adverse action will be continued until the hearing is resolved.

H. **Continuing Food Stamp Benefits:** If a hearing request is made in a timely manner by a Food Stamp recipient, the amount of Food Stamp benefits issued prior to the adverse action will be continued until the hearing is resolved, provided that the household complies with recertification provisions at 8.139.120.8 NMAC, if applicable to the household during the hearing process.

[07/01/97, 04/01/98; 8.100.970.8 NMAC – Rn 8 NMAC 3.ISD.970, 04/13/2001, A, 01/01/2003]

8.100.970.9 [INITIATION OF HEARING PROCESS] THE HEARING PROCESS

~~[A. Notice: The hearing process is initiated by a claimant's request for hearing. In most cases, a request for hearing is made in response to an HSD notice of adverse action. For further information concerning adverse action notice requirements, see 8.100.180 NMAC and 8.200.430 NMAC.]~~

A. Initiation of the Hearing Process:

(1) A request for hearing can be made orally or in writing.

(2) HSD staff shall consider an oral or written expression by an applicant, recipient or authorized representative that he/she wishes to appeal a decision as a

request for hearing.

(3) If a recipient or applicant makes an oral request for a hearing, the HSD staff shall complete the procedures necessary to start the hearing process.

(4) Receipt of a hearing request, either orally or in writing, shall be acknowledged in writing to the claimant by the Hearings Bureau.

B. Time Limits:

(1) An applicant or recipient has 90 days from the date of notice of action to request a hearing either orally or in writing. To be considered timely, the request must be received by the HSD Hearing Bureau or the local county office no later than the close of business on the 90th day.

(2) Hearings ~~are~~ must be conducted and a written decision ~~is~~ issued by the appropriate HSD Division Director or designee to the claimant within ~~[45]~~ 60 days from the date that the department receives the hearing request.

C. ~~[Eligibility:]~~ **Requesting a Hearing:** An applicant for, or recipient of, assistance can request a hearing if:

(1) An application for benefits or services is denied or not processed timely;

(2) Assistance or services are reduced, terminated or suspended, or the form of payment is changed;

(3) A good cause request for not participating in the work program or child support enforcement program is denied in whole or in part;

(4) The department refuses or fails to approve a work program participation plan developed by a participant or supportive services related to it;

(5) He or she is aggrieved by any other action affecting benefit level or participation in an assistance program administered by HSD.

(6) A hearing is provided to all applicants or recipients who timely request one in accordance with these regulations.

D. **Dismissal of Hearing Request:** HSD may deny or dismiss a request for a hearing when:

(1) The request is not received ~~in a timely manner or within the time period set out in the notice.~~ by the close of business on the 90th day from the date of notice of action.

(2) The request is withdrawn or canceled, in writing, by the claimant or claimant's authorized representative;

(3) The sole issue presented concerns a federal or state law requiring an adjustment of assistance for all or certain classes of clients, including but not necessarily limited to a reduction, suspension or cancellation of benefits, unless the reason for the hearing request involves alleged

error in the computation of benefits;

(4) The claimant fails to appear, without good cause, at a scheduled hearing; or

(5) The same issue has already been appealed and a hearing decision made.

~~[(6) A request for a hearing may be considered abandoned and therefore dismissed if neither the claimant nor his/her authorized representative appears at the time and place of the hearing unless, within ten days from the scheduled hearing date, the claimant presents good cause for failing to appear. "Good cause" includes a death in the family, disabling personal illness, or other significant emergencies. At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.~~

~~E. **Method:** A request for hearing can be made in writing or orally. HSD staff shall consider any clear expression by an applicant, recipient or authorized representative that he/she wishes to appeal a decision as a request for hearing. If a recipient or applicant makes an oral request for hearing, the HSD staff are to complete the procedures necessary to start the hearing process.~~

~~F. **Acknowledgment of Request:** Receipt of a hearing request shall be acknowledged in writing to the claimant by the Hearings Bureau.]~~

~~E. **Good Cause for Failing to Appear:** A request for a hearing may be considered abandoned and therefore dismissed if the claimant or the claimant's authorized representative fails to appear at the time and place of the hearing unless the claimant presents good cause. A claimant may present good cause at any time during the hearing process and until ten days after the scheduled hearing date. Good cause includes a death in the family, disabling personal illness, or other significant emergencies. At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.~~

~~[07/01/97, 04/01/98; 8.100.970.9 NMAC – Rn, 8 NMAC 3.ISD.971, 04/13/2001, A, 01/01/2003]~~

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.102.410 NMAC, Section 17. This rule filing also adds a new Section 18. This amendment provides clarification of and expands the rules for TANF cash assistance recipients upon reaching the TANF 60-month term limit.

8.102.410.17 TERM LIMITS

~~[A. NMW:~~

~~(4) NMW assistance (cash benefits and supportive services) shall not be provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime. The benefit group shall be ineligible if the family contains one or more persons, who reside in the home, who have received 60 or more months of assistance, unless the term limit has been waived pursuant to Subsection C of 8.102.410.17 NMAC].~~

A. TANF Cash Assistance:

(1) TANF cash assistance shall not be provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime. The benefit group shall be ineligible if the benefit group contains at least one adult, minor head of household or spouse of the minor head of household who has received 60 or more months of TANF cash assistance, unless the term limit has been waived pursuant to Subsection E of 8.102.410.17 NMAC.

(2) For purposes of determining the 60-month term limit, the count of months of TANF assistance begins on July 1, 1997 and thereafter, and includes assistance received under PROGRESS, or the court-ordered AFDC program in effect until March 31, 1998, or NMW.

~~(2)~~ (3) Any month in which an adult, ~~member of~~ a minor head of household, or the spouse of a minor head of household, has received ~~[NMW] full~~, partial, prorated, or retroactive ~~[benefits]~~ TANF cash assistance shall be considered a month of receipt and shall be counted towards the 60-month term limit for the benefit group in which that individual resides.

~~(3)~~ (4) The count of months of TANF assistance shall include cash benefits, supportive services reimbursements, ~~[as well as any child care payments made or reimbursements made with TANF funds, provided July 1, 1997 and thereafter under PROGRESS, the court ordered AFDC program in effect until March 31, 1998 and NMW.]~~ or other forms of benefits designed to meet a family's ongoing basic needs (for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). TANF cash assistance shall include supportive services such as transportation and childcare provided to a family who is unemployed.

~~(4)~~ (5) Receipt of ~~[a TANF benefit]~~ TANF assistance from another state after July 1997, or from a tribal entity (that does not meet ~~[exemption]~~ the exclusion criteria as described below) is counted as a month of ~~[TANF]~~ receipt of TANF assistance for purposes of the term limit regula-

tion.

B. Non-Countable Assistance:

(1) ~~[Services received under NMW which do not have a direct monetary value are not counted as months of federal TANF assistance.] The Department shall not count a month of receipt of TANF cash assistance or services toward the 60-month term limit if the recipient was a minor who was not the head of household or the spouse of the head of household.~~

(2) Support services, transportation reimbursements, or child care assistance received by a benefit group with earned income shall not be considered as a month of TANF assistance against the 60-month term limit, as long as the benefit group does not also receive TANF cash assistance to meet ongoing basic needs.

(3) Assistance shall not be considered a month of TANF assistance if the assistance is a:

(a) non-recurrent short term benefit that will not extend beyond four months, is not intended to meet ongoing basic needs, and is designed to meet a specific crisis situation or episode of need;

(b) work subsidy to an employer to cover the cost of employee wages, benefits, supervision and training;

(c) refundable earned income tax credit;

(d) contribution to or distribution from an Individual Development Account;

(e) service such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, or other employment related services that do not provide basic income support; and

(f) transportation benefit provided under a Job Access or Reverse Commute project to an individual who is not receiving TANF assistance.

(2) (4) Under federal law, TANF funds may be transferred into the Social Services Block Grant and the Child Care Development Block Grant. Benefits provided to individuals from these transferred funds are no longer characterized as TANF funds and do not count against the term limits.

C. Exceptions:

(1) ~~Waiver of Ineligibility:~~ Waivers are not granted prior to exhausting the 60 month term limit. The waiver will end if the condition or situation allowing the waiver ceases to exist. Adults may be granted a waiver of the term limit for the following reasons:

(a) ~~Because the individual is disabled or is caring for a disabled individual.~~

(i) ~~For the purposes of this section, a hardship exception may be~~

~~granted to a person who demonstrates through reliable medical, psychological or mental reports, social security administration records, court orders, or police reports that he is a person who is barred from engaging in a work activity because he is temporarily or completely disabled; the sole provider of home care to an ill or disabled family member; or is unable to be gainfully employed due to domestic violence.~~

(ii) ~~The determination is made by the Incapacity Review Unit using criteria set forth at 8.102.420.11, 8.102.420.12, and 8.102.420.13 NMAC.~~

(b) ~~Because the individual has been to battered or subject to extreme cruelty. An individual has been battered or subjected to extreme cruelty if the individual can demonstrate by reliable medical, psychological or mental reports, court orders or police reports that the individual has been subjected to and is currently affected by:~~

(i) ~~Physical acts that result in physical injury;~~

(ii) ~~Sexual abuse;~~

(iii) ~~Being forced to engage in nonconsensual sexual acts or activities;~~

(iv) ~~Threats or attempts at physical or sexual abuse;~~

(v) ~~Mental abuse; or~~

(vi) ~~Neglect or deprivation of medical care except when deprivation is based by mutual consent on religious grounds.~~

(e) ~~Is an individual is over age 60:~~

(d) ~~If an application for Supplemental Security Insurance (SSI) is pending or in the appeals process with the Social Security Administration.~~

(2) ~~Exemption from Counting:~~ Any month in which an adult or minor head of household receives NMW or tribal TANF benefits or services while residing in Indian country, as the term is defined in 18 U.S.C. Subsection 1151, and where at least 50% of the adults are not working, shall not be counted toward the term limit.]

C. Excluded from the Term Limit Count: Any month in which an adult or minor head of household receives NMW or tribal TANF cash assistance or services while residing in Indian country, as the term is defined in 18 U.S.C. Subsection 1151, and where at least 50% of the adults are not working, shall not be counted toward the term limit.

D. Extension of the Term Limit Due to Hardship: Up to twenty percent (20%) of the population of TANF recipients to whom the term limit applies may be waived from the 60-month term limit based on hardship or being battered or subjected to extreme cruelty.

(1) An extension of TANF cash

assistance shall not be granted to a benefit group prior to exhausting the 60-month term limit.

(2) The term limit extension will end if the condition or situation allowing the extension ceases to exist.

E. Hardship Extension

Types: For purposes of establishing a hardship and eligibility for an extension of TANF cash assistance, an individual to whom the term limit applies must demonstrate through reliable medical, psychological or mental reports, social security administration (SSA) records, court orders, department records or police reports that the individual:

(1) is barred from engaging in a work activity because of a temporary or complete disability;

(2) is the sole provider of home care to an ill or disabled family member;

(3) does not have the ability to be gainfully employed because the individual is affected by domestic violence;

(4) has been battered or subjected to extreme cruelty;

(5) has an application for supplemental security income (SSI) pending in the application or appeals process; or

(6) has reached the age of 60 by the end of the last month of his or her term limit.

F. Determining Hardship and Eligibility for an Extension:

(1) The Incapacity Review Unit shall make a determination of hardship based on a temporary or complete disability or being the sole provider of home care to an ill or disabled family member based on criteria set forth at 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC.

(2) The Incapacity Review Unit may determine contingency requirements or conditions for continued participation of the individual under the applicable hardship type(s).

(3) **Hardship Based on Domestic Violence, Battery, or Extreme Cruelty:** A certification that an individual cannot be gainfully employed due to domestic violence, or has been battered or subject to extreme cruelty shall be made by a trained domestic violence counselor and shall be part of the case record.

(a) Supporting documentation shall be provided to the Department and made part of the individual's case record. For purposes of determining a hardship, an individual has been battered or subjected to extreme cruelty if the individual can demonstrate by reliable medical, psychological or mental reports, court orders, department records or police reports that the individual has been subjected to and cur-

rently is affected by:

- (i) physical acts that result in physical injury;
- (ii) sexual abuse;
- (iii) being forced to engage in non-consensual sex acts;
- (iv) threats or attempts at physical or sexual abuse;
- (v) mental abuse; or
- (vi) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.

(b) The Incapacity Review Unit shall review the documentation provided to demonstrate a hardship type related to domestic violence, battery, or extreme cruelty, shall ensure that the documentation supports a finding of hardship, and shall determine review periods and contingency requirements if applicable.

(4) The Department shall determine the eligibility of the individual for a hardship extension based on age or whether an application for SSI is pending or in the appeals process by reviewing department records or SSA files.

G. Participating Benefit Group:

(1) A NMW benefit group in active status at the time the benefit group reaches the 60-month term limit may ask for an extension of TANF cash assistance under hardship provisions. The benefit group must provide supporting documentation by the 15th day of the 60th month. If otherwise eligible and a hardship type is determined, the benefit group shall be authorized cash assistance from the first day of the 61st month.

(2) A NMW benefit group whose certification period expires in the 60th month of the term limit may be recertified, if otherwise eligible, under hardship provisions, but must provide supporting documentation by the end of the benefit group's certification period.

H. Closed Benefit Group: A benefit group shall be required to file an application for NMW cash assistance based on hardship under the following conditions:

- (1) a NMW benefit group in active status does not submit supporting documentation by the 15th day of the 60th month of receipt of cash assistance; or
- (2) a NMW case closes upon reaching the term limit.

(3) A benefit group may file an application on the first day of the 61st month, or at anytime after, and if eligible, benefits shall be approved effective the date of authorization or 30 days from the date of application, whichever is earlier.

I. Automatic Extension of Cash Assistance: A NMW benefit group

shall be automatically extended TANF cash assistance based on hardship when the benefit group member who has received 60 months of cash assistance is:

- (1) an adult age 60 or over; or
- (2) an adult or minor head of household with an application for SSI pending or in the appeals process; or based on verification in the case record that is not older than three months, the benefit group member is:

(3) waived from participation in work activities due to a complete disability, either permanently or temporarily; or

(4) the sole provider of home care to an ill or disabled family member; or

(5) unable to be gainfully employed because the benefit group member has been battered or subjected to extreme cruelty, or affected by domestic violence.

[8.102.410.17 NMAC - Rp 8.102.410.17 NMAC, 07/01/2001, A, 01/01/2003]

8.102.410.18 REQUIREMENTS FOR TANF HARDSHIP EXTENSIONS

A. Benefit Group: NMW cash assistance regulations at 8.102 NMAC continue to apply to a TANF benefit group that receives a cash assistance based on a hardship determination. A benefit group may be sanctioned at the appropriate level in compliance with regulations at 8.102.620.10 NMAC when a benefit group member fails to comply with the requirements at set forth in at 8.102.410.17 NMAC and 8.102.410.18 NMAC.

B. Certification Period: In most cases the certification period for the case will be set at six (6) months, beginning with the 61st month of cash assistance. The Incapacity Review Unit may set the certification period for a benefit group that is shorter or longer than six months when the condition for the hardship type warrants such a determination.

C. Waived Individual:

(1) An individual granted a waiver of the 60-month term limit due to a hardship determination shall be required to meet with the work program contractor. An individual determined to be waived due to hardship shall be referred by the Department to the work program contractor:

(a) no later than the first day of the 61st month for a case in active status in the 60th month; or

(b) by the end of the first month of the benefit group's hardship extension period for a benefit group whose certification period expires in the 60th month; or

(c) upon approval of a hardship extension period for a benefit group whose case is closed.

(2) The waived individual shall be

required to comply with any contingency for eligibility determined by the Incapacity Review Unit under hardship, including but not limited to, counseling; substance abuse treatment; speech or physical therapy, continuing or follow up medical treatment; keeping doctor's appointments; family counseling; or engaging in programs or activities to address the hardship type.

D. Other Benefit Group Members: Any other individual included in the NMW benefit group who is determined to be a mandatory work participant must comply with work program requirements set forth at 8.102.460 NMAC.

E. Case Management:

(1) The individual and the work program contractor shall develop a case management plan that includes specific provisions for assessing barriers and determining actions or behaviors that will enhance the ability of the benefit group to become economically independent.

(2) Case management includes, but is not limited to:

(a) making referrals to appropriate agencies and providing any follow up necessary to obtain the assistance needed by the benefit group;

(b) completing an in-depth assessment and identifying individual and family barriers, such as but not limited to, learning disabilities, cognitive disabilities, substance abuse, criminal history, transportation issues, child care, school attendance for dependent children, limited English proficiency; or limited work ability;

(c) making appropriate referrals and seeking the assistance needed to address the barriers;

(d) identifying support services needs; or

(e) placement in appropriate and realistic work activities and follow up on work activity progress.

[8.102.410.18 NMAC - N, 01/01/2003]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Sections 11, 12, and 13, which will be effective on January 1, 2003. The Medical Assistance Division amended subsections in each section by changing the deduction amounts.

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA): The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was

calculated prior to submission of a formal Medicaid application. If institutionalization began:

(A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

(B) On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

(C) On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

(D) On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

(E) On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

(F) On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

(G) On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

(H) On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

(I) On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

(J) On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

(K) On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

(L) On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

(M) On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

(N) On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

(O) On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<u>DEDUCTION</u>	<u>AMOUNT</u>
A. Personal Needs Allowance for Institutionalized Spouse	\$49.00
B. Basic Community Spouse Monthly Income Allowance Standard (CSMIA)	\$1,493.00
(CSMIA standard minus income of community spouse = deduction)	
C. * Excess Shelter Allowance for Allowable Expenses for Community Spouse	[\$739.00] \$774.00
D. ** Extra Maintenance Allowance	
E. Dependent Family Member	1/3 X (CSMIA - dependent member's income)
F. Non-Covered Medical Expenses	
G. * The allowable shelter expenses of the community spouse must exceed \$448 per month for any deduction to apply.	
H. ** To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.	
I. MAXIMUM TOTAL:	The maximum total of the Community Spouse Monthly Income Allowance and excess shelter deduction is [\$2,232] \$2,267.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

<u>DATE</u>	<u>AVERAGE COST PER MONTH</u>
A. July 1, 1988 - Dec. 31, 1989	\$ 1,726 per month
B. Jan. 1, 1990 - Dec. 31, 1991	\$ 2,004 per month
C. Jan. 1, 1992 - Dec. 31, 1992	\$ 2,217 per month
D. Effective July 1, 1993, for application register on or after Jan. 1, 1993	\$ 2,377 per month
E. Jan. 1, 1994 - Dec. 31, 1994	\$ 2,513 per month
F. Jan. 1, 1995 - Dec. 31, 1995	\$ 2,592 per month
G. Jan. 1, 1996 - Dec. 31, 1996	\$ 2,738 per month
H. Jan. 1, 1997 - Dec. 31, 1997	\$ 2,889 per month
I. Jan. 1, 1998 - Dec 31, 1998	\$ 3,119 per month
J. Jan. 1, 1999 - Dec. 31, 1999	\$ 3,429 per month
K. Jan. 1, 2000 – Dec. 31, 2000	\$ 3,494 per month
L. Jan. 1, 2001 – Dec. 31, 2001	\$ 3,550 per month
M. Jan. 1, 2002 – Dec. 31, 2002	\$ 3,643 per month
<u>N. Jan. 1, 2003 -</u>	<u>\$4,188 per month</u>

Any fraction of a month remaining when this calculation is completed is dropped.

[1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 12, 13, 15, 16, and 20, which will be effective on January 1, 2003. The Medical Assistance Division amended subsections in each section by changing the deduction amounts.

8.200.520.12 COLA DISREGARD COMPUTATION

<u>Current Amt/Cost of Living</u>	<u>Benefit Period</u>
<u>Current Title II Amount</u> =	Benefit Before [4/02] 1/03
1.026 1.014	
<u>Benefit Before 1/03</u> =	<u>Benefit Before 1/02</u>
1.026	
<u>Benefit Before 1/02</u> =	Benefit Before 1/01
1.035	
<u>Benefit Before 1/01</u> =	Benefit Before 1/00
1.025	
<u>Benefit Before 1/00</u> =	Benefit Before 1/99
1.013	
<u>Benefit Before 1/99</u> =	Benefit Before 1/98
1.021	
<u>Benefit before 1/98</u> =	Benefit Before 1/97
1.029	
<u>Benefit before 1/97</u> =	Benefit Before 1/96
1.026	
<u>Benefit before 1/96</u> =	Benefit Before 1/95
1.028	
<u>Benefit before 1/95</u> =	Benefit Before 1/94
1.026	
<u>Benefit before 1/94</u> =	Benefit Before 1/93
1.030	
<u>Benefit before 1/93</u> =	Benefit Before 1/92
1.037	
<u>Benefit before 1/92</u> =	Benefit Before 1/91
1.054	
<u>Benefit before 1/91</u> =	Benefit Before 1/90
1.047	
<u>Benefit before 1/90</u> =	Benefit Before 1/89
1.040	
<u>Benefit before 1/89</u> =	Benefit Before 1/88
1.042	
<u>Benefit before 1/88</u> =	Benefit Before 1/87
1.013	
<u>Benefit before 1/87</u> =	Benefit Before 1/86
1.031	
<u>Benefit before 1/86</u> =	Benefit Before 1/85
1.035	
<u>Benefit before 1/85</u> =	Benefit Before 1/84
1.035	
<u>Benefit before 1/84</u> =	Benefit Before 7/82
1.074	
<u>Benefit before 7/82</u> =	Benefit Before 7/81
1.112	
<u>Benefit before 7/81</u> =	Benefit Before 7/80
1.143	
<u>Benefit before 7/80</u> =	Benefit Before 7/79
1.099	
<u>Benefit before 7/79</u> =	Benefit Before 7/78
1.065	
<u>Benefit Before 7/78</u> =	Benefit Before 7/77
1.059	

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.12 NMAC – Rn, 8 NMAC 4.MAD.520.6 & A, 1-1-01; A, 1-1-02; A, 1-1-03]

8.200.520.13 FEDERAL BENEFIT RATES

YEAR	Individual FBR	Inst. FBR	Indiv. VTR	Couple FBR	Inst. FBR	Couple VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	<u>\$552</u>	<u>\$30</u>	<u>\$184.00</u>	<u>\$829</u>	<u>\$60</u>	<u>\$276.33</u>

Ineligible Child Deeming Allocation: ~~[\$273.00]~~ \$277.00

Part B Premium is ~~[\$54.00]~~ \$58.70 per month.

VTR (Value of One Third Reduction) is used when an individual or couple lives in the household of another and receives food and shelter from the household or when the individual or couple is living in their own household but receiving support and maintenance from others.

Effective January 1, 1989, the SSI resource standard was increased to \$2,000 for an individual and \$3,000 for a couple. These amounts did not change in 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, ~~or~~ 2001, 2002 or 2003. [1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.13 NMAC - Rn, 8 NMAC 4.MAD.520.7 & A, 1-1-01; A, 1-01-02; A, 1-1-03]

8.200.520.15 SSI LIVING ARRANGEMENTS

A. Individual Living in His/Her Own Household who Own or Rent

Payment Amount: ~~[\$545]~~ \$552 Individual

~~[\$817]~~ \$829 Couple

B. Individual Receiving Support and Maintenance Payments:

For an individual or couple living his/her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: ~~[\$545 - \$181.66 = \$363.44]~~ \$552 - \$184 = \$368.00
 Individual ~~[\$817 - \$272.33 = \$544.67]~~ \$829 - \$276.33 = \$552.67 Couple

C. Individual or Couple Living Household of Another: For an individual or couple living in another person's household and not contributing his/her pro-rata share of household expenses, subtract the VTR.

Payment amount: ~~[\$545 - \$181.66 = \$363.44]~~ \$552 - \$184 = \$368.00
 Individual ~~[\$817 - \$272.33 = \$544.67]~~ \$829 - \$276.33 = \$552.67 Couple

D. Child Living in Home with His/Her Parent(s)

Payment amount: ~~[\$545]~~ \$552

E. Individual in Institution

Payment amount: \$30.00
 [1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98,

1-1-99; 8.200.520.15 NMAC - Rn, 8 NMAC 4.MAD.520.9 & A, 1-1-01; A, 1-1-02; A, 1-1-03]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER CATEGORIES:

Effective January 1, ~~[2002]~~ 2003, the maximum countable monthly income standard for Institutional Care Medicaid and the Home and Community Based Waiver Categories is ~~[\$1,615]~~ \$1,636.

[4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 4-1-99; 8.200.520.16 NMAC - Rn, 8 NMAC 4.MAD.520.10 & A, 1-1-01; A, 1-1-02; A, 1-1-03]

8.200.520.20 COVERED QUARTER INCOME STANDARD:

DATE CALENDAR QUARTER AMOUNT

Jan. 2003 - Dec. 2003 \$890 per calendar quarter

Jan. 2002 - Dec. 2002 \$870 per calendar quarter

[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02; A, 1-1-03]

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

This is an amendment to 8.350.4 NMAC, Section 9, which will be effective on January 1, 2003. This rule was renumbered from 8 NMAC 4.MAD.955 to 8.350.4 NMAC to conform to NMAC requirements. The Medical Assistance Division amended section 9 by adding language to enable the MAD Deputy Director to make the final reconsideration decision for final settlements and the MAD Director will make the final fair hearing decision. Also other language was changed for clarity purposes.

8.350.4.9 RECONSIDERATION OF AUDIT SETTLEMENTS:

A. General Reconsideration Process: Medicaid providers who disagree with an audit settlement can submit a written request for a reconsideration to the New Mexico Medical Assistance Division (MAD) within thirty (30) calendar days of the date on the notice of final settlement. The written request may be submitted by facsimile or by U.S. mail but not by electronic mail. The written request must be received by MAD no later than the thirtieth day from the date of the notice. Filing of a request for reconsideration does not affect the imposition of the final settlement.

(1) **Information Included in the Request:** The written request for reconsideration must identify each point on which the provider takes an issue with the audit agent and include all documentation, citations of authority, and arguments on which the request is based. Any point or issue not raised in the original request for reconsideration may not be raised later and will not be considered in the final decision of the reconsideration.

(2) **Audit Agent Response:** The written request and supporting materials is forwarded to the audit agent for reconsideration. The audit agent must file a response with MAD within thirty (30) calendar days of the receipt of the request and supporting material from MAD.

(3) **Submission of Additional Material:** MAD forwards the audit agent's response to the provider. Additional material from the audit agent or the provider must be received by MAD within fifteen (15) calendar days of the date the response was forwarded to the provider. Any additional information, the request for reconsideration and supporting documentation, and the audit agent's response constitute the final submittal. The packet containing the final submittal is provided to the MAD Deputy

Director for final [decision] submittal by the responsible bureau for program reimbursement.

(4) **Decision by MAD**
[Director]: [The MAD Director or designee may secure] The Deputy Director may call on all information and call on all expertise he/she believes is necessary to decide the issue. The Deputy Director [or designee] makes a determination and submits a written copy of his/her findings to each party within [thirty (30) days of the delivery of final submittal. The MAD Director's decision is final and any changes to the final settlement are implemented pursuant to that decision.] forty-five (45) calendar days of the date of final submittal to the MAD Director. The decision may be sent to the parties by facsimile or U.S. mail. The provider may appeal an adverse decision on the request for reconsideration to the New Mexico Human Services Department's Hearings Bureau pursuant to the 8.353.10 NMAC. The MAD Director or designee shall make the decision on the recommendation from the hearing officer.

B. Specific Reconsideration Process for Nursing Facility, Intermediate Care Facility for the Mentally Retarded Providers: The reconsideration process for audit settlement varies for the aforementioned providers. See 8.312.3 NMAC, COST RELATED REIMBURSEMENT FOR NURSING FACILITIES, and 8.313.3 NMAC, COST RELATED REIMBURSEMENT OF ICF/MR FACILITIES for specific information.

[11/1/96; 8.350.4.9 - Rn, 8 NMAC 4.MAD.955 & A, 1/1/03]

NEW MEXICO DEPARTMENT OF LABOR
LABOR AND INDUSTRIAL
DIVISION

This is an amendment to 11.2.3 NMAC, Section 22. This rule was also renumbered and reformatted to comply with current NMAC requirements.

11.2.3.22 STANDARDS OF APPRENTICESHIP:

A. General policy: It is the objective of the council to encourage the development and continuance of apprenticeship programs adequate to produce qualified skilled workers. Labor and management will be encouraged to jointly develop adequate standards of apprenticeship, and it is the policy of the council to

render any assistance needed by these groups in the development of such standards. Apprenticeship program sponsors shall submit their standards to the council for registration. After registration, the sponsor shall provide the director of apprenticeship with such documentation as may be requested concerning the operation of the program.

B. Development of standards: In order to promote good apprenticeship policies and procedures the council requires that each apprenticeship program sponsor, who desires registration by the council, formulate, adopt, and submit to the council for review and registration a set of apprenticeship standards. The purpose of these standards is to provide rules for the operation of the apprenticeship program. An apprenticeship program, to be eligible for registration by the council shall conform to the following standards:

(1) The program is an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, as defined in this manual and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The program standards contain the equal opportunity pledge prescribed in the Council Plan for Equal Employment Opportunity in Apprenticeship, and when applicable, an affirmative action plan and selection procedure as required by this Plan, and provision concerning the following:

(a) The employment and training of the apprentice in a skilled trade;

(b) A term of apprenticeship, not less than 2,000 hours of work experience, consistent with training requirements as established by industry practice;

(c) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(d) Provisions which will ensure the apprentice of organized related and supplemental instruction in technical subjects related to the trade. A minimum of 144 hours of related instruction for each year is required. Such instruction may be given in a classroom through trade and industrial courses or by correspondence courses of equivalent value, or other forms of self-study approved by the council. Such instruction will not be the financial responsibility of the apprentice with the possible exception of the purchase of books;

(e) A progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired. The entry

wage shall not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable federal law, state law, respective regulations, or by collective bargaining agreement;

(f) Periodic review and evaluation of the apprentice's progress in job performance and related instruction; and the maintenance of appropriate progress records;

(g) The numeric ratio of apprentices to journeymen consistent with established industry practices, proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements except where such ratios are expressly prohibited by the collective bargaining agreements. The ratio language shall be specific and clear as to application in terms of job site, work force, department or plant. For all apprenticeship programs in the building and construction industry, the maximum allowable ratio of apprentices to journeymen shall not exceed 1:1 on a job or an employer's total workforce;

(h) A probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship;

(i) Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction, which will include at least 5 hours of special classroom training in accident prevention and job safety practices;

(j) The minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years;

(k) The placement of an apprentice under a written apprenticeship agreement. Such agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

(l) The granting of advanced standing or credit for previously acquired experience, training or skills for all applicants equally with commensurate wages for any progression step so granted;

(m) In multi-employer programs, transfer of the employer's training obligation, when the employer is unable to fulfill his obligation, under the apprenticeship agreement, to another employer under the same program with consent of the apprentice and apprenticeship committee or program sponsor;

(n) Assurance of qualified training personnel and adequate supervision on the job;

(o) Recognition for successful completion of apprenticeship evidenced by

an appropriate certificate;

(p) Identification of the council as the registration agency;

(q) Provision for the registration, cancellation and deregistration of the program; and requirement for the prompt submission of any modification or amendment thereto;

(r) Provision for registration of apprenticeship agreements, modifications, and amendments. Notice to the registration office of persons who have successfully completed apprenticeship programs, and notice of cancellations, suspensions and terminations of apprenticeship agreements and causes therefore;

(s) Authority for the termination of an apprenticeship agreement during the probationary period by either party without stated cause;

(t) A statement that the program will be conducted, operated, and administered in conformity with applicable provisions of the Council Plan for Equal Employment Opportunity in Apprenticeship;

(u) Name and address of the appropriate authority under the program to receive, process, and make disposition of complaints;

(v) Recording and maintenance of all records concerning apprenticeship as may be required by the council and other applicable law;

(w) All standards registered with the council shall contain a provision which states that the director of apprenticeship or his designee selected from BAT or SAC staff shall be an ex-officio member, without vote, of any committee which functions to administer the apprenticeship program;

(x) All standards which are presented to the council for registration shall contain a provision which clearly states that the director of apprenticeship or his designated representative shall have the right to visit all job sites where apprentices may be employed, and apprentice related instruction classes, in order to determine compliance with apprenticeship standards;

(y) All standards which are approved by the council shall be registered for a specific period only, such period not to exceed two years.

(i) When such period of registration expires, the period of registration shall be automatically renewed for another two years if no evidence has been presented to the council which alleges that the sponsor has not conducted the program according to the standards, of that the program is not in compliance with rules and regulations contained in the Council Policy Manual.

(ii) If evidence has been

presented to the council which alleges that the sponsor had not operated the program in accordance with the standards or that the program is not in compliance with the Council Policy Manual, the council may extend the registration period in order to investigate the allegation or to allow the sponsor sufficient time to correct any deficiencies, or the council may instruct the director to inform the sponsor that the program registration will not be renewed unless the sponsor is able to show cause why the registration should be continued in a hearing before the council. Notice of opportunity for a hearing shall be sent to the sponsor by registered or certified mail, return receipt requested. This notice shall include the deficiencies which exist, or are alleged to exist, in the program and shall state that registration will not be renewed unless, within 15 days of receipt of the notice the sponsor requests a hearing by registered or certified mail, return receipt requested. If the sponsor does not request a hearing within the allotted time, the director shall discontinue the registration of the program. If the sponsor requests a hearing, the director shall submit to the council chairman all the documentation which supports the allegation/s/ of non-compliance. The council chairman may convene a special council meeting in order to allow the sponsor a hearing or such hearing may be held during the next council meeting. The director shall send a notice to the sponsor by registered or certified mail, return receipt requested, informing him of the time and place of the council meeting during which the hearing will be held. Such notice shall also include a statement of the provision of this Manual pursuant to which the hearing will be held. The sponsor shall also be informed that the council chairman shall regulate the course of the hearing and that the hearing will be informally conducted. Every party shall have the right to counsel, and a fair opportunity to present his/her case including such cross-examination as may be appropriate in the circumstances. The council shall make a decision, based upon the evidence presented during the hearing, if registration is to be renewed or such renewal is to be denied. All benefits of registration shall be extended to the sponsor after the expiration of registration of his program until a final decision is made by the council to deny registration of the program, except that no new apprentices will be registered during this period.

(iii) During the specified period of registration, the council may deregister any program in accordance with Paragraph (1) of Subsection D of 11.2.3.27 NMAC, or Paragraph (2) of Subsection D of 11.2.3.27 NMAC, of this Policy Manual.

(z) A requirement that, should

either federal or state regulations or any other applicable regulation allow the employment of "Helpers" on construction projects for which wages have been predetermined, no employer who participates in the apprenticeship program covered by standards shall employ any "Helper" on any construction project unless the full maximum allowable ratio of apprentices are employed and physically present on such project. This requirement shall apply to all construction projects, whether or not wages have been

predetermined for the project.

[6-7-77, 2-21-78, 8-26-84; 11.2.3.22 NMAC - Rn & A, 11 NMAC 2.3.22, 12-30-02]

NEW MEXICO PUBLIC REGULATION COMMISSION

The Public Regulation Commission will repeal the following Transportation rules effective December 30, 2002: SCC 70-8, Revoking Rule XV of the Regulations Regulating Aircraft Common Carriers and Adopting Replacement of Equipment List, filed 11/19/70; SCC 72-6, Order No. 2229, Docket No. 346, filed 10/02/72; SCC 72-16, The Law Regulating Aircraft Common Carriers Within the State of N.M. Together with Rules and Regulations, filed 10/18/72; SCC Rule 79-1, Rules Governing Tariff Filing Requirements, filed 3/6/79; SCC 85-1, In the Matter of the Adoption of Regulations Regarding the Transportation of Hazardous Materials, filed 1/17/85; SCC 95-04-TR, Parental Responsibility Act Rule, filed 10/18/95; SCC Rule 201, Prefatory Rules, 1/5/93; SCC Rule 202, Definitions, filed 10/27/93; SCC Rule 203, Commission Forms, 10/27/93; SCC Rule 204, Fees, filed 10/27/93; SCC Rule 205, Commission Records, filed 1/5/93; SCC Rule 206, Commission Procedures, filed 1/5/93; SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed 12/28/94; SCC Rule 211, General Operating Authority Provisions, filed 1/5/93; SCC Rule 212, Certificates of Public Convenience and Necessity for Common Motor Carriers, filed 1/5/93; SCC Rule 213, Permits for Contract Motor Carriers, filed 1/5/93; SCC Rule 214, Warrants for Limited Operating Authority, filed 10/27/93; SCC Rule 215, Registration of Interstate Carriers, filed 10/27/93; SCC Rule 216, Licenses for Transportation Brokers, filed 1/5/93; SCC Rule 217, Emergency and Temporary Authority, filed 1/5/93; SCC Rule 218, Changes in Operating Authority, filed 10/27/93; SCC Rule 221, Tariffs, Rates and Schedules, filed 10/27/93; SCC

Rule 222, Motor Carrier Agreements, filed 10/27/93; SCC Rule 223, Leasing and Interchange of Equipment, filed 10/27/93; SCC Rule 224, Single Unit Leasing, filed 1/5/93; SCC Rule 231, General Compliance Requirements, filed 10/27/93; SCC Rule 232, Insurance Requirements, filed 1/5/93; SCC Rule 233, Bond Requirements, filed 1/5/93; SCC Rule 241, Records of Motor Transportation Entities, filed 1/5/93; SCC Rule 242, Accounts, filed 1/5/93; SCC Rule 243, Annual Reports, filed 1/5/93; SCC Rule 244, Other Reports, filed 1/5/93; SCC Rule 251, Motor Carriers of Persons - General Provisions, filed 1/5/93; SCC Rule 261, Motor Carriers of Property - General Provisions, filed 1/5/93; SCC Rule 262, Bills of Lading and Route Manifests, filed 1/5/93; SCC Rule 263, Freight Bills, filed 1/5/93; SCC Rule 264, Collection of Freight Charges; C.O.D. Shipments, filed 1/5/93; SCC Rule 265, Parcel Carriers, filed 1/5/93; SCC Rule 266, Claims for Loss or Damage to Cargo, filed 1/5/93; SCC Rule 267, Wrecker Services, filed 1/5/93; SCC Rule 268, Household Goods Carriers, filed 1/5/93; SCC Rule 271, Enforcement - General Provisions, filed 1/5/93; SCC Rule 272, Inspections, filed 1/5/93; SCC Rule 273, Administrative Enforcement Proceedings, filed 1/5/93; SCC Rule 274, Enforcement of Commission Orders, filed 1/5/93; SCC Rule 275, Criminal Penalties, filed 1/5/93; and SCC Rule 276, Civil Liability, filed 1/5/93.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 1 TRANSPORTATION GENERAL PROVISIONS

PART 2 TRANSPORTATION DIVISION PROCEDURES

18.1.2.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[18.1.2.1 NMAC - N, 12-30-02]

18.1.2.2 SCOPE: This rule applies to all persons operating as motor carriers or commuter vanpools in New Mexico who are subject to the jurisdiction of the Commission.
[18.1.2.2 NMAC - N, 12-30-02]

18.1.2.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4 and 65-2-83.
[18.1.2.3 NMAC - N, 12-30-02]

18.1.2.4 DURATION: Permanent.
[18.1.2.4 NMAC - N, 12-30-02]

18.1.2.5 EFFECTIVE DATE: December 30, 2002, unless a later date is cited at the end of a section.
[18.1.2.5 NMAC - N, 12-30-02]

18.1.2.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Sections 65-2-92, 65-2-96, and 65-2-109.
[18.1.2.6 NMAC - N, 12-30-02]

18.1.2.7 DEFINITIONS: [Reserved]
[18.1.2.7 NMAC - N, 12-30-02]

18.1.2.8 COMPLAINTS GENERALLY: The Commission shall not accept a complaint from a customer of a motor carrier until the customer has made a good faith effort to resolve the complaint directly with the motor carrier, except when the complaint is safety related.
[18.1.2.8 NMAC - Rp, SCC Rule 273.05, 12-30-02]

18.1.2.9 INFORMAL COMPLAINTS:

A. Initiation. Any person may initiate an informal complaint by letter, facsimile transmission, electronic mail, or other writing filed with the Commission. Such complaints will not toll the running of any limitation period.

B. Contents. A written informal complaint shall set forth the name and address of the complainant, the name and address of the person against whom the complaint is made, the nature of the complaint in a clear and concise manner, a brief statement of the facts forming the basis of the complaint, the relief requested, and whether the complainant has attempted to resolve the complaint with the motor carrier. An informal complaint need not be in affidavit form. If the informal complaint does not initially contain the information described in this paragraph, a member of the Transportation Division staff will contact the complainant to attempt to obtain the missing data.

C. Without prejudice. The presentation of an informal complaint shall be without prejudice to the right to file a formal complaint.

D. Commission investigation of complaint. Upon receipt of an informal complaint, the Commission shall, when appropriate, inform the motor carrier as soon as practicable that a complaint has been filed against it. The Transportation

Division shall review and investigate the complaint and shall advise the complainant and the motor carrier of the results of the investigation within sixty (60) days. The Commission may extend the time for the investigation for good cause. If the complaint is safety related, and the motor vehicle weighs 10,001 pounds or more, staff shall also refer the complaint to MTD.

F. Choice of procedure.

If the Transportation Division is unable to resolve an informal complaint to the satisfaction of the parties, either party may, within ten (10) days after receipt of the results of the investigation:

- (1) request mediation; or
- (2) file a formal complaint.

[18.1.2.9 NMAC - N, 12-30-02]

18.1.2.10 FORMAL COMPLAINTS:

A. Form of complaint.

Formal complaints shall be in writing, and shall allege a violation of the Motor Carrier Act, a Commission rule or order, or a tariff or operating authority. A complainant who is not an individual shall be represented by an attorney. A formal complaint shall be filed as provided in 18.3.1.11 NMAC and shall be assigned a docket number. A formal complaint must contain:

- (1) a clear and concise statement of the relief sought;
- (2) a concise and explicit statement of the facts which the complainant is prepared to prove by competent evidence and upon which the Commission is expected to rely in granting the relief sought;
- (3) citations to any laws, rules, orders, tariffs, or operating authorities alleged to have been violated;
- (4) the exact legal and "doing business as" name, mailing address and telephone number of the complainant and his attorney if any; and
- (5) the exact legal name, mailing address and telephone number of the respondent, if known.

B. Notice of complaint.

The Commission shall immediately notify the respondent motor carrier that a formal complaint has been filed against it. When required by law, the notice shall also state that administrative fines or other sanctions may be imposed.

C. Docketing of Complaint.

(1) Upon receipt of a formal complaint that is in substantial compliance with this rule, the Commission shall cause a copy of the complaint to be served on the respondent accompanied by a notice from the Commission calling upon the respondent to satisfy the complaint or to answer it in writing within twenty (20) days of service of the

complaint. The notice shall also state that the Commission may impose administrative fines or other sanctions. The Commission shall further serve the respondent with notice of any amendments to the complaint. The Commission may appoint a hearing examiner for further proceedings.

D. Notice of hearing. If a hearing is scheduled, at least twenty (20) days prior to the hearing, the Commission or hearing examiner shall mail a notice of hearing to the respondent and the complainant. If the Commission determines that the subject matter of the complaint involves a matter of general public interest, the Commission or hearing examiner may require that the respondent, at his own expense, give notice of the hearing:

- (1) by publication at least twenty (20) days prior to the hearing in a newspaper of general circulation available in the county where the complaint originated, or
- (2) in such other manner as the Commission or hearing examiner may deem proper under the circumstances.

E. Satisfaction of complaint. If the respondent desires to satisfy the complaint, he shall submit to the Commission in the answer a statement of the relief that he is willing to give, and shall contemporaneously serve a copy of the answer upon the complainant. The Commission may dismiss the complaint upon acceptance of the offer by the complainant and notice to the Commission. If there is a partial settlement of the case with dismissal in part, the complainant may proceed with the remaining issues.

F. Time for filing answers to complaints.

(1) The respondent shall answer the complaint within twenty (20) days of the date of service of the complaint by the Commission. For good cause shown, the Commission or hearing examiner may require the filing of an answer within a different time period.

(2) If an amendment to a complaint is filed before the answer is filed, the respondent shall have either ten (10) days from the date of service of the amendment, or the period set forth in the Commission notice, whichever period is longer, to answer. The respondent need not answer amendments to a complaint made subsequent to the filing of an answer unless required by the Commission or hearing examiner.

G. Contents of answers.

The answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the averments upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a

belief as to the truth of an averment, the answer shall so state and this shall have the effect of a denial.

[18.1.2.10 NMAC - N, 12-30-02]

18.1.2.11 SETTLEMENT CONFERENCES:

A. Purpose.

(1) The purposes of a settlement conference are to resolve complaints, expedite the hearing process, and assist parties and the Director in reaching a settlement at the earliest possible stage.

(2) Nothing in this rule shall be construed to limit or discourage voluntary settlement negotiations among the Director and the parties to any proceeding. When deemed appropriate, the Commission or hearing examiner may order a settlement conference.

(3) Nothing in this rule shall be construed to limit additional settlement conferences. The Commission or hearing examiner may suspend the procedural schedule in the case until the settlement conference is complete.

B. Result of settlement conference. If the parties and staff have agreed upon a settlement, they shall file a stipulation with the Commission.

[18.1.2.11 NMAC - N, 12-30-02]

18.1.2.12 MEDIATION:

A. The Commission may, in its discretion, designate a mediator at any time upon request of any party or staff or on its own motion.

B. The mediator may be a permanent or temporary employee of the Commission or another state agency or any other individual who is acceptable to the parties and staff. If the parties request a mediator who is not an employee of the Commission, the Commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services. The mediator shall not be the hearing examiner who is assigned to the case. The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the Commission and all parties agree that the mediator may serve. The mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

(1) The Commission may assign a mediator at the same time it assigns the case to a hearing examiner.

(2) The mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at Commission offices unless otherwise directed by the mediator. The notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint. In addition the mediator may require counsel to have their clients present at the settlement conference or accessible by telephone. The mediator shall not discuss the mediation conference with any Commissioner or hearing examiner hearing the case.

C. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect the settlement. If the parties are unable to reach a complete settlement of their dispute, and no formal complaint has been filed, the mediator shall advise the parties that they may file a formal complaint with the Commission.

D. If the parties and staff are unable to reach an agreement through mediation, the mediator shall issue a statement that the settlement conference was held and the case shall proceed.

E. Offers of settlement and statements made in furtherance of them made in the course of a settlement conference are privileged and, except by agreement among all parties and staff, shall not be admissible as evidence in any formal hearing before the Commission nor disclosed by the mediator voluntarily or through compulsory process.
[18.1.2.12 NMAC - N, 12-30-02]

HISTORY OF 18.1.2 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:
SCC Rule 273, Administrative Enforcement Proceedings, filed on 1-5-93.

History of repealed material.

SCC Rule 273, Administrative Enforcement Proceedings, filed on 1-5-93.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 3 MOTOR CARRIER
GENERAL PROVISIONS**

PART 1 GENERAL PROVISIONS

18.3.1.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[18.3.1.1 NMAC - N, 12-30-02]

18.3.1.2 SCOPE: This rule applies to all motor carriers subject to the jurisdiction of the Commission.
[18.3.1.2 NMAC - Rp, SCC Rules 201.06 and 201.08, 12-30-02]

18.3.1.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4 and 65-2-83.
[18.3.1.3 NMAC - Rp, SCC Rule 201.05, 12-30-02]

18.3.1.4 DURATION: Permanent.
[18.3.1.4 NMAC - N, 12-30-02]

18.3.1.5 EFFECTIVE DATE: December 30, 2002, unless a later date is cited at the end of a section.
[18.3.1.5 NMAC - Rp, SCC Rule 201.03, 12-30-02]

18.3.1.6 OBJECTIVE: The purpose of this rule is to set forth general provisions governing motor transportation in New Mexico.
[18.3.1.6 NMAC - Rp, SCC Rule 201.02, 12-30-02]

18.3.1.7 DEFINITIONS: In addition to the definitions in NMSA 1978 Section 65-2-82, as used in these rules:

A. amendment (of a certificate or permit) means a change in the routes, territory, or services authorized by an existing certificate of public convenience and necessity or permit.

B. bingo bus service means the scheduled or unscheduled compensated transportation of passengers in motor vehicles over regular or irregular routes to and from legal gambling establishments at rates that apply to each individual passenger.

C. cadaver means a dead human body.

D. cancellation means the voluntary, permanent termination of all or part of an operating authority.

E. change in name means a change in the legal name of the owner of an operating authority or in the d/b/a name of the transportation business, but does not include a change in ownership.

F. charter service means the compensated transportation of a group of persons in a motor vehicle who, pursuant

to a common purpose, under a single contract, at a fixed charge for the motor vehicle and driver, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

G. common control means control of more than one operating authority of the same kind for the same or overlapping territory.

H. control (of an operating authority) means the power to direct or cause the direction of the management and policies of a motor carrier deriving from:

(1) ownership of a sole proprietorship, if the operating authority is held by a person or sole proprietorship;

(2) ownership of ten percent or more of the voting stock of the corporation, if the operating authority is held by a corporation;

(3) a partnership interest in a general partnership, if the operating authority is held by a general partnership;

(4) an interest in a limited partnership of ten percent or more of the total value of contributions made to the limited partnership, or entitlement to ten percent or more of the profits earned or other compensation paid by the limited partnership, if the operating authority is held by a limited partnership;

(5) a membership interest of ten percent or more in a limited liability company, if the operating authority is held by a limited liability company; or

(6) capacity as a trustee, personal representative or other person with a fiduciary duty to a motor carrier.

I. Director means the Director of the Transportation Division of the New Mexico Public Regulation Commission or his designee.

J. endorsement means the document evidencing the amendment of a certificate of public convenience and necessity or permit.

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

L. FMCSA means the Federal Motor Carrier Safety Administration or any predecessor or successor agency.

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

N. household goods carrier (HGC) means a person who transports household goods.

O. inspection means the examination by the Commission, the Motor

Transportation Division, or other lawful entity of a motor carrier's operations, including the facilities and equipment used in connection with its operations, and all pertinent records.

P. involuntary suspension means the temporary cessation of use of all or part of an operating authority ordered by the Commission for cause for a stated period of time or pending compliance with certain conditions.

Q. lease of a certificate or permit means an agreement by which the owner of a certificate of public convenience and necessity or permit grants to another the exclusive right to use all or part of the certificate of public convenience and necessity or permit for a specified period of time in exchange for consideration.

R. limousine service means the unscheduled compensated transportation over irregular routes of passengers in a chauffeur-driven luxury motor vehicle at the exclusive direction of one individual or group at a fixed charge for the motor vehicle and driver for a period of time that is not less than thirty (30) minutes.

S. motor carrier of persons means a person who provides compensated transportation of persons on any highway in New Mexico.

T. MTD means the Motor Transportation Division of the New Mexico Department of Public Safety.

U. non-emergency medical transport service means the unscheduled medically necessary transportation of passengers in a motor vehicle over irregular routes, to or from medical facilities only, at rates that apply to each individual passenger.

V. on duty time has the meaning given in 49 CFR Part 395.

W. operating authority means a certificate of public convenience and necessity, permit, warrant, certificate of registration, single trip permit, license, or single-state registration issued by the Commission.

X. principal place of business means the mailing address of the motor carrier and the street address and other physical locations of a motor carrier's business office and stationing points.

Y. property means movable articles of value, cadavers, hazardous matter, farm products transported from the place of harvesting to market, to storage, or to a processing plant, livestock hauled in lots of less than twenty-five thousand pounds, and the items transported by a towing service, but does not include household goods.

Z. public liability insurance means automobile bodily injury and

property damage liability insurance.

AA. rate means every form of compensation charged or collected, whether directly or indirectly, by any person for any transportation service that is subject to the jurisdiction of the Commission.

BB. records means all accounts, correspondence, tapes, discs, papers, books, documents, and memoranda, and transcribed information regarding the operations of a motor carrier, in whatever form created and maintained.

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

DD. revocation means the involuntary permanent termination of all or part of an operating authority ordered by the Commission for cause.

EE. shared ride service means the unscheduled compensated transportation of passengers to or from transportation hub facilities over irregular routes in motor vehicles with a seating capacity of seven (7) or more persons at rates for each individual passenger that are generated from a grid-based zone rate structure.

FF. shuttle service means the scheduled compensated transportation of passengers in motor vehicles over regular routes at rates that apply to each individual passenger.

GG. tariff means a document filed by a motor carrier of persons, household goods carrier or towing service performing nonconsensual tows, and approved by the Commission, that sets forth the transportation services offered by the motor carrier to the general public, and all rates, terms and conditions, and schedules if applicable, relating to those services.

HH. taxi service means the unscheduled compensated transportation of passengers over irregular routes in motor vehicles with a seating capacity of 6 or fewer persons at rates based upon one charge for the first person who has exclusive direction of the motor vehicle and an additional lower charge for each additional person.

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

JJ. tour and sightseeing service means the scheduled or unscheduled guided compensated transportation of passengers over regular or irregular routes in motor vehicles to scenic points or other points of interest at rates that apply to each individual passenger.

KK. towing service has the meaning given to "towing company" in NMSA 1978 Section 65-2-82 and, as used in 18.3.13 NMAC, Towing Services,

includes repossession services using towing equipment.

LL. vehicle escort service means the compensated use of a motor vehicle to accompany another motor vehicle that is transporting a load that exceeds the maximum size or weight limits allowed by law.

MM. voluntary suspension means the Commission-authorized temporary withdrawal from or cessation of use of all or part of a certificate of public convenience and necessity or permit at the request of the motor carrier, for a specified period of time not to exceed one hundred eighty (180) days.

NN. warrant means the operating authority issued by the Commission or its designee to charter, towing, repossession, and vehicle escort services, and motor carriers of property.

[18.3.1.7 NMAC - Rp, SCC Rules 202.03 & 207.03, 12-30-02]

18.3.1.8 COMPLIANCE WITH THE LAW:

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

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

[18.3.1.8 NMAC - Rp, SCC Rule 231.01, 12-30-02]

18.3.1.9 COMPLIANCE WITH TERMS OF OPERATING AUTHORITY AND TARIFFS:

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

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

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

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

[18.3.1.9 NMAC - Rp, SCC Rule 231.02, 12-30-02]

18.3.1.10 WAIVER OF OR

VARIANCE FROM RULE REQUIREMENTS:

A. The Commission may, in its discretion, waive or vary any requirement of these rules whenever the Commission finds that such waiver or variance would be in the public interest.

B. A motor carrier that cannot meet one or more of the requirements of these rules may petition the Commission for a waiver or variance. The petition shall be in writing and shall include:

(1) a list of those requirements which the motor carrier wishes to have waived or varied;

(2) an explanation and description of the specific conditions which prevent the requirement from being met; and,

(3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.

C. The Commission may order a hearing on the merits of the petition.

D. A motor carrier shall be required to comply with requirements it has petitioned to have waived or varied until the Commission has issued an order on the merits of the petition, unless the Commission or its designee grants an interim waiver of or variance from one of more of the requirements that are the subject of the petition.

E. No waiver or variance of any requirement of these rules granted by the Commission is transferable.

[18.3.1.10 NMAC - Rp, SCC Rules 201.09 and 206.06, 12-30-02]

18.3.1.11 FILING OF DOCUMENTS: In addition to the requirements stated here, particular rules may include other filing requirements.

A. Address for correct filing of documents.

(1) Documents filed by mail must be sent to the New Mexico Public Regulation Commission, Docket Filing Unit, Transportation Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person must be delivered to the Docket Filing Unit of the New Mexico Public Regulation Commission, P.E.R.A. Building, Room 406, Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

B. Filing by facsimile or electronic mail. Persons may call the New Mexico Public Regulation Commission Docket Filing Unit to obtain the facsimile number or electronic mail address for filing documents. Persons filing documents by facsimile or electronic mail must also mail or deliver the original document to the Commission. The document will be

deemed filed on the date of receipt of the facsimile, the electronic mail, or the original, whichever occurs first. The Commission will accept facsimile and electronic mail filings of:

(1) appointments of a substitute agent for service of process;

(2) change of address reports;

(3) reports of fatal accidents;

(4) complaints; and

(5) other documents the Commission or its designee in its discretion permits.

[18.3.1.11 NMAC - Rp, SCC Rule 206.01, 12-30-02]

18.3.1.12 INCOMPLETE FILINGS:

A. A filing will be considered incomplete if:

(1) it is unsigned;

(2) it is unverified and verification is required;

(3) it omits any information required by law or Commission rule or order;

(4) it is not submitted on a Director-prescribed form and a form exists for that purpose;

(5) the required fee is not submitted with the filing;

(6) the Commission determines the filing is otherwise insufficient.

B. The Director shall return an incomplete filing with a statement indicating the nature of the insufficiency.

[18.3.1.12 NMAC - Rp, SCC Rule 206.02, 12-30-02]

18.3.1.13 DIRECTOR-PRESCRIBED FORMS:

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

B. How to obtain. Copies of Director-prescribed forms may be obtained from the Director:

(1) by writing to the New Mexico Public Regulation Commission, Transportation Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269;

(2) by calling the New Mexico Public Regulation Commission, Transportation Division at 1-800-947-4722;

(3) on the Commission's website at www.nmprc.state.nm.us.

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

[18.3.1.13 NMAC - Rp, SCC Rule 203.01, 12-30-02]

18.3.1.14 INSPECTION:

A. General authority. NMSA 1978 Section 65-2-101 authorizes the Commission to inspect a motor carrier's operations.

B. Inspection of cargo under seal. NMSA 1978 Section 65-1-7 authorizes MTD enforcement employees to inspect cargo.

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

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

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

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

[18.3.1.14 NMAC - Rp, SCC Rules 272.01 and 272.03, 12-30-02]

18.3.1.15 INVESTIGATIONS:

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

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

[18.3.1.15 NMAC - Rp, SCC Rules 271.03 and 273.06, 12-30-02]

18.3.1.16 TRANSPORTATION OF HAZARDOUS MATTER:

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

[18.3.1.16 NMAC - Rp, SCC Rules 261.03 and 261.04, 12-30-02]

18.3.1.17 DECEPTIVE ADVERTISING PROHIBITED:

A. No motor carrier of persons or household goods, or towing service performing nonconsensual tows, shall make in any manner, orally or in writing, via any medium of advertisement or communication, a statement concerning any aspect of,

or payment for, intrastate compensated transportation performed by the motor carrier that is false or misleading in part or in whole. A statement shall be deemed false or misleading if it omits any qualification imposed by these rules.

B. A motor carrier of persons or household goods, or towing service performing nonconsensual tows, shall be answerable for violations of this section by unauthorized persons or firms within the control of the motor carrier of persons or household goods, or towing service performing nonconsensual tows.

C. A motor carrier of persons or household goods, or towing service performing nonconsensual tows, shall advertise and solicit in the legal or "doing business as" name shown on its operating authority, but may advertise the name of an officially registered agent so long as the name of the motor carrier of persons or household goods, or towing service performing nonconsensual tows, is prominently displayed along with the agent's name. [18.3.1.17 NMAC - Rp, SCC Rule 231.13, 12-30-02]

18.3.1.18 RULES OF PROCEDURE: In all matters before the Commission involving motor carriers, the Commission shall follow 18.1.2 NMAC, Transportation Division Procedures, and the Rules of Procedure of the New Mexico Public Regulation Commission. A specific provision in these rules shall control over a conflicting general provision in 18.1.2 NMAC, Transportation Division Procedures, or the Rules of Procedure. [18.3.1.18 NMAC - Rp, SCC Rule 206.04, 12-30-02]

HISTORY OF 18.3.1 NMAC

Pre-NMAC history: The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976,

filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;

SCCMC Rule No. 1, Rules of Procedure Governing Motor Carriers, filed on 3-5-82; SCCMC Rule No. 28, Complaints, filed on 3-5-82;

SCCMC Rule No. 29, Inspector Authority, filed on 3-5-82;

SCC Rule 201, Prefatory Rules, filed on 1-5-93;

SCC Rule 202, Definitions, filed on 1-5-93; SCC Rule 203, Commission Forms, filed on 1-5-93;

SCC Rule 206, Commission Procedures, filed on 1-5-93;

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on SCC Rule 231, General Compliance Requirements;

SCC Rule 261, Motor Carriers of Property-General Provisions, filed on 1-5-93;

SCC Rule 271, Enforcement-General Provisions, filed on 1-5-93;

SCC Rule 272, Inspections;

SCC Rule 273, Administrative Enforcement Proceedings, filed on 1-5-93.

History of repealed material.

SCC Rule 201, Prefatory Rules, filed on 1-5-93;

SCC Rule 202, Definitions, filed on 1-5-93; SCC Rule 203, Commission Forms, filed on 1-5-93;

SCC Rule 206, Commission Procedures, filed on 1-5-93;

SCC Rule 231, General Compliance Requirements;

SCC Rule 261, Motor Carriers of Property-General Provisions, filed on 1-5-93;

SCC Rule 271, Enforcement-General Provisions, filed on 1-5-93;

SCC Rule 272, Inspections;

SCC Rule 273, Administrative Enforcement Proceedings, filed on 1-5-93.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS

PART 2 OPERATING AUTHORITIES

18.3.2.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[18.3.2.1 NMAC - N, 12-30-02]

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

[18.3.2.2 NMAC - N, 12-30-02]

18.3.2.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4 and 65-2-83.

[18.3.2.3 NMAC - N, 12-30-02]

18.3.2.4 DURATION: Permanent.

[18.3.2.4 NMAC - N, 12-30-02]

18.3.2.5 EFFECTIVE DATE: December 30, 2002, unless a later date is cited at the end of a section.

[18.3.2.5 NMAC - N, 12-30-02]

18.3.2.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Sections 65-2-92, 65-2-96, and 65-2-109.

[18.3.2.6 NMAC - N, 12-30-02]

18.3.2.7 DEFINITIONS: See 18.3.1.7 NMAC.

[18.3.2.7 NMAC - N, 12-30-02]

18.3.2.8 OPERATING AUTHORITY REQUIRED: No person shall provide any of the following compensated transportation services in New Mexico without having first obtained from the Commission the operating authority required for the particular type of service to be rendered.

A. A warrant evidencing compliance with safety and financial responsibility requirements is required for:

- (1) charter services;
- (2) towing services;
- (3) repossession services using towing equipment;

(4) vehicle escort services; or

(5) transportation of property, except that a warrant is not required for the transportation of cadavers by a person licensed pursuant to the Thanatopractice Act, NMSA 1978 Section 61-32-1 et seq.

B. A certificate of registration is required for:

- (1) farm carriers; or
- (2) commuter vanpools.

C. A license as a motor carrier transportation agent is required to act as intermediary between the public and uncertificated motor carriers of persons pursuant to NMSA 1978 Section 65-4-1 et seq.

D. A certificate of public convenience and necessity or permit is required for:

- (1) taxi services;
- (2) limousine services;

- (3) shuttle services;
- (4) shared-ride services;
- (5) tour and sightseeing services;
- (6) bingo bus services;
- (7) non-emergency medical transportation services; or
- (8) transportation of household goods.

E. A single trip permit is required when a motor vehicle regularly used to convey children to and from school or school activities is used for a trip sponsored by a charitable organization. [18.3.2.8 NMAC – Rp, SCC Rules 207.08, 212.01, 213.01, 214.01, 216.01, and 261.05, 12-30-02]

18.3.2.9 CONTENTS OF APPLICATIONS FOR A WARRANT, CERTIFICATE OF REGISTRATION, OR LICENSE: An applicant for a warrant, certificate of registration, or license shall file with the Commission an application containing the following information and documents:

- A.** the applicant's name;
- B.** the applicant's d/b/a name, if applicable;
- C.** the applicant's principal place of business;
- D.** the applicant's business telephone number;
- E.** the applicant's tax identification number obtained from the New Mexico Taxation and Revenue Department, or the applicant's social security number;
- F.** if the applicant is a corporation, evidence that the applicant is authorized by the corporations bureau of the Commission to do business in New Mexico and that it is in good corporate standing in New Mexico;
- G.** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, and the date the business entity was created;
- H.** if the applicant is a commuter vanpool, a description of the area to be served;
- I.** if the applicant is a towing service providing non-consensual tows, a proposed tariff meeting the requirements of 18.3.6 NMAC, Tariffs;
- J.** an appointment of an agent for service of process;
- K.** a list of all equipment to be used by the applicant, including all equipment leases filed with and approved by the Commission in accordance with these rules;
- L.** for each piece of equipment, an annual inspection form completed by a qualified inspector within the preceding twelve (12) months that shows that each

motor vehicle proposed to be operated by the applicant meets the safety requirements of the Federal Motor Carrier Safety Regulations;

M. a list of drivers and drivers license information for each driver including state of issuance, license number, and class of license;

N. the applicant's written statement certifying that all drivers meet the driver qualifications of 18.3.3 NMAC, Qualifications of Drivers, and that the applicant will maintain driver qualification files on each driver;

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

P. proof of public liability insurance in accordance with 18.3.3 NMAC, Financial Responsibility, and the insurance filing fee;

Q. a copy of either a certificate of workers' compensation insurance or a certificate of exemption from the workers' compensation administration; (Commuter vanpools shall not be required to file a certificate for volunteer drivers but shall file the appropriate certificate for drivers who are employees.)

R. the applicant's written statement certifying that it has developed a drug and alcohol testing program that will meet the requirements of 49 CFR Parts 40 and 382; or, if the applicant is a commuter van pool, a certification that it has a program providing for an initial drug test for anyone seeking to be a commuter vanpool driver;

S. a copy of the applicant's written preventive maintenance program for its motor vehicles as required by 18.3.5.11 NMAC;

T. a contact person and telephone number for the Commission to call in the event of a complaint.

U. the notarized oath of the applicant attesting that all statements in the application are true and correct; and

V. the required application fee, if any.

[18.3.2.9 NMAC – Rp, SCC Rules 211.01 and 214.02, 12-30-02]

18.3.2.10 CONTENTS OF APPLICATIONS FOR A SINGLE TRIP PERMIT: An applicant for a single trip permit shall file with the Commission an application containing the following information and documents:

A. the applicant's name, address, and telephone number;

B. the time, purpose, origin, and destination of the trip;

C. the name, address, purpose, and status of the charitable organization sponsoring the trip, and the name and

telephone number of a contact person for the charitable organization;

D. affidavits stating that no certificated or permitted common or contract motor carrier service is available for the trip described in the application;

E. proof that the motor vehicle to be used for the trip meets the safety requirements prescribed by the Motor Carrier Act and the commission's rules.

F. the applicant's tax identification number obtained from the New Mexico Taxation and Revenue Department, or the applicant's social security number;

G. an annual vehicle inspection conducted by a qualified inspector within the preceding twelve (12) months that shows that the motor vehicle proposed to be used for the trip meets the safety requirements of the Federal Motor Carrier Safety Regulations;

H. the name and driver's license information for the driver including state of issuance, license number, and class of license;

I. the applicant's written statement certifying that the driver meets the driver qualifications of 18.3.4 NMAC, Qualifications of Drivers, and that the applicant maintains a driver qualification files on the driver;

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

K. proof of public liability insurance in accordance with 18.3.3 NMAC, Financial Responsibility, and

L. a contact person and telephone number for the Commission to call in the event of a complaint.

M. the notarized oath of the applicant attesting that all statements in the application are true and correct; and

N. the required application fee, if any.

[18.3.2.10 NMAC – N, 12-30-02]

18.3.2.11 PROCEDURE FOR REVIEWING APPLICATIONS FOR WARRANTS, CERTIFICATES OF REGISTRATION, SINGLE TRIP PERMITS, AND LICENSES:

A. Application required. Applications for a warrant, certificate of registration, single trip permit, or license must be typed or completed in ink on forms prescribed by the Director.

B. Number of copies. Applicants must file an original and two copies of the application form and every required attachment with the Docket Filing Unit as provided in 18.3.1.11 NMAC. If the applicant wishes to have a file stamped copy of the complete application returned to it, it must submit an additional copy of each

form and attachment.

C. Review by the Director. Within seven (7) business days of receipt of an application, the Director will review the application to determine whether it is complete.

D. Complete applications. If the application contains the information and documents required by 18.3.2.9 NMAC, the Director shall approve the application for the warrant, certificate of registration, single trip permit, or license.

E. Incomplete applications.

(1) If the application is incomplete, the Director will return the application to the applicant along with an initial letter outlining the deficiencies in the application. The applicant will have fifteen (15) days from the date of the initial letter to cure the deficiencies. If the applicant fails to return the application to the Commission within fifteen (15) days from the date of the initial letter, the application shall be deemed abandoned, the docket will be closed, and all fees paid will be forfeited to the state.

(2) If the applicant returns the application to the Commission within twenty days from the date of the initial letter but the application is still deficient, the Director, within fifteen (15) days, will return the application to the applicant along with a second letter outlining the deficiencies in the application. The applicant will have fifteen (15) days from the date of the second letter to cure the deficiencies. If the applicant fails to return the application to the Commission within fifteen (15) days from the date of the second letter, or returns the application but it is still deficient, the application shall be deemed abandoned, the file will be closed, and all fees paid will be forfeited to the state.

F. Issuance of warrant, certificate of registration, single trip permit, or license.

(1) The Director will issue a warrant, certificate of registration, single trip permit, or license within five (5) business days after the date the Director approves the application. Issuance of the warrant, certificate of registration, single trip permit, or license closes the docket.

(2) The Director will issue a warrant, certificate of registration, single trip permit, or license in the name of the person owning the motor carrier, if the motor carrier is a sole proprietorship; in the name of the partners, if the motor carrier is a partnership; in the name of the limited liability company if the motor carrier is a limited liability company; and in the name of the corporation, if the motor carrier is a corporation. No warrant, certificate of registration, single trip permit, or license will be issued

only in a "doing business as" name.

[18.3.2.11 NMAC – Rp, SCC Rules 211.01, 211.10, and 214.03, 12-30-02]

18.3.2.12 TERMS AND CONDITIONS OF WARRANTS, CERTIFICATES OF REGISTRATION, SINGLE TRIP PERMITS, AND LICENSES:

A. Proof of operating authority. A copy of the warrant, certificate of registration, or single trip permit, shall be carried in each motor vehicle operated by the motor carrier or commuter vanpool.

B. Term. A warrant, certificate of registration, or license shall remain in force until suspended or revoked by the Commission or until surrendered by the person holding it. A single trip permit shall be valid only for the duration of the trip.

C. Changes prohibited. A warrant, certificate of registration, single trip permit, or license may not be leased, transferred, assigned or voluntarily suspended.

[18.3.2.12 NMAC – Rp, SCC Rule 214.04, 12-30-02]

18.3.2.13 CONTENTS OF APPLICATIONS FOR AN ORIGINAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT:

A. Applications for certificate of public convenience and necessity. An applicant for a certificate of public convenience and necessity shall file with the Commission an application containing the following information and documents:

- (1) the applicant's name;
- (2) the applicant's d/b/a name, if applicable;
- (3) the applicant's mailing address;
- (4) the applicant's tax identification number obtained from the New Mexico Taxation and Revenue Department, or the applicant's social security number;
- (5) if the applicant is a corporation:

(a) evidence that the applicant is authorized by the corporations bureau of the Commission to do business in New Mexico and that it is in good corporate standing in New Mexico; and

(b) the names and addresses of any shareholders who own ten percent or more of the voting stock of the corporation;

(6) if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the percentage of ownership interest of each, and the date the business entity was created;

(7) appointment of an agent for service of process;

(8) an income statement for the latest fiscal year if available;

(9) a current balance sheet;

(10) affidavits or other evidence upon which the applicant intends to rely to show that the proposed service is or will be required by the public convenience and necessity;

(11) affidavits or other evidence upon which the applicant intends to rely to show that the applicant is fit, willing and able; and

(12) a statement of the type of service the applicant intends to operate and a description of the territory it proposes to serve;

(13) the application fee required by Section 65-2-125 NMSA 1978;

(14) a proposed tariff meeting the requirements of 18.3.6 NMAC, Tariffs; and

(15) a proposed general schedule if the applicant will provide scheduled service;

(16) for lease or transfer of an existing certificate of public convenience and necessity, a showing that the proposed change is not being made to avoid any previously incurred taxes or legal obligations, or to circumvent any otherwise applicable requirements of these rules or the Motor Carrier Act; and

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

B. Applications for permits. An applicant for a permit shall file with the Commission an application containing the following information and documents:

(1) the information and documents required by paragraphs (1) through (16) of subsection A of this section, unless the applicant already holds a certificate of public convenience and necessity;

(2) a copy of each contract under which the applicant intends to operate;

(3) a statement indicating:

(a) the effect that denying the permit would have on the applicant and its customers; and

(b) the changing character of the requirements of those customers;

(4) the application fee required by Section 65-2-125 NMSA 1978; and

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

[18.3.2.13 NMAC – Rp, SCC Rules 211.01, 212.02, 213.02, and 221.14, 12-30-02]

18.3.2.14 PROCEDURE FOR REVIEWING APPLICATIONS FOR AN ORIGINAL CERTIFICATE OF

PUBLIC CONVENIENCE AND NECESSITY OR PERMIT:

The Commission shall review applications for an original certificate of public convenience and necessity or permit in accordance with 18.3.2.14 through 18.3.2.18 NMAC.

[18.3.2.14 NMAC – N, 12-30-02]

18.3.2.15 FILING REQUIREMENTS:**A. Application required.**

Applications must be typed or completed in ink on forms prescribed by the Director.

B. Number of copies.

Applicants must file an original and five copies of the application form and every required attachment with the Docket Filing Unit as provided in 18.3.1.11 NMAC. If the applicant wishes to have a file-stamped copy of the complete application returned to it, it must submit an additional copy of each form and attachment.

C. Filing fee. Applicants shall submit the appropriate application fee with the application in the form of a check or money order made payable to the New Mexico Public Regulation Commission.

D. Docket number. The Docket Filing Unit shall issue a docket number upon receipt of the application and fee.

[18.3.2.15 NMAC – Rp, SCC Rule 211.01, 12-30-02]

18.3.2.16 REVIEW FOR COMPLETENESS: Within seven (7) business days of receipt of an application, the Director will review the application to determine if it is complete.

A. Complete applications. If the application contains all of the information and documents required by the section specified below for each particular type of application, and is in compliance with all other statutory requirements and these rules, the Director shall certify in writing that the application satisfies the completeness requirements of subsection C of NMSA 1978 Section 65-2-125.

(1) For an original certificate of public convenience and necessity or permit, 18.3.2.13 NMAC;

(2) For a change in a tariff, 18.3.6.14 NMAC;

(3) For amendment of a certificate of public convenience and necessity or permit, 18.3.8.9 NMAC;

(4) For lease of a certificate of public convenience and necessity or permit, 18.3.8.10 NMAC;

(5) For voluntary transfer of a certificate of public convenience and necessity or permit, 18.3.8.11 NMAC;

(6) For transfer by operation of law of a certificate of public convenience

and necessity or permit, 18.3.8.12 NMAC;

(7) For reinstatement of a certificate of public convenience and necessity or permit following involuntary suspension, 18.3.8.13 NMAC;

(8) For a change in the form of ownership of a certificate of public convenience and necessity or permit, 18.3.8.14 NMAC;

(9) For cancellation of a certificate of public convenience and necessity or permit, 18.3.8.15 NMAC;

(10) For voluntary suspension of a certificate of public convenience and necessity or permit, 18.3.8.16 NMAC;

(11) For reinstatement of a certificate of public convenience and necessity or permit following voluntary suspension, 18.3.8.17 NMAC;

(12) For leasing equipment, subsection A of 18.3.9.8 NMAC.

B. Incomplete applications.

(1) If the application is incomplete, the Director will return the application to the applicant along with an initial letter outlining the deficiencies in the application. The applicant will have twenty days from the date of the initial letter to cure the deficiencies. If the applicant fails to return the application to the Commission within twenty days from the date of the initial letter, the application shall be deemed abandoned, the docket will be closed, and all fees paid will be forfeited to the state.

(2) If the applicant returns the application to the Commission within twenty (20) days from the date of the initial letter but the application is still deficient, the Director, within ten (10) days, will return the application to the applicant along with a second letter outlining the deficiencies in the application. The applicant will have ten (10) days from the date of the second letter to cure the deficiencies. The Director will review the supplemented application within ten (10) days. If the supplemented application cures the deficiencies, the Director will certify the application as complete pursuant to subsection A of this section. If the applicant fails to return the application to the Commission within ten (10) days from the date of the second letter, or the Director determines the application is still deficient, the application shall be deemed abandoned, the docket will be closed, and all fees paid will be forfeited to the state.

[18.3.2.16 NMAC – N, 12-30-02]

18.3.2.17 NOTICE:

A. The Director shall prepare a notice of application and, if applicable, grant of temporary authority within five (5) business days of the date the Director certifies that an application is complete. If

the application is accompanied by an application for temporary authority, the notice shall so state.

B. An applicant shall, at its own expense, publish the notice of application and, if applicable, grant of temporary authority once in a newspaper of general circulation in the area to be served within five (5) business days of receipt of the notice prepared by the Director.

C. An applicant shall request from the Director a list of all motor carriers holding the kind of operating authority the applicant has or is seeking and all other interested parties. An applicant shall mail a copy of the notice of application and, if applicable, grant of temporary authority to all persons on the list within five (5) business days of receipt of the notice prepared by the Director. Mailing of such notice by first class U.S. mail to the last known business address of a motor carrier shall constitute service under this rule.

D. An applicant shall file an affidavit of publication and a certificate of mailing with the Docket Filing Unit. Instead of the affidavit of publication, an applicant may file the page from the newspaper showing the notice of application and, if applicable, grant of temporary authority, the name of the newspaper, and the date of its publication. The Commission will not act on an application, except to dismiss it for good cause, until it has received the affidavit of publication or newspaper page and the certificate of mailing.

E. There shall be a minimum twenty (20) calendar day notice period before the Commission may act on an application; the notice period shall start on the later of the date of publication of the notice in a newspaper of general circulation or three (3) days after the date notice was mailed to the persons on the list supplied by the Director.

[18.3.2.17 NMAC – Rp, SCC Rule 211.02, 12-30-02]

18.3.2.18 CONTESTED APPLICATIONS:

A. If the Director requests a hearing, or a member of the public or industry files a motion to intervene in an application or grant of temporary authority at any time during the notice period, the Commission shall appoint a hearing examiner who shall, within ten (10) days of appointment, issue a notice of hearing setting a hearing to be held within sixty (60) days from the date of appointment. The hearing examiner may for good cause extend the time within which a hearing must be held.

B. The applicant has the burden of proof and shall present testimony

and evidence justifying: issuance of an original certificate of public convenience and necessity or permit and the justness and reasonableness of the accompanying proposed tariff; approval of the proposed change in tariff; approval of the proposed amendment, lease, transfer, or reinstatement following involuntary suspension of an existing certificate of public convenience and necessity or permit; or approval of a proposed equipment lease; as appropriate. Contesting parties shall be allowed an opportunity to present evidence regarding the application. The hearing examiner may require pre-filed testimony.

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

[18.3.2.18 NMAC – N, 12-30-02]

18.3.2.19 UNCONTESTED

APPLICATIONS: If the Director does not request a hearing, and no person files a motion to intervene in the application during the notice period, and the Director finds that the applicant has met the statutory requirements specified below for each particular type of application, the Director shall prepare, within five (5) business days of the end of the notice period, a proposed order conditionally approving the application.

A. for an original certificate of public convenience and necessity, or for reinstatement of a certificate of public convenience and necessity following involuntary suspension, NMSA 1978 Section 65-2-84;

B. for an original permit, or for reinstatement of a permit following involuntary suspension, NMSA 1978 Section 65-2-87;

C. for temporary authority, NMSA 1978 Section 65-2-94;

D. for an original tariff or motor carrier agreement, or for a change in a tariff or motor carrier agreement, NMSA 1978 Section 65-2-96, 65-2-97, and, if applicable, 65-2-107;

E. for amendment of a certificate of public convenience and necessity or permit, NMSA 1978 Section 65-2-92;

F. for lease or transfer of a certificate of public convenience and necessity or permit, NMSA 1978 Section 65-2-93;

G. for cancellation of a certificate of public convenience and necessity or permit, NMSA 1978 Section 65-2-108;

H. for voluntary suspen-

sion of a certificate of public convenience and necessity or permit, NMSA 1978 Section 65-2-92; and

I. for lease of equipment, NMSA 1978 Section 65-2-105.

[18.3.2.19 NMAC – N, 12-30-02]

18.3.2.20 APPROVAL OF AN ORIGINAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT:

A. If the Commission finds that the applicant for a certificate of public convenience and necessity has met the statutory requirements in NMSA 1978 Section 65-2-84, or that the applicant for a permit has met the statutory requirements in NMSA 1978 Section 65-2-87, the Commission shall issue an order conditionally approving the application. Then, unless the Commission prescribes a different period, the applicant must, within ninety (90) days from the date of the order, comply with the qualifying provisions set forth in 18.3.2.21 NMAC and with any other qualifying provisions, terms, conditions, or limitations set forth by the Commission in its order. If the applicant fails to timely comply with all qualifying provisions, the Commission may dismiss the case without prejudice and close the docket.

B. Within five (5) business days after the date the Director certifies that the applicant has complied with all qualifying provisions, the Commission shall, over the signature of a single Commissioner, issue a certificate of public convenience and necessity or permit.

C. The Commission will issue the certificate of public convenience and necessity or permit in the name of the person owning the motor carrier, if the motor carrier is a sole proprietorship; in the name of the partners, if the motor carrier is a partnership; in the name of the limited liability company if the motor carrier is a limited liability company; and in the name of the corporation, if the motor carrier is a corporation. No certificate of public convenience and necessity or permit will be issued only in a "doing business as" name.

[18.3.2.20 NMAC – Rp, SCC Rules 211.10, 212.04, 213.03, 12-30-02]

18.3.2.21 QUALIFYING PROVISIONS: Upon conditional approval of its application, an applicant shall submit the following information and documents:

A. the applicant's principal place of business;

B. the applicant's business telephone number;

C. a list of all equipment to be used by the applicant, including all equipment leases filed with and approved

by the Commission in accordance with these rules;

D. for each piece of equipment, an annual inspection form completed by a qualified inspector within the preceding twelve (12) months that shows that each motor vehicle proposed to be operated by the applicant meets the safety requirements of the Federal Motor Carrier Safety Regulations;

E. a list of drivers and drivers license information for each driver including state of issuance, license number and class of license;

F. the applicant's written statement certifying that all drivers meet the driver qualifications of the 18.3.3 NMAC, Qualifications of Drivers, and that the applicant will maintain driver qualification files on each driver;

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

H. proof of public liability insurance in accordance with 18.3.3 NMAC, Financial Responsibility, and the insurance filing fee;

I. a copy of either a certificate of workers' compensation insurance or a certificate of exemption from the Workers' Compensation Administration;

J. the applicant's written statement certifying that the motor carrier has developed a drug and alcohol testing program that will meet the requirements of 49 CFR Section 382 and Part 40;

K. a copy of the applicant's written preventive maintenance program for its motor vehicles as required by 18.3.5.11 NMAC;

L. a proposed specific schedule of service meeting the requirements of subsection A of 18.3.6.15 NMAC if the applicant will provide scheduled service; and

M. if the application is for transfer or cancellation of a certificate of public convenience and necessity or permit, the original certificate of public convenience and necessity or permit and all endorsements to it.

[18.3.2.21 NMAC – Rp, SCC Rule 211.04, 12-30-02]

18.3.2.22 TERMS AND CONDITIONS OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITS:

A. Proof of operating authority. A motor carrier shall carry a copy of the certificate of public convenience and necessity or permit in each motor vehicle it operates.

B. Operation to begin within thirty days. A motor carrier must actually begin authorized operations within

thirty (30) days from the date its certificate of public convenience and necessity or permit was issued. Failure to begin operations within thirty (30) days shall create a presumption that the applicant has refused to render continuous and adequate service.

C. Continuous and adequate service. A motor carrier shall render reasonably continuous and adequate service to the public in accordance with its certificate of public convenience and necessity or permit.

D. Multiple operating authorities allowed. A person may simultaneously hold a certificate of public convenience and necessity, a permit, and a warrant authorizing transportation by motor vehicle over the same routes or within the same territory, unless the Commission finds that such multiple operating authorities are not in the public interest.

E. Duplication of operating authority prohibited.

(1) No person may control more than one certificate of public convenience and necessity and more than one permit for the same kind of service in the same territory.

(2) The Commission shall not grant any new operating authority:

(a) to a motor carrier that duplicates operating authority of the same kind and for the same territory already held by that motor carrier; or

(b) to a motor carrier under common control with another motor carrier that duplicates operating authority of the same kind and for the same territory already held by either of them.

F. Sham competition prohibited. If two motor carriers come to be held in common control, and each has operating authority that duplicates the operating authority of the other, then one of them shall have its operating authority modified to exclude the portion of the operating authority that is of the same kind and for the same territory, but shall be allowed to operate in the name of and under the operating authority of the other motor carrier with which it is held in common control.

G. Posting of operating authority. Every motor carrier of persons shall post, in a conspicuous place visible to the public, in each of its motor vehicles and at the motor carrier's principal place of business, a notice containing a statement in substantially the following form: "This motor carrier operates pursuant to NMPRC Operating Authority No. _____, issued by the New Mexico Public Regulation Commission, and the tariff approved by the Commission. If you have any questions or problems with the service provided by this company, you may contact the management

at [insert phone number], and if the problem is not resolved, you may contact the New Mexico Public Regulation Commission, Transportation Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269, 1-800-947-4722."

[18.3.2.22 NMAC – Rp, SCC Rules 211.05, 211.07, 211.08, 231.06, 231.09, and 251.02, 12-30-02]

18.3.2.23 REQUIREMENTS APPLICABLE TO ALL MOTOR CARRIERS OF PERSONS:

A. Safe and adequate service, equipment, and facilities. All motor carriers of persons must provide safe and adequate service, equipment, and facilities for the provision of transportation services.

B. Rates to be posted in vehicles. A motor carrier of persons shall post the rates for transportation services in the passenger compartment of the vehicle in a place and manner that is readily accessible and viewable by passengers.

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

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

E. Child restraints. A motor carrier of persons except commuter vanpools shall ensure that each motor vehicle it uses that is capable of transporting fifteen or fewer persons complies with all federal and state requirements regarding child restraint systems.

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

G. Cleaning. A motor carrier of persons shall ensure that the interior and exterior of every motor vehicle it operates is cleaned routinely to keep the motor vehicle free of dirt and debris.

H. Transportation of

property limited.

(1) No motor carrier of persons shall transport hazardous matter (including but not limited to explosives, acids, flammable liquids), loaded guns or other deadly weapons, or other dangerous articles of property.

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

I. Use of highways. A motor carrier may use only those highways that are authorized by its operating authority but may deviate from its authorized routes where the condition of the highway or street necessitates a detour.

J. Businesslike operations. All motor carriers of persons shall conduct their operations in a businesslike, ethical and courteous manner.

[18.3.2.23 NMAC – Rp, SCC Rules 231.03, 231.05, 231.08, 251.03, 251.04, 251.05, 251.06, and 251.12, 12-30-02]

18.3.2.24 REQUIREMENTS APPLICABLE TO ALL MOTOR CARRIERS OF PERSONS EXCEPT CHARTER SERVICES AND COMMUTER VANPOOLS:

A. Stations. A motor carrier of persons shall ensure that any station it operates is of adequate size and contains those facilities reasonably needed by the traveling public. A motor carrier of persons shall ensure that its stations are maintained in a clean and sanitary condition, adequately lighted, heated and ventilated during hours of use, and contain adequate restroom facilities. A motor carrier of persons shall make reasonable efforts to keep the station area safe for the public.

B. Routing of passengers. Unless expressly requested otherwise, a motor carrier of persons shall ticket all passengers over the shortest available route and for the earliest scheduled arrival.

C. Rest stops. A motor carrier of persons shall require its drivers to announce all scheduled rest stops immediately before leaving any station and the location of the restroom facilities upon arriving at a rest stop.

[18.3.2.24 NMAC – Rp, SCC Rules 251.10, 251.11, and 251.17, 12-30-02]

18.3.2.25 ADDITIONAL REQUIREMENTS FOR MOTOR CARRIERS OF PERSONS PROVIDING SCHEDULED SERVICE EXCEPT

COMMUTER VANPOOLS:**A. Posting of schedules.**

A motor carrier of persons shall post in a conspicuous place, readily available for public inspection, at each station or place where passengers are regularly received or discharged, at least one copy of its current schedule of arrivals and departures.

B. Compliance with time schedules required.

(1) A motor carrier of persons authorized to provide scheduled service must operate the service on each day as scheduled.

(2) A motor carrier of persons shall comply with all time schedules throughout its routes.

(3) A shuttle service picking up passengers at a transportation hub facility may delay its departure from the transportation hub facility when reserved passengers are delayed as a result of another carrier's late arrival or delayed baggage handling, provided that:

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

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

C. Reserve equipment.

Every motor carrier of persons must keep sufficient equipment on reserve to assure reasonable compliance with approved time schedules.

D. Interruption of service.

Each motor carrier of persons shall promptly report in writing to the Commission any interruption in service which is likely to continue for more than 24 hours, stating in detail the cause of the interruption and its expected duration.

[18.3.2.25 NMAC – Rp, SCC Rules 251.08, 251.13, 251.14, and 251.15, 12-30-02]

18.3.2.26 UNAUTHORIZED CARRYING OF PERSONS PROHIBITED:

No motor carrier unauthorized to transport persons shall carry any person, including but not limited to hitchhikers, except on-duty employees of the motor carrier, Commission representatives on official business, or in an emergency.

[18.3.2.26 NMAC – Rp, SCC Rules 207.12 and 261.02, &A, 12-30-02]

18.3.2.27 TEMPORARY AUTHORITY:**A. Grant discretionary.**

Pursuant to NMSA 1978 Section 65-2-94,

the Commission may, in its discretion, but is not required to, grant temporary authority to a person applying for a certificate of public convenience and necessity or permit, amendment of a certificate of public convenience and necessity or permit or for lease or transfer of all or part of a certificate of public convenience and necessity if it finds that the applicant meets the requirements of Section 65-2-94 NMSA 1978. An application for temporary authority shall be made on the form prescribed by the Director.

B. Original or amended authority. If the application for temporary authority is made in connection with an application for an original certificate of public convenience and necessity or permit, or for amendment of a certificate of public convenience and necessity or permit, the Commission shall not grant temporary authority unless:

(1) the Director has certified that the application contains all of the information and documents required by 18.3.2.12 NMAC; and

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

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

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

(3) the applicant submits the fee required by Section 65-2-125 NMSA 1978.

C. Transfer of authority.

If the application for temporary authority is made in connection with an application for transfer of all or part of a certificate of public convenience and necessity or permit, the Commission shall not grant temporary authority to a transferee unless:

(1) the Director certifies that the application contains all of the information and documents required by 18.3.8.12 NMAC; and

(2) the transferor provides an affidavit that it is no longer fit, no longer willing, or no longer able to render continuous and adequate service; and

(3) the applicant submits the fee required by Section 65-2-125 NMSA 1978.

D. Lease of authority.

If the application for temporary authority is made in connection with an application for lease of all or part of a certificate of public convenience and necessity or permit, the Commission shall not grant temporary authority to a transferee unless:

(1) the Director certifies that the application contains all of the information and documents required by 18.3.8.12 NMAC; and

(2) the applicant submits the fee required by Section 65-2-125 NMSA 1978.

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

[18.3.2.27 NMAC – Rp, SCC Rule 217.02, 12-30-02]

18.3.2.28 SUSPENSION OR REVOCATION OF OPERATING AUTHORITIES:

A. The Commission may suspend or revoke any operating authority for failure to comply with:

(1) the Motor Carrier Act;

(2) these rules; or

(3) a lawful order of the Commission.

B. The Commission may suspend or revoke a certificate of public convenience and necessity or permit for failure to render reasonably continuous and adequate service. The Commission may find that a motor carrier operating under a certificate of public convenience and necessity or permit that is not seasonal has failed to render reasonably continuous and adequate service when the motor carrier has not operated under the certificate of public convenience and necessity or permit for sixty (60) days or more, and one or more of the following is true:

(1) the motor carrier is unable to operate; or

(2) the motor carrier has refused to accept business; or

(3) the motor carrier has not actively, and in good faith, solicited business; or

(4) the motor carrier has failed to obtain approval from the Commission for voluntary suspension in accordance with 18.3.8 NMAC, Changes in Certificates of Public Convenience and Necessity and Permits.

[18.3.2.28 NMAC – Rp, SCC Rules 207.06, 231.09, and 273.09, 12-30-02]

18.3.2.29 CHANGES OF NAME:

A. A motor carrier that changes its name shall file with the Commission within ten (10) days after the change of name:

(1) the form prescribed by the Commission for filing changes of name;

(2) the original certificate of public convenience and necessity or permit;

(3) the fee required by NMSA 1978 Section 65-2-125;

(4) new filings for paragraphs (4), (5)(a) or (6), and (7) of 18.3.2.13 NMAC, and

(5) the applicable insurance filing forms in the new name and the insurance filing fee.

B. If the applicant fails to comply with any of the requirements of subsection A of this section, the Commission shall refuse to approve the change of name.

C. If the Director determines the filing is complete, the Commission shall issue a new certificate of public convenience and necessity or permit in the new name.

[18.3.2.29 NMAC - N, 12-30-02]

HISTORY OF 18.3.2 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;

SCCMC Rule No. 4, Application for Certificates and Permits, filed on 3-5-82;

SCCMC Rule No. 25, Pet Animals, filed on 3-5-82;

SCCMC Rule No. 27, Bus Express, filed on 3-5-82;

SCCMC Rule No. 32, Continuous and Adequate Service, filed on 3-5-82;

SCCMC Rule No. 33, Business-Like Operations, filed on 3-5-82;

SCCMC Rule No. 43, Hearing on Application-Public Notice, filed on 3-5-82;

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on ;

SCC Rule 211, General Operating Authority Provisions, filed on 1-5-93;

SCC Rule 212, Certificates of Public

Convenience and Necessity for Common Motor Carriers, filed on 1-5-93;

SCC Rule 213, Permits for Contract Motor Carriers, filed on 1-5-93;

SCC Rule 214, Warrants for Limited Operating Authority, filed on 1-5-93;

SCC Rule 216, Licenses for Transportation Brokers, filed on 1-5-93

SCC Rule 217, Emergency and Temporary Authority, filed on 1-5-93;

SCC Rule 221, Tariffs, Rates and Schedules, filed on 1-5-93;

SCC Rule 231, General Compliance Requirements, filed on 1-5-93;

SCC Rule 251, Motor Carriers of Persons-General Provisions, filed on 1-5-93;

SCC Rule 261, Motor Carriers of Property-General Provisions, filed on 1-5-93;

SCC Rule 273, Administrative Enforcement Proceedings, filed on 1-5-93.

History of repealed material.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 1-5-93;

SCC Rule 211, General Operating Authority Provisions, filed on 1-5-93;

SCC Rule 212, Certificates of Public Convenience and Necessity for Common

Motor Carriers, filed on 1-5-93;

SCC Rule 213, Permits for Contract Motor Carriers, filed on 1-5-93;

SCC Rule 214, Warrants for Limited Operating Authority, filed on 1-5-93;

SCC Rule 216, Licenses for Transportation Brokers, filed on 1-5-93

SCC Rule 217, Emergency and Temporary Authority, filed on 1-5-93;

SCC Rule 221, Tariffs, Rates and Schedules, filed on 1-5-93;

SCC Rule 231, General Compliance Requirements, filed on 1-5-93;

SCC Rule 251, Motor Carriers of Persons-General Provisions, filed on 1-5-93;

SCC Rule 261, Motor Carriers of Property-General Provisions, filed on 1-5-93;

SCC Rule 273, Administrative Enforcement Proceedings, filed on 1-5-93.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS

PART 3 F I N A N C I A L RESPONSIBILITY

18.3.3.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.

[18.3.3.1 NMAC - N, 12-30-02]

18.3.3.2 SCOPE:

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

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

[18.3.3.2 NMAC - N, 12-30-02]

**18.3.3.3 S T A T U T O R Y
AUTHORITY:** NMSA 1978 Sections 8-8-4 and 65-2-83.

[18.3.3.3 NMAC - N, 12-30-02]

18.3.3.4 D U R A T I O N :
Permanent.

[18.3.3.4 NMAC - N, 12-30-02]

18.3.3.5 EFFECTIVE DATE:
December 30, 2002, unless a later date is cited at the end of a section.

[18.3.3.5 NMAC - N, 12-30-02]

18.3.3.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Section 65-2-110.

[18.3.3.6 NMAC - N, 12-30-02]

18.3.3.7 DEFINITIONS: See 18.3.1.7 NMAC.

[18.3.3.7 NMAC - N, 12-30-02]

**18.3.3.8 PROOF OF FINANCIAL
RESPONSIBILITY:** Every motor carrier must file proof of financial responsibility with the Commission. The required financial responsibility must be in the exact legal and "doing business as" name of the motor carrier.

A. Intrastate motor carriers.

(1) Public liability financial responsibility. The Commission will accept the following documents as proof of the required public liability financial responsibility:

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

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

(c) a certified statement from the Superintendent of Insurance that the motor carrier has met all requirements to be self-insured.

(2) Cargo liability financial responsibility. The Commission will

accept as proof of the required cargo liability financial responsibility a certificate showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to transact insurance business in New Mexico on Uniform Filing Form H.

B. Interstate motor carriers. The Commission will accept as proof of the required public liability financial responsibility a certificate showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to transact insurance business in any state of the United States on Uniform Filing Form BMC 91 or BMC 91X.

[18.3.3.8 NMAC - Rp, SCC Rules 231.01 and 232.02, 12-30-02]

18.3.3.9 INSURANCE FILINGS:

A. Address for correct filing of insurance-related documents.

(1) Current address. Insurance companies must mail original Uniform Filing Forms E, H, and K to the New Mexico Public Regulation Commission, Transportation Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269. The Commission will not accept copies of uniform filings.

(2) Possible future address. The Commission may in its discretion elect to participate in a central repository of motor carrier insurance information which would allow the Commission to accept electronic filings of Forms E, H, and K made to the central repository and to access other information contained in the central repository. In such event, the commission will post the address for filing insurance-related documents on its website.

B. Filing fees. Insurance companies for intrastate motor carriers must file the insurance filing fee required by NMSA 1978 Section 65-2-125 with each filing of a Uniform Filing Form E or H.

[18.3.3.9 NMAC - N, 12-30-02]

18.3.3.10 MINIMUM LIMITS OF PUBLIC LIABILITY INSURANCE:

A. Motor carriers of persons providing service in vehicles with a seating capacity of sixteen (16) persons or more, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least five million dollars (\$5,000,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

B. Motor carriers of persons (other than commuter vanpools) that provide service in vehicles with a seating capacity of ten (10) to fifteen (15) persons, excluding the driver, must maintain a com-

bined single-limit public liability insurance policy of at least three million dollars (\$3,000,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

C. Household goods carriers, all commuter vanpools, and those motor carriers of persons that provide service in vehicles with a seating capacity of seven (7) to nine (9) persons, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

D. Motor carriers of persons providing service in vehicles with a seating capacity of six (6) persons or less, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least one million dollars (\$1,000,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

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

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

[18.3.3.10 NMAC - Rp, SCC Rule 232.03, 12-30-02]

18.3.3.11 ADDITIONAL SPECIALTY INSURANCE REQUIREMENTS:

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

B. Motor carriers transporting hazardous matter must maintain five million dollars (\$5,000,000) of environmental restoration and wrongful disposal liability insurance.

C. Household goods carriers must maintain ten thousand dollars (\$10,000) of cargo liability insurance per shipper for loss or damage to cargo of the shipper.

[18.3.3.11 NMAC - N, 12-30-02]

18.3.3.12 MAXIMUM DEDUCTIBLE: No motor carrier insurance policy shall have a deductible in excess of five thousand dollars (\$5,000),

except that the Commission may approve a higher deductible for a motor carrier that files:

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

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

[18.3.3.12 NMAC - N, 12-30-02]

18.3.3.13 CANCELLATION OF INSURANCE:

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

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

C. Interstate. An interstate motor carrier may cancel its insurance by having its insurance company file with the Commission or its designee a Uniform Filing Form BMC 35 stating that the motor carrier's public liability insurance will expire in thirty (30) days.

[18.3.3.13 NMAC - Rp, SCC Rule 232.04, 12-30-02]

18.3.3.14 SUSPENSION OR REVOCATION OF OPERATING AUTHORITY:

A. Commuter vanpools. The Commission may suspend or revoke, without a hearing, a certificate of registration for a commuter vanpool if it fails to continuously maintain the amounts of financial responsibility required by this rule.

B. All other motor carriers. The Commission may suspend or revoke, after notice and a public hearing, the operating authority of any other motor carrier if it fails to continuously maintain the amounts of financial responsibility required by this rule.

[18.3.3.14 NMAC - N, 12-30-02]

18.3.3.15 LAPSE IN COVERAGE: If Commission records indicate that a motor carrier's financial responsibility expired or was canceled, the Commission may require evidence that the motor carrier had continuous and adequate coverage for all times it was operating during the lapse

before it accepts a subsequent insurance filing.

[18.3.3.15 NMAC - N, 12-30-02]

18.3.3.16 PROOF OF FINANCIAL RESPONSIBILITY: Each motor carrier and commuter vanpool shall carry proof of financial responsibility in the form and amount required by this rule in each motor vehicle it operates in this state.

[18.3.3.16 NMAC - Rp, SCC Rule 231.04, 12-30-02]

HISTORY OF 18.3.3 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;

SCCMC Rule No. 30, Insurance, filed on 3-5-82;

SCCMC Rule No. 41, Uniform Standards, filed on 3-5-82;

SCC Rule 231, General Compliance Requirements, filed on 1-5-93;

SCC Rule 232, Insurance Requirements, filed on 1-5-93.

History of repealed material.

SCC Rule 231, General Compliance Requirements, filed on 1-5-93;

SCC Rule 232, Insurance Requirements, filed on 1-5-93.

NEW MEXICO PUBLIC REGULATION COMMISSION

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 3 MOTOR CARRIER
GENERAL PROVISIONS
PART 4 QUALIFICATIONS**

OF DRIVERS

18.3.4.1 ISSUING AGENCY: New Mexico Public Regulation Commission, Transportation Division.

[18.3.4.1 NMAC - N, 12-30-02]

18.3.4.2 SCOPE:

A. This rule applies to all motor carriers and commuter vanpools subject to the jurisdiction of the Commission.

B. Commuter vanpools are exempt from the following requirements of this rule:

(1) subsections B and C of 18.3.4.8 NMAC;

(2) 18.3.4.10 NMAC;

(3) 18.3.4.13 NMAC;

(4) 18.3.4.14 NMAC;

(5) 18.3.4.16 NMAC;

(6) subsection B of 18.3.4.18 NMAC;

(7) 18.3.4.19 NMAC; and

(8) 18.3.4.20 NMAC.

[18.3.4.2 NMAC - N, 12-30-02]

18.3.4.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4 and 65-2-83.

[18.3.4.3 NMAC - N, 12-30-02]

18.3.4.4 DURATION: Permanent.

[18.3.4.4 NMAC - N, 12-30-02]

18.3.4.5 EFFECTIVE DATE: December 30, 2002, unless a later date is cited at the end of a section.

[18.3.4.5 NMAC - N, 12-30-02]

18.3.4.6 OBJECTIVE: The purpose of this rule is to establish qualifications for drivers used or employed by, or who have contracted with, motor carriers or commuter vanpools subject to the jurisdiction of the Commission.

[18.3.4.6 NMAC - N, 12-30-02]

18.3.4.7 DEFINITIONS: See 18.3.1.7 NMAC.

[18.3.4.7 NMAC - N, 12-30-02]

18.3.4.8 DRIVERS MUST BE QUALIFIED:

A. No motor carrier or commuter vanpool shall use, employ or contract with a driver who fails to meet the minimum qualifications stated in 18.3.4.9 NMAC.

B. All motor carriers must perform the minimum duties prescribed by this rule with respect to the qualifications of their drivers.

C. A motor carrier who employs him or herself as a driver must

comply with the requirements of these rules applicable to motor carriers and the requirements of these rules applicable to drivers.

[18.3.4.8 NMAC - N, 12-30-02]

18.3.4.9 MINIMUM QUALIFICATIONS OF DRIVERS: A person is qualified to drive a motor vehicle if the person:

A. is at least eighteen (18) years old;

B. can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

C. can, by reason of experience, training, or both, safely operate the type of motor vehicle the person will be assigned to drive;

D. is physically qualified to drive a motor vehicle in accordance with 18.3.4.18 NMAC;

E. has a valid Commercial Driver's License or New Mexico driver's license for the type of motor vehicle the person will drive;

F. has prepared and furnished the motor carrier or commuter vanpool that uses, employs or contracts with him or her with the list of violations required by paragraph 8 of subsection B of 18.3.4.12 NMAC or the driver's annual certification of violations required by subsection C of 18.3.4.15 NMAC;

G. is not disqualified to drive a motor vehicle as provided in 18.3.4.11 NMAC; and,

H. has successfully completed a driver's road test and been issued a certificate of driver's road test in accordance with 18.3.4.16 NMAC, or has presented a driver's license or certificate of road test which the employing or contracting motor carrier or commuter vanpool has accepted as equivalent to a road test in accordance with 18.3.4.17 NMAC.

[18.3.4.9 NMAC - N, 12-30-02]

18.3.4.10 DRIVERS' RESPONSIBILITIES REGARDING CARGO AND BAGGAGE: This section does not

apply to commuter vanpools. A motor carrier shall not require or permit a person to drive a motor vehicle unless the person:

A. can determine whether the cargo and baggage to be transported has been properly located, distributed, and secured in or on the motor vehicle; and

B. is familiar with methods and procedures for securing cargo and baggage in or on the motor vehicle.

[18.3.4.10 NMAC - N, 12-30-02]

18.3.4.11 DISQUALIFICATION OF DRIVERS: A motor carrier or commuter vanpool shall not require or permit a driver who is disqualified to drive a motor vehicle.

A. Disqualification for loss of driving privileges.

(1) A driver is deemed disqualified if the driver's license is revoked, suspended, withdrawn, or denied until that driver's license is restored by the authority that revoked, suspended, withdrew, or denied it.

(2) A motor carrier or commuter vanpool shall require a driver who receives a notice that his or her license has been revoked, suspended, or withdrawn to notify the motor carrier or commuter vanpool that uses, employs or contracts with the driver of the contents of the notice before the end of the business day following the day the driver received it.

B. Disqualification for criminal and other offenses. A driver who is convicted of or fined for, or forfeits bond or collateral upon a charge of, a disqualifying offense specified in paragraph (1) this subsection is disqualified for the period of time specified in paragraph (2) this subsection.

(1) **Disqualifying offenses.** The following offenses are disqualifying offenses:

(a) driving a motor vehicle while under the influence of alcohol;

(b) driving a motor vehicle under the influence of a controlled substance, amphetamine, narcotic drug, formulation of an amphetamine, or derivative of a narcotic drug identified on 21 CFR 1308.11 Schedule I;

(c) driving a motor vehicle while transporting or possessing a controlled substance, amphetamine, narcotic drug, formulation of an amphetamine, or derivative of a narcotic drug identified on 21 CFR 1308.11 Schedule I;

(d) committing a felony involving the use of a motor vehicle.

(2) Duration of disqualification.

(a) Drivers for motor carriers of persons. If a driver for a motor carrier of persons or commuter vanpool is convicted of or fined for, or forfeits bond or collateral on a charge of, any offense described in paragraph (1) of this subsection, the driver shall be disqualified for:

(i) five years if it is a first offense;

(ii) life if it is a second or subsequent offense.

(b) Drivers for all other motor carriers. A driver who drives for any other kind of motor carriers shall be disqualified for the period of time specified in 49 CFR Part 391.

[18.3.4.11 NMAC - N, 12-30-02]

18.3.4.12 DRIVER QUALIFICATION FORM:

A. No motor carrier or commuter vanpool shall require or permit a person, including him or herself, to drive a motor vehicle unless the person has completed and signed a driver qualification form that meets the requirements of this section.

B. The motor carrier or commuter vanpool shall furnish a driver qualification form which shall contain:

(1) the name and address of the employing or contracting motor carrier or organization sponsoring the commuter vanpool;

(2) the driver candidate's name, address, date of birth, and social security number;

(3) the addresses at which the driver candidate has resided during the three (3) years preceding the date on which the driver qualification form is submitted;

(4) the date on which the driver qualification form is submitted;

(5) the issuing state, license number, and expiration date of each unexpired driver's license that has been issued to the driver candidate;

(6) the nature and extent of the driver candidate's experience in the operation of motor vehicles, including the type of equipment which he or she has operated;

(7) a list of all motor vehicle accidents in which the driver candidate was involved during the three (3) years preceding the date the driver qualification form is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(8) a list of all violations of motor vehicle laws or ordinances (other than parking violations) of which the driver candidate was convicted, fined, or forfeited bond or collateral during the three (3) years preceding the date the driver qualification form is submitted;

(9) a statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any driver's license that has been issued to the driver candidate, or a statement that no such denial, revocation, or suspension has occurred;

(10) a list of the names and addresses of the driver candidate's employers during the three (3) years preceding the date the driver qualification form is submitted, together with the dates he or she was employed by, and his/her reason for leaving the employ of, each employer; and

(11) the following certification and signature line, which must appear at the

end of the driver qualification form and be signed by the driver candidate: "I certify that this driver qualification form was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge. [date] [driver candidate's signature]"

C. A motor carrier may require a driver candidate to provide information in addition to the information required by this section on the driver qualification form.

D. Before accepting a driver qualification form, the motor carrier shall inform the driver candidate that the information he or she provides in accordance with this section may be used, and the driver candidate's prior employers may be contacted, for the purpose of investigating the driver candidate's background as required by this rule.

[18.3.4.12 NMAC - N, 12-30-02]

18.3.4.13 INQUIRIES AND INVESTIGATIONS: This section does not apply to commuter vanpools.

A. Initial inquiry into driving records. A motor carrier shall make an inquiry into the driving record of each driver candidate it desires to employ or contract with, including him or herself, prior to the date the driver candidate begins driving for the motor carrier. The motor carrier shall make the inquiry to the appropriate agency of every state in which the driver candidate held a driver's license during the preceding three (3) years in the form and manner prescribed by those agencies. The motor carrier shall retain a copy of the response from each state agency, showing the driver candidate's driving record or certifying that no driving record exists for that driver candidate, in the driver's qualification file.

B. Initial investigation of employment records. A motor carrier shall make an investigation of the driver's employment record prior to the date the driver candidate begins driving for the motor carrier. The investigation may consist of personal interviews, telephone interviews, letters, or any other method of obtaining information that the motor carrier deems appropriate. Each motor carrier must make a written record with respect to each past employer who was contacted. The record must include the past employer's name and address, the date he or she was contacted, and his/her comments with respect to the driver candidate. The motor carrier shall retain the record in the driver's qualification file.

[18.3.4.13 NMAC - N, 12-30-02]

18.3.4.14 ANNUAL INQUIRY

AND REVIEW OF DRIVING RECORD: This section does not apply to commuter vanpools.

A. A motor carrier shall, at least once every twelve (12) months, make an inquiry into the driving record of each driver it employs or contracts with, covering at least the preceding twelve (12) months, to the appropriate agency of every state in which the driver held a driver's license during the time period. The motor carrier shall retain a copy of the response from each state agency in the driver's qualification file.

B. A motor carrier shall, at least once every twelve (12) months, review the driving record of each driver it employs or contracts with to determine whether that driver meets the minimum qualifications of drivers in 18.3.4.9 NMAC or is disqualified to drive a motor vehicle pursuant to 18.3.4.11 NMAC. The motor carrier shall

retain a note, including the name of the person who performed the review of the driving record and the date of such review, in the driver's qualification file.

C. A motor carrier must consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public.

[18.3.4.14 NMAC - N, 12-30-02]

18.3.4.15 ANNUAL CERTIFICATION OF VIOLATIONS:

A. Every motor carrier or commuter vanpool shall, at least once every twelve (12) months, require each driver it uses, employs, or contracts with to submit a

driver's certification of violations of any motor vehicle traffic laws and ordinances (other than parking violations) of which the driver has been convicted or fined or on account of which he or she has forfeited bond or collateral during the preceding twelve (12) months. The motor carrier or commuter vanpool shall retain the driver's certification of violations, or a copy of it, in the driver's qualification file.

B. If a driver has not been convicted of or fined for, or forfeited bond or collateral on account of, any violation that must be listed, he or she shall so certify. The motor carrier or commuter vanpool shall retain the certificate, or a copy of it, in its files as part of the driver's qualification file.

C. The motor carrier or commuter vanpool shall use the following form or a substantially similar form, for the annual driver's certification of violations:

DRIVER'S CERTIFICATION OF VIOLATIONS			
I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted, fined, or forfeited bond or collateral during the past 12 months.			
Date of conviction	Offense	Location	Type of motor vehicle operated
If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.			
Date of certification			
Driver's signature			
Name of motor carrier			
Address of motor carrier			
Signature of reviewer			
Printed name of reviewer			
Title of reviewer			
Date of review			

[18.3.4.15 NMAC - N, 12-30-02]

18.3.4.16 ROAD TEST: This section does not apply to commuter vanpools.

A. No motor carrier shall require or permit a person to drive a motor vehicle unless the person has first successfully completed a road test and been issued a certificate of driver's road test in accordance with this section or met the requirements of 18.3.4.17 NMAC.

B. The road test shall be given by the motor carrier or by an examiner designated by the motor carrier who is competent to evaluate and determine whether the person taking the road test is capable of operating the motor vehicle and associated equipment the motor carrier intends to assign to the person. A driver who is a motor carrier must be given the road test by another person.

C. The road test must be of

sufficient duration to enable the examiner to evaluate the skill of the person who takes it at handling the motor vehicle and associated equipment that the motor carrier intends to assign to the person. At a minimum, the person who takes the road test must be tested, while operating the type of motor vehicle the motor carrier intends to assign to him or her, on his/her skill at performing each of the following operations:

(1) the pre-trip inspection required by subsection B of 18.3.5.15 NMAC;

(2) placing the motor vehicle in operation;

(3) use of the motor vehicle's controls and emergency equipment;

(4) operating the motor vehicle in traffic and while passing other motor vehicles;

(5) turning the motor vehicle;

(6) braking, and slowing the motor vehicle by means other than braking; and

(7) backing and parking the motor vehicle.

D. The motor carrier shall provide a form on which the examiner shall rate the performance of the person who takes the road test at each operation or activity that is a part of the road test. The examiner shall complete the form and sign it.

E. If the road test is successfully completed, the examiner shall complete a certification of driver's road test in substantially the following form and give a copy of it to the person who took the road test:

CERTIFICATION OF DRIVER'S ROAD TEST	
Driver's name	
Driver's Social Security Number	
Driver's License Number	
State	
Type of motor vehicle driven and associated equipment	
This is to certify that the above-named driver was given a road test under my supervision on [insert 12-30-02] , consisting of approximately _____ miles of driving. It is my considered opinion that this driver possesses sufficient driving skill to safely operate the type of motor vehicle listed above.	
Title of examiner	
Organization and address of examiner	
Signature of examiner	

F. The motor carrier shall retain in the driver's qualification file of the person who took the road test:

(1) the original of the signed road test form required by subsection D of this section; and

(2) the original, or a copy of, the certification of driver's road test required by subsection E of this section.

[18.3.4.16 NMAC - N, 12-30-02]

18.3.4.17 EQUIVALENT OF ROAD TEST:

A. In place of and as equivalent to the road test required by 18.3.4.16 NMAC, a motor carrier may, but is not required to, accept from a driver candidate:

(1) a valid driver's license which has been issued to the driver candidate after successful completion of a road test in a motor vehicle of the type the motor carrier intends to assign to the driver candidate; or

(2) a copy of a valid certificate of driver's road test issued to the driver candidate pursuant to subsection E of 18.3.4.16 NMAC within the preceding three (3) years.

B. If a motor carrier accepts a driver's license or certificate of driver's road test as equivalent to the road test, the motor carrier shall retain a legible copy of the driver's license or certificate of driver's road test in the driver's qualification file.

C. A motor carrier may require any driver candidate who presents a driver's license or certificate of driver's road test as equivalent to the road test to take a road test or any other test of the driver candidate's driving skill as a condition of the driver candidate's employment as a driver. [18.3.4.17 NMAC - N, 12-30-02]

18.3.4.18 PHYSICAL QUALIFICATIONS OF DRIVERS:

A. No motor carrier or commuter vanpool shall require or permit a person to drive a motor vehicle unless the person is physically qualified to do so.

B. A motor carrier shall

require its drivers to carry on their person the original or a photographic copy of a medical examiner's certificate that the person is physically qualified to drive a motor vehicle. This subsection does not apply to commuter vanpools.

C. A person is physically qualified to drive a motor vehicle if that person:

(1) has no loss of a foot, a leg, a hand, or an arm;

(2) has no impairment of a hand or finger which interferes with prehension or power grasping; or

(3) has no impairment of an arm, foot, or leg, or any other significant limb defect or limitation, which interferes with the ability to perform normal tasks associated with operating a motor vehicle;

(4) has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(5) has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(6) has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a motor vehicle safely;

(7) has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a motor vehicle safely;

(8) has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his/her ability to control and operate a motor vehicle safely;

(9) has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle;

(10) has no mental, nervous,

organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a motor vehicle safely;

(11) has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber;

(12) first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951;

(13) does not use a controlled substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or any other habit-forming drug, except that a driver may use such a substance or drug if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties and has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a motor vehicle; and

(14) has no current clinical diagnosis of alcoholism.

[18.3.4.18 NMAC - N, 12-30-02]

18.3.4.19 MEDICAL EXAMINATIONS: This section does not apply to commuter vanpools.

A. **Persons who must be medically examined and certified.** A motor carrier shall require a medical examination of:

(1) any driver who has not been

medically examined and certified as qualified to operate a motor vehicle during the preceding twenty-four (24) months; or

(2) any driver whose ability to perform his or her normal duties has been impaired by a physical or mental injury or disease.

B. Medical examination; certificate of physical examination.

(1) The medical examination shall be performed by a licensed physician or physician's assistant. A licensed optometrist may perform that portion of the medical examination that pertains to visual acuity, field of vision, and the ability to recognize colors.

(2) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the instructions and forms found in 49 CFR Part 391.

[18.3.4.19 NMAC - N, 12-30-02]

18.3.4.20 REQUIREMENTS FOR DRIVER QUALIFICATION FILES:

This section does not apply to commuter vanpools.

A. A motor carrier shall maintain a driver's qualification file for each driver it employs or contracts with. A driver's qualification file may be combined with the driver's personnel file. The driver's qualification file shall include:

(1) the driver qualification form required by 18.3.4.12 NMAC; the file may include the driver's annual certification of violations of motor vehicle laws and ordinances required by 18.3.4.15 NMAC in lieu of the list required by paragraph 8 of subsection B of 18.3.4.12 NMAC;

(2) a written record of the response of each state agency to the initial inquiry into driving records required by subsection A of 18.3.4.13 NMAC;

(3) a written record of the response of each employer to the initial investigation of employment records required by subsection B of 18.3.4.13 NMAC;

(4) a note relating to the annual inquiry and review of driving record required by 18.3.4.14 NMAC;

(5) the certificate of driver's road test issued to the driver pursuant to 18.3.4.16 NMAC, or a copy of the driver's license or certificate of driver's road test which the motor carrier accepted as equivalent to the driver's road test pursuant to 18.3.4.17 NMAC;

(6) the medical examiner's certificate of the driver's physical qualification to drive a motor vehicle required by 18.3.4.19 NMAC or a legible photographic copy of the certificate.

B. Except as provided in

subsection C of this section, each driver's qualification file shall be retained for as long as a driver is employed by or contracted with that motor carrier and for three (3) years thereafter.

C. The following records may be removed from a driver's qualification file three (3) years after the date of entry in the file:

(1) the response of each state agency to the initial inquiry into driver record;

(2) the note relating to the annual inquiry and review of the driving record;

(3) the list or driver's certification of violations relating to violations of motor vehicle laws and ordinances;

(4) the medical examiner's certificate of the driver's physical qualification to drive a motor vehicle or the photographic copy of the certificate.

[18.3.4.20 NMAC - N, 12-30-02]

History of 18.3.4 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCCMC Rule No. 6, Qualifications of Drivers, filed on 3-5-82;

SCC Rule 231, General Compliance Requirements, filed on 1-5-93;

SCC Rule 231, General Compliance Requirements, filed on 10-27-93.

History of repealed material.

SCC Rule 231, General Compliance Requirements, filed on 10-27-93.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS

PART 5 OPERATING REQUIREMENTS

18.3.5.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[18.3.5.1 NMAC - N, 12-30-02]

18.3.5.2 SCOPE:

A. This rule applies to all motor carriers subject to the jurisdiction of the Commission and to all motor vehicles operated by the motor carrier in the course of its operations.

B. Commuter vanpools are exempt from the following provisions of this rule:

- (1) 18.3.5.11 NMAC,
- (2) 18.3.5.13 NMAC,
- (3) paragraph (2) of subsection B, and subsection D, of 18.3.5.15 NMAC,
- (4) 18.3.5.16 NMAC, and
- (5) 18.3.5.17 NMAC.

[18.3.5.2 NMAC - N, 12-30-02]

18.3.5.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4 and 65-2-83.

[18.3.5.3 NMAC - N, 12-30-02]

18.3.5.4 DURATION: Permanent.

[18.3.5.4 NMAC - N, 12-30-02]

18.3.5.5 EFFECTIVE DATE: December 30, 2002, unless a later date is cited at the end of a section.

[18.3.5.5 NMAC - N, 12-30-02]

18.3.5.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Sections 65-2-92, 65-2-96, and 65-2-109.

[18.3.5.6 NMAC - N, 12-30-02]

18.3.5.7 DEFINITIONS: See 18.3.1.7 NMAC.

[18.3.5.7 NMAC - N, 12-30-02]

18.3.5.8 IDENTIFICATION OF EQUIPMENT:

A. Issuance. The Commission shall assign an NMPRC transportation number to each motor carrier or commuter vanpool when it issues an operating authority. Any transportation number issued by the New Mexico State Corporation Commission shall be changed to an NMPRC transportation number and displayed as required by this rule.

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

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

(2) **Placement on all other motor vehicles.** The name or trade name of the motor carrier or commuter vanpool and the NMPRC transportation number must be distinctly displayed on the right and left sides of the power unit of each motor vehicle operated in New Mexico.

C. Exception. Interstate motor carriers that display a federal transportation number are not required to display the NMPRC transportation number.

[18.3.5.8 NMAC - Rp, SCC Rules 207.11 and 231.07, 12-30-02]

18.3.5.9 EQUIPMENT REQUIREMENTS:

A. Head lamps and auxiliary road lighting lamps.

(1) **Head lamps required.** Every motor vehicle shall be equipped with a headlighting system composed of at least two head lamps, not including fog or other auxiliary lamps, with an equal number on each side of the vehicle. The headlighting system shall provide an upper and lower distribution of light, selectable at the driver's will.

(2) **Lamps operable.** All lamps must be capable of being operated at all times.

(3) **Mounting.** Head lamps and auxiliary road lighting lamps shall be mounted so that the beams are readily adjustable, both vertically and horizontally, and the mounting shall be such that the aim is not readily disturbed by ordinary conditions of service.

(4) **Fog, adverse weather, and auxiliary road-lighting lamps.** For the purposes of this section, fog, adverse-weather, and auxiliary road lighting lamps, when installed, are considered to be a part of the headlighting system. Such lamps may be used in lieu of headlamps under conditions making their use advisable if there is at least one such lamp on each side of the vehicle.

(5) **Stop lamp operation.** All stop lamps on each motor vehicle shall be actuated upon application of any of the service brakes.

B. Turn signaling systems. Every motor vehicle shall be equipped with a signaling system that, in addition to signaling turning movements, shall have a switch or combination of switches that will cause the two front turn signals and the two rear turn signals to flash simultaneously as a vehicular traffic hazard warning with the ignition on or off. Every trailer shall be equipped so that the two rear turn signals flash simultaneously with the two front turn signals of the towing vehicle as a vehicular traffic hazard warning.

C. Brake systems. All motor vehicles must have brakes adequate to control the movement of, and to stop and hold, the motor vehicle. All brakes and brake systems shall be maintained such that they are capable of operating safely at all times.

D. Windshield. All motor vehicles shall be equipped with a windshield that is free from damage in the area extending upward from the height of the top of the steering wheel (excluding a two inch

border at the top of the windshield) and extending from a one-inch border at each side of the windshield, except that the following types of minor damage are permissible:

(1) Any crack that is not intersected by another crack;

(2) Any damaged area that can be covered by a disk 3/4 inch in diameter, if not closer than three inches to any other similarly damaged area.

E. Tires. No motor vehicle shall be operated on any tire that: has body ply or belt material exposed through the tread or sidewall; is flat or has an audible leak; has a cut to the extent that the ply or belt material is exposed; or has a tread depth of less than 4/32 of an inch for front wheels and 2/32 of an inch for all other wheels.

(1) **Tire loading restrictions.** No motor vehicle shall be operated carrying a weight greater than that marked on the sidewall of the tire.

(2) **Tire inflation pressure.** No motor vehicle shall be operated on a tire that has a cold inflation pressure less than that specified for the load being carried.

F. Windshield wipers. All motor vehicles shall be equipped with at least two automatically-operating windshield wiper blades for cleaning rain, snow, or other moisture from the windshield and which shall be in such condition as to provide clear vision for the driver.

G. Defrosting device. All motor vehicles, when operating under conditions such that ice, snow, or frost would be likely to collect on the outside of the windshield or condensation on the inside of the windshield, shall be equipped with a device or other means, not manually operated, for preventing or removing such obstructions to the driver's view.

H. Rearview mirrors. All motor vehicles shall be equipped with two rearview mirrors, one on each side, firmly attached to the outside of the motor vehicle, and so positioned as to reflect to the driver a view of the highway to the rear along both sides of the vehicle. Only one inside mirror shall be required on motor vehicles, which shall be positioned on the driver's side, which shall be so constructed that the driver has a view to the rear by means of an interior mirror.

I. Horn. All motor vehicles shall be equipped with a horn and actuating elements that shall be in such condition as to give an adequate and reliable warning signal.

J. Speedometer. All motor vehicles shall be equipped with a speedometer indicating vehicle speed in miles per hour, which shall be operative

with reasonable accuracy.

K. Exhaust system.

Every motor vehicle having a device capable of expelling harmful combustion fumes shall have a system to direct the discharge of such fumes.

(1) No part of the exhaust system shall be located where its location would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

(2) No part of the exhaust system shall be temporarily repaired with wrap, patches or otherwise.

(3) No part of the exhaust system shall leak or discharge at a point forward of or directly below the driver compartment. The exhaust outlet may discharge above the cab roofline.

(4) The exhaust system must be securely fastened to the vehicle, although exhaust systems may use hangers that permit required movement due to expansion and contraction caused by heat of the exhaust and relative motion between engine and chassis of a vehicle.

L. Floors. The flooring in all motor vehicles shall be substantially constructed, free of unnecessary holes and openings, and shall be maintained so as to minimize the entrance of fumes, exhaust gases, or fire. Floors shall not be permeated with oil or other substances likely to cause injury to persons using the floor as a traction surface.

M. Emergency equipment.

(1) **Fire extinguisher.** Every motor vehicle must be equipped with a fire extinguisher that is properly filled and located so that it is readily accessible for use. The fire extinguisher must be securely mounted on the vehicle. The fire extinguisher must be designed, constructed, and maintained to permit visual determination of whether it is fully charged. The fire extinguisher must have an extinguishing agent that does not need protection from freezing.

(2) **Warning devices for stopped vehicles.** Every motor vehicle must be equipped with at least three bi-directional emergency reflective triangles or 6 fuses capable of burning for thirty minutes or 3 liquid-burning flares capable of burning for sixty minutes.

(a) **Supplemental warning devices.** Other warning devices may be used in addition to, but not in lieu of, the required warning devices, provided those warning devices do not decrease the effectiveness of the required warning devices.

(b) **Restrictions on the use of flame-producing devices.** Liquid-burning flares, fuses, or any signal produced by a

flame shall not be carried on any motor vehicle transporting explosives, flammable gas, flammable liquid or other hazardous matter, whether loaded or empty, or any commercial motor vehicle using compressed gas as a motor fuel.

[18.3.5.9 NMAC - N, 12-30-02]

18.3.5.10 EMERGENCY SIGNALS; STOPPED MOTOR VEHICLES:

A. Hazard warning signal flashers. Whenever a motor vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver of the stopped motor vehicle shall immediately activate the vehicular hazard warning signal flashers and continue the flashing until the driver places the warning devices required by these rules. The flashing signals shall be used during the time the warning devices are picked up for storage before movement of the motor vehicle. The flashing lights may be used at other times while a motor vehicle is stopped in addition to, but not in lieu of, the warning devices required by these rules.

B. Placement of warning devices. Whenever a motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within ten (10) minutes, place the warning devices required by these rules in the following manner:

(1) one (1) on the traffic side of and four (4) paces (approximately ten (10) feet) from the stopped motor vehicle in the direction of approaching traffic;

(2) one (1) at forty (40) paces (approximately one hundred (100) feet) from the stopped motor vehicle in the center of the traffic lane or shoulder occupied by the motor vehicle and in the direction of approaching traffic; and

(3) one (1) at forty (40) paces (approximately one hundred (100) feet) from the stopped motor vehicle in the center of the traffic lane or shoulder occupied by the motor vehicle and in the direction away from approaching traffic.

C. Special rules for fuses and liquid-burning flares. The driver of a motor vehicle equipped with only fuses or liquid-burning flares shall place a lighted fuse or liquid-burning flare at each of the locations specified in these rules. There shall be at least one lighted fuse or liquid-burning flare at each of the prescribed locations as long as the motor vehicle is stopped. Before the stopped motor vehicle is moved, the driver shall extinguish and remove each fuse or liquid-burning flare.

D. Business or residential districts. The placement of warning devices is not required within the business or residential district of a municipality, except during the time from a half hour after sunset to a half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred (500) feet.

E. Hills, curves, and obstructions. If a motor vehicle is stopped within five hundred (500) feet of a curve, crest of a hill, or other obstruction to view, the driver shall place the warning signal required by these rules in the direction of the obstruction to view a distance of one hundred (100) feet to five hundred (500) feet from the stopped motor vehicle so as to afford ample warning to other users of the highway.

F. Divided or one-way roads. If a motor vehicle is stopped upon the traveled portion or the shoulder of a divided or one-way highway, the driver shall place the warning devices required by these rules, one warning device at a distance of two hundred (200) feet and one warning device at a distance of one hundred (100) feet in a direction toward approaching traffic in the center of the lane or shoulder occupied by the motor vehicle. The driver shall place one warning device at the traffic side of the motor vehicle within ten (10) feet of the rear of the motor vehicle.

G. Leaking, flammable material. If gasoline or any other flammable liquid, or combustible liquid or gas seeps or leaks from a fuel container or a motor vehicle stopped upon a highway, no emergency warning signal producing a flame shall be lighted or placed except at such a distance from any such liquid or gas as will assure the prevention of a fire or explosion.

[18.3.5.10 NMAC - N, 12-30-02]

18.3.5.11 PREVENTIVE MAINTENANCE PROGRAM: Every motor carrier shall adopt a written preventive maintenance program that provides for systematic inspection, repair and maintenance of all motor vehicles subject to its control and shall regularly inspect, repair, and maintain all motor vehicles subject to its control. This section does not apply to commuter vanpools.

[18.3.5.11 NMAC - N, 12-30-02]

18.3.5.12 ANNUAL INSPECTION OF VEHICLES: A motor carrier or commuter vanpool shall not use a motor vehicle unless it has passed an annual inspection conducted in accordance with 49 CFR Part 396.

A. Motor carriers.

(1) A motor carrier shall retain a copy of the annual inspection report at its principal place of business for a period of three years from the date of the inspection report.

(2) A motor carrier shall retain evidence of the qualified inspector's qualifications at its principal place of business for a period of three (3) years from the date of that inspector's inspection report. A motor carrier is not required to retain evidence of inspector qualifications for those inspections performed either as part of a state periodic inspection program or at the roadside as part of a random roadside inspection.

B. Commuter vanpools.

A commuter vanpool shall file with the Commission by January 15 of each year the certificates of annual inspection from the prior calendar year for each vehicle it operates.

[18.3.5.12 NMAC - N, 12-30-02]

18.3.5.13 HOURS OF SERVICE: This section does not apply to commuter vanpools.

A. Maximum daily driving time. Except in adverse or emergency driving conditions as provided in this section, no motor carrier shall permit or require any driver it employs or contracts with to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services:

(1) more than ten (10) hours following eight (8) consecutive hours off duty; or

(2) for any period after having been on duty fifteen (15) hours following eight (8) consecutive hours off duty.

B. Maximum weekly driving time. Except in adverse or emergency driving conditions as provided in this section, no motor carrier shall permit or require any driver it employs or contracts with to drive nor shall any such driver drive, regardless of the number of motor carriers using the driver's services, for any period after:

(1) having been on duty sixty (60) hours in any seven (7) consecutive days if the employing or contracting motor carrier does not operate motor vehicles every day of the week; or

(2) having been on duty seventy (70) hours in any period of eight (8) consecutive days if the employing or contracting motor carrier operates motor vehicles every day of the week.

C. Adverse driving conditions. Except in emergency conditions, a driver who encounters adverse driving conditions, and cannot, because of those condi-

tions, safely complete the run within the ten (10) hour maximum driving time permitted by this rule may drive and be permitted or required to drive a motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for the occupants of the motor vehicle and security for the motor vehicle and its cargo or baggage. However, that driver may not drive or be permitted to drive:

(1) for more than twelve (12) hours in the aggregate following eight (8) consecutive hours off duty; or

(2) after he/she has been on duty fifteen (15) hours following eight (8) consecutive hours off duty.

D. Emergency conditions. In case of any emergency, a driver may complete his/her run without being in violation of these rules, if such run reasonably could have been completed absent the emergency.

[18.3.5.13 NMAC - N, 12-30-02]

18.3.5.14 IMPAIRMENT BY USE OF DRUGS, ALCOHOL, OR OTHER SUBSTANCES PROHIBITED: No motor carrier or commuter vanpool shall require or permit a driver to violate any provision of this section.

A. Drug and alcohol testing:

(1) Commuter vanpools shall be required to conduct a drug test on each driver in conformance with the initial drug-testing program filed with its application for a certificate of registration.

(2) Every motor carrier other than a commuter vanpool shall conduct a drug and alcohol testing program in accordance with 49 CFR Section 382 and Part 40.

B. Drugs and other substances.

(1) No motor carrier or commuter vanpool shall require or permit a driver to be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

(a) any 21 CFR 1308.11 Schedule I substance;

(b) an amphetamine or any formulation thereof (including, but not limited, to "pep pills," and "bennies");

(c) a narcotic drug or any derivative thereof; or

(d) any other substance, to a degree that renders the driver incapable of safely operating a motor vehicle.

(2) This subsection does not apply to the possession or use of a substance administered to a driver by or under the instructions of a licensed medical practitioner who has advised the driver that the substance will not affect the driver's ability

to safely operate a motor vehicle.

C. Alcohol. No motor carrier or commuter vanpool shall require or permit a driver to:

(1) use alcohol or be under the influence of alcohol, within eight hours before going on duty or operating, or having physical control of, a motor vehicle; or

(2) use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a motor vehicle;

(3) be on duty or operate a motor vehicle while the driver possesses alcohol; or

(4) be on duty or operate a motor vehicle if, by the driver's general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding eight hours.

[18.3.5.14 NMAC - N, 12-30-02]

18.3.5.15 DRIVING OF MOTOR VEHICLES:

Every motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, where these rules impose a higher standard of care than that law, ordinance or regulation, a motor carrier and its drivers must comply with these rules.

A. Impaired operator.

No motor carrier or commuter vanpool shall require or permit a driver to operate a motor vehicle while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him or her to begin or continue to operate the motor vehicle. However, in a case of grave emergency where the hazard to occupants of the motor vehicle or other users of the highway would be increased by compliance with this rule, the driver may continue to operate the motor vehicle to the nearest place at which that hazard is removed.

B. Driver pre-trip inspection.

(1) Before permitting operation of a motor vehicle, a motor carrier or commuter vanpool shall require a driver to inspect and drive the motor vehicle as necessary to be satisfied that it is in safe operating condition.

(2) In addition, a motor carrier other than a commuter vanpool shall require a driver to:

(a) review the last driver vehicle inspection report; and

(b) sign the report, if defects or deficiencies were noted by the previous driver, to acknowledge that this driver reviewed the report and that the report certifies that the required repairs were per-

formed.

C. Emergency equipment, inspection and use. No motor carrier or commuter vanpool shall permit a motor vehicle to be driven, unless the motor carrier and the driver are satisfied that the emergency equipment required by these rules is in place and ready for use; nor shall any driver fail to use or make use of such equipment when and as needed.

D. Safe loading. This subsection does not apply to commuter vanpools. No motor carrier shall require or permit a person to drive a motor vehicle unless:

(1) the motor vehicle's cargo and baggage is properly distributed and adequately secured;

(2) the motor vehicle's tailgate, doors, tarpaulins, spare tire, fire extinguisher, and other equipment used in its operation, and the means of fastening the motor vehicle's cargo and baggage are secured; and

(3) the motor vehicle's cargo and baggage or any other object does not obscure the driver's view ahead or to the right or left sides, interfere with the free movement of his/her arms or legs, prevent his/her free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the motor vehicle or driver's compartment.

E. Hazardous conditions; extreme caution.

A motor carrier or commuter vanpool shall require its drivers to exercise extreme caution in the operation of a motor vehicle when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the motor vehicle shall be discontinued and shall not be resumed until the motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

F. Use of distracting devices prohibited.

No motor carrier or commuter vanpool shall require or permit a driver to use any device, including but not limited to headphones, earphones, cell phones, or televisions, which may distract the driver from concentrating or inhibit the ability of the driver to hear or see clearly. A driver may use a motor vehicle's audio equipment at a volume that will not distract the driver from concentrating or inhibit the ability of the driver to hear clearly.

G. Use of seat belts. A motor carrier or commuter vanpool shall require a driver to properly restrain him-

self/herself with a seat belt in any motor vehicle which has a seat belt installed at the driver's seat.

[18.3.5.15 NMAC - N, 12-30-02]

18.3.5.16 DRIVER'S RECORD

OF DUTY STATUS: This section does not apply to commuter vanpools. Every motor carrier shall require every driver it employs or contracts with to record his/her duty status for each twenty-four (24) hour period, except as provided in 49 CFR Part 395. All entries relating to driver's duty status must be legible and in the driver's own handwriting.

A. Required information.

The driver's daily record of duty status form shall include the following:

- (1) date;
- (2) total miles driven on the date;
- (3) motor vehicle number;
- (4) name of motor carrier;
- (5) driver's signature and certification that all entries are true and correct;
- (6) starting time;
- (7) ending time;
- (8) total hours;
- (9) driver's remarks.

B. Submission of driver's record of duty status. Every driver shall, and every motor carrier shall require every driver it employs or contracts with to submit the driver's record of duty status within five (5) days following the completion of a driving day.

(1) A driver shall review and verify that all entries are complete prior to submitting the driver's record of duty status to the employing or contracting motor carrier.

(2) Every motor carrier shall verify that each of its drivers complies with this rule.

[18.3.5.16 NMAC - Rp, SCC Rule 241.03, 12-30-02]

18.3.5.17 DRIVER VEHICLE

INSPECTION REPORTS: This section does not apply to commuter vanpools.

A. Report required:

Every motor carrier shall require its drivers to prepare an inspection report in writing at the completion of each day's work, on each motor vehicle the driver operated. The report shall cover at least the following parts and accessories:

- (1) brakes;
- (2) steering mechanism;
- (3) lighting devices and reflectors;
- (4) tires;
- (5) horn;
- (6) windshield wipers;
- (7) rear vision mirrors;
- (8) wheels and rims; and
- (9) emergency and safety equip-

ment.

B. Report content: The report shall identify the motor vehicle and list any defect or deficiency discovered by or reported to the driver that would affect the safety of operation of the motor vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate. In all instances, the driver shall sign the report. If a driver operates more than one motor vehicle during the day, the driver shall prepare a report for each motor vehicle operated.

C. Corrective action.

Prior to requiring or permitting a driver to operate a motor vehicle, every motor carrier shall repair any defect or deficiency listed on the driver vehicle inspection report that would be likely to affect the safety of the operation of the motor vehicle. Every motor carrier shall certify on the original driver vehicle inspection report that lists a defect or deficiency that the defect or deficiency was repaired or that repair is unnecessary before the motor vehicle is again operated.

[18.3.5.17 NMAC - N, 12-30-02]

18.3.5.18 COMMUTER VAN-POOL MOTOR VEHICLE SAFETY

REPORTS: Each commuter vanpool shall require its drivers to report to it, and each commuter vanpool shall timely repair, any defect or deficiency that would be likely to affect the safe operation of the motor vehicle.

[18.3.5.18 NMAC - N, 12-30-02]

HISTORY OF 18.3.5 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977,

filed on 1-25-77;

SCCMC Rule No. 3, Hours of Service, filed on 3-5-82;

SCCMC Rule No. 6, Qualifications of Drivers, filed on 3-5-82;

SCCMC Rule No. 7, Driving of Motor Vehicles, filed on 3-5-82;

SCCMC Rule No. 8, Emergency Equipment, filed on 3-5-82;

SCCMC Rule No.9, Securing of Load and Equipment, filed on 3-5-82;

SCCMC Rule No.11, Emergency Signals, filed on 3-5-82;

SCCMC Rule No.12, Head Lamps and Auxiliary Road Lighting Lamps, filed on 3-5-82;

SCCMC Rule No.13, Brakes, filed on 3-5-82;

SCCMC Rule No.14, Equipment Required on Certain Vehicles, filed on 3-5-82;

SCCMC Rule No.15, Windshields Must be Unobstructed and Equipped with Wipers, filed on 3-5-82;

SCCMC Rule No.16, Mirrors, filed on 3-5-82;

SCCMC Rule No.17, Horns and Warning Devices, filed on 3-5-82;

SCCMC Rule No. 37, Slick Tires, filed on 3-5-82;

SCCMC Rule No. 39, Identification of Equipment, filed on 3-5-82;

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12-28-94

SCC Rule 231, General Compliance Requirements, filed on 1-5-93;

SCC Rule 231, General Compliance Requirements, filed on 10-27-93;

SCC Rule 241, Records of Motor Transportation Entities, filed on 1-5-93.

History of repealed material.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12-28-94;

SCC Rule 231, General Compliance Requirements, filed on 1-5-93;

SCC Rule 231, General Compliance Requirements, filed on 10-27-93

SCC Rule 241, Records of Motor Transportation Entities, filed on 1-5-93.

NEW MEXICO PUBLIC REGULATION COMMISSION

**TITLE 18 TRANSPORTATION
AND HIGHWAYS**

**CHAPTER 3 MOTOR CARRIER
GENERAL PROVISIONS**

PART 6 TARIFFS

18.3.6.1 ISSUING AGENCY:
New Mexico Public Regulation

Commission.

[18.3.6.1 NMAC - N, 12-30-02]

18.3.6.2 SCOPE:

A. This rule applies to household goods carriers, towing services performing non-consensual tows, and motor carriers of persons subject to the jurisdiction of the Commission.

B. This rule does not apply to charter services or commuter vanpools.

[18.3.6.2 NMAC - N, 12-30-02]

18.3.6.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4 and 65-2-83.

[18.3.6.3 NMAC - N, 12-30-02]

18.3.6.4 DURATION: Permanent.

[18.3.6.4 NMAC - N, 12-30-02]

18.3.6.5 EFFECTIVE DATE: December 30, 2002, unless a later date is cited at the end of a section.

[18.3.6.5 NMAC - N, 12-30-02]

18.3.6.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Sections 65-2-92, 65-2-96, and 65-2-109.

[18.3.6.6 NMAC - N, 12-30-02].

18.3.6.7 DEFINITIONS: See 18.3.1.7 NMAC.

[18.3.6.7 NMAC - N, 12-30-02]

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

[18.3.6.8 NMAC - Rp, SCC Rule 221.03, 12-30-02]

18.3.6.9 CONTENTS OF TARIFFS:

A. All proposed tariffs filed with the Commission must be consistent with applicable statutes and these rules, clear in their disclosures, free from ambiguities, and shall contain:

(1) a title page with the legal and "doing business as" name of the motor carrier as shown on its application or operating authority, its NMPRC number, the proposed tariff number, the proposed effective date of the tariff, and the name, address and telephone number of the person to whom correspondence regarding the tariff should be addressed;

(2) a brief description of the transportation services to be provided and

the territory to be served;

(3) any terms and conditions applicable to the rendition of the service;

(4) rates stated in dollars and cents per passenger, mile, hour, pound, or other readily ascertainable unit, to, from, and between points in the territory to be served; and

(5) for motor carriers providing scheduled service, a general schedule stating the days of the week on which the motor carrier will provide service, the minimum number of runs per day, the latest time for the first run of the day, the earliest time for the last run of the day, the general area of all arrival and departure points, and at least one precisely defined departure point and one precisely defined arrival point.

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

[18.3.6.9 NMAC - Rp, SCC Rule 221.04, 12-30-02]

18.3.6.10 RATES BETWEEN UNITS:

Whenever the exact size of a ratemaking unit does not appear in a scale of rates in a tariff, the applicable rate shall be that prescribed for the next greater sized unit in the scale.

[18.3.6.10 NMAC - Rp, SCC Rule 221.10, 12-30-02]

18.3.6.11 COMPUTATION OF DISTANCES:

A. A motor carrier shall compute distances using the current official road map of New Mexico issued by the New Mexico State Highway and Transportation Department.

B. A motor carrier shall use actual odometer miles via the shortest practicable route:

(1) for any part of the distance that cannot be calculated from the official road map;

(2) for off-highway miles;

(3) for uncharted highway miles; and

(4) when a highway is closed by authority of any regulatory body and motor vehicles must be detoured.

C. In computing distances, a motor carrier shall retain all fractions of miles until the segments are added to obtain the total distance. Any remaining fraction of less than 1/2 (.5) mile will be omitted; any remaining fraction of 1/2 (.5) mile or greater will be increased to the next whole mile.

[18.3.6.11 NMAC - Rp, SCC Rule 267.14, 12-30-02]

18.3.6.12 TARIFFS TO BE AVAILABLE:

A motor carrier subject to

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

[18.3.6.12 NMAC - Rp, SCC Rule 221.08, 12-30-02]

18.3.6.13 CONTENTS OF APPLICATION FOR APPROVAL OF A MOTOR CARRIER AGREEMENT:

A. An application for approval of a motor carrier agreement must contain:

(1) a true copy of the agreement; and

(2) the full and correct name and business address of each motor carrier which is a party to the agreement and whether it is a limited liability company, corporation, partnership, or individual.

B. If the agreement for which approval is sought establishes or continues a motor carrier association, then the following information concerning the motor carrier association must be submitted:

(1) The full and correct name and business address of the motor carrier association; whether it is an association, corporation, or partnership; if a corporation, the government, state, or territory under the laws of which the applicant was organized and received its present charter; and, if an association or partnership, the names of the officers or partners and the date of formation.

(2) a complete description of such motor carrier association, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations; and, if such motor carrier association has a working or other arrangement or relationship with any other motor carrier association, a complete description of such arrangement or relationship. If the agreement is of any other character, a precise statement of its nature and scope and the mode of its procedure.

(3) The facts and circumstances relied upon to establish that the agreement will be in furtherance of the transportation policy of this state.

(4) The name, title, and business address of counsel, an officer, or other person representing the motor carrier association to whom correspondence regarding the agreement should be addressed.

(5) A copy of the constitution, bylaws, or other documents or writings, specifying the motor carrier association's powers, duties, and procedures, unless

incorporated in the agreement.

(6) An organization chart of the motor carrier association.

(7) A brief description of the manner by which the motor carrier association is funded.

[18.3.6.13 NMAC - Rp, SCC Rule 222.03, 12-30-02]

18.3.6.14 CHANGES IN TARIFFS AND MOTOR CARRIER AGREEMENTS: As used in this section, tariff includes a motor carrier agreement.

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

(1) An application for a change in rates shall include:

(a) a proposed tariff including the proposed changes in rates;

(b) a balance sheet for the preceding fiscal year;

(c) an income statement for the preceding fiscal year;

(d) all documentary evidence which the applicant believes supports its proposed change in rates; and

(e) pre-filed direct testimony explaining why a change in rates is required for the motor carrier to achieve revenue levels that will provide a flow of net income adequate to support reasonable expense levels, including reasonable depreciation expense and repayment of a reasonable level of debt, and permit the raising of needed equity capital.

(2) An application for a change in terms and conditions of service or a change in a general schedule shall include:

(a) a proposed tariff including the proposed changes in terms and conditions of service or general schedule;

(b) a description of the proposed changes and an explanation as to why they are needed; and

(c) all evidence upon which the applicant intends to rely in support of its proposed changes in terms and conditions of service or general schedule.

B. Procedure. The Commission shall review applications for a change in tariff in accordance with 18.3.2.14 through 18.3.2.18 NMAC.

C. Qualifying provisions. If the Commission finds that the applicant has met the statutory requirements in NMSA 1978 Sections 65-2-96, 65-2-97, and 65-2-105 if applicable, the Commission shall issue an order conditionally approving the application for a change in tariff or motor carrier agreement. The applicant must, within the timeframe set forth in the order, comply with any qualifying provi-

sions, terms, conditions, or limitations set forth by the Commission in its order. If the applicant fails to timely comply with all qualifying provisions, the Commission may dismiss the case without prejudice and close the docket.

D. Approval. Within five (5) business days after the date the Director certifies that the applicant has complied with all qualifying provisions, the Commission shall, over the signature of a single Commissioner, issue an order approving the tariff change.

[18.3.6.14 NMAC - N, 12-30-02]

18.3.6.15 SPECIFIC SCHEDULES OF SERVICE:

A. Contents of specific schedules. A motor carrier providing scheduled service shall file with the Director a specific schedule of service that complies with the minimum requirements stated in the general schedule in its approved tariff and contains precise departure times and estimated arrival times for each stop on each route on which the carrier provides scheduled transportation services.

B. Changes in specific schedules. Whenever a motor carrier proposes to change its specific schedule of service, it shall:

(1) file a copy of the proposed specific schedule of service with the Director at least thirty (30) calendar days before the changed schedule will go into effect. The Director may disapprove any proposed change in schedule that does not comply with the minimum requirements stated in a carrier's general schedule.

(2) mail the proposed specific schedule to all motor carriers on the Department's list and file a certificate of mailing with the Director.

[18.3.6.15 NMAC - N, 12-30-02]

HISTORY OF 18.3.6 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules

and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;

SCCMC Rule No. 5, Tariffs and Schedules, filed on 3-5-82;

SCCMC Rule No. 26, New Time Schedules, filed on 3-5-82;

SCC Rule 221, Tariffs, Rates and Schedules, filed on 1-5-93;

SCC Rule 222, Motor Carrier Agreements, filed on 1-5-93;

SCC Rule 267, Wrecker Services.

History of repealed material.

SCC Rule 221, Tariffs, Rates and Schedules, filed on 1-5-93;

SCC Rule 222, Motor Carrier Agreements, filed on 1-5-93;

SCC Rule 267, Wrecker Services.

NEW MEXICO PUBLIC REGULATION COMMISSION

**TITLE 18 TRANSPORTATION
AND HIGHWAYS**

**CHAPTER 3 MOTOR CARRIER
GENERAL PROVISIONS**

**PART 7 R E P O R T S ,
RECORDS, AND ACCOUNTS**

18.3.7.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.

[18.3.7.1 NMAC - N, 12-30-02]

18.3.7.2 SCOPE:
A. 18.3.7.8 NMAC
through 18.3.7.13 NMAC apply to all motor
carriers subject to the jurisdiction of the
Commission.

B. 18.3.7.14 NMAC
through 18.3.7.19 NMAC apply only to
motor carriers operating pursuant to a cer-
tificate of public convenience and necessity
or a permit.

C. This rule does not apply
to commuter vanpools.

[18.3.7.2 NMAC - N, 12-30-02]

**18.3.7.3 S T A T U T O R Y
AUTHORITY:** NMSA 1978 Sections 8-8-
4 and 65-2-83.

[18.3.7.3 NMAC - N, 12-30-02]

18.3.7.4 D U R A T I O N :
Permanent.

[18.3.7.4 NMAC - N, 12-30-02]

18.3.7.5 EFFECTIVE DATE: December 30, 2002, unless a later date is cited at the end of a section.
[18.3.7.5 NMAC - N, 12-30-02]

18.3.7.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Section 65-2-101.
[18.3.7.6 NMAC - N, 12-30-02]

18.3.7.7 DEFINITIONS: See 18.3.1.7 NMAC.
[18.3.7.7 NMAC - N, 12-30-02]

18.3.7.8 ANNUAL REPORT: Every motor carrier shall prepare and file with the Commission an annual report of its operations.

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

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

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

[18.3.7.8 NMAC - Rp, SCC Rules 243.01, 243.03, and 243.04, 12-30-02]

18.3.7.9 CONTENTS OF ANNUAL REPORT: The annual report shall include:

- A.** the motor carrier's operating authority number;
- B.** the motor carrier's name;
- C.** the motor carrier's d/b/a name;
- D.** the motor carrier's principal place of business;
- E.** the motor carrier's business telephone number;
- F.** the motor carrier's tax identification number;
- G.** for motor carriers operating pursuant to a warrant or certificate of

registration, a list of equipment used in the motor carrier's operations if the motor carrier is using twenty-five (25) vehicles or less, or the motor carrier's written statement certifying the number of vehicles in use if the motor carrier is using more than twenty-five (25) vehicles;

H. for motor carriers operating pursuant to a certificate of public convenience or necessity or a permit,

(1) a list of equipment used in the motor carrier's operations if the motor carrier is using twenty-five (25) vehicles or less, or the motor carrier's written statement certifying the number of vehicles in use if the motor carrier is using more than twenty-five (25) vehicles; and

(2) the names and addresses of any shareholders who own ten percent or more of the voting stock of the motor carrier if it is a corporation, or if the motor carrier is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners, and the percentage ownership of each;

I. for motor carriers operating pursuant to a permit, any changes in the contract for which the permit was issued;

J. the motor carrier's written statement certifying that each piece of equipment it uses has passed an annual inspection within the preceding twelve (12) months;

K. a list of the motor carrier's drivers;

L. the motor carrier's written statement certifying that it has received a current MVD printout of the driving record of each driver it uses, employs or contracts with;

M. the motor carrier's written statement certifying that it has received a current certificate of workers' compensation insurance or a written statement from the Workers' Compensation Division that coverage is not required;

N. an updated appointment of an agent for service of process; and

O. the oath prescribed by subsection B of 18.3.7.8 NMAC.

[18.3.7.9 NMAC - Rp, SCC Rule 243.02, 12-30-02]

18.3.7.10 CHANGE OF ADDRESS REPORTS:

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

B. No change of address will be permitted that has the effect of mov-

ing the motor carrier's operations to a location not permitted under its operating authority.

[18.3.7.10 NMAC - Rp, SCC Rule 244.01, 12-30-02]

18.3.7.11 ACCIDENT REPORTS:

A. Report required. Every motor carrier shall report directly to the Commission every accident which occurs in the course of the motor carrier's operations within the state, on either public or private property, that results in the death of a person; injury to a person that requires treatment by a physician; or damage to property belonging to the carrier or any other person to an apparent extent of one thousand dollars (\$1,000.00) or more. Property damage shall include damage to either vehicles or cargo.

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

C. Time to file report.

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

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

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

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

[18.3.7.11 NMAC - Rp, SCC Rule 244.02, 12-30-02]

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

[18.3.7.12 NMAC - Rp, SCC Rule 241.02, 12-30-02]

18.3.7.13 EQUIPMENT LIST:

A. Every motor carrier shall maintain at its principal place of business within the state a list of equipment, including but not limited to motor vehicles, used in its authorized operations. The list shall identify each piece of equipment by make, model, year, VIN number, license plate number, and other descriptive information sufficient for identification, and shall state whether the motor vehicle is leased or owned.

B. No motor carrier may use a piece of equipment or motor vehicle in its authorized operations unless it is identified on the equipment list.

C. The motor carrier shall update the list within ten days of the date on which a piece of equipment is put into or taken out of service.

[18.3.7.13 NMAC - Rp, SCC Rule 241.04, 12-30-02]

18.3.7.14 MAINTENANCE, PRESERVATION, AND RETENTION OF RECORDS.

A. Motor carriers operating pursuant to a certificate of public convenience and necessity or permit shall maintain:

- (1) complete accounts;
- (2) records of all services performed for others, such as work orders, invoices, bills of lading, warehouse receipts, dispatch sheets, and claim registers;
- (3) records of numbers of runs made and numbers of passengers transported;
- (4) records of equipment, such as driver inspection reports, repair and maintenance records, equipment lists, titles and registration certificates;
- (5) driver qualification files;
- (6) drivers' records of duty status;
- (7) records and forms evidencing driver drug and alcohol testing;
- (8) copies of equipment leases or leases of certificates of public convenience and necessity; and
- (9) records of all complaints indicating dissatisfaction with rates, service, safety, equipment or driving practices.

B. Motor carriers operating pursuant to a certificate of public convenience and necessity or permit shall retain records for the previous three complete calendar years.

C. All required records are subject to inspection by the Commission as provided in NMSA 1978 Section 65-2-101, and shall be maintained so that they are reasonably accessible. A motor carrier operating pursuant to a certificate of public convenience and necessity or permit shall take

reasonable steps to protect required records from destruction and physical hazards. A motor carrier operating pursuant to a certificate of public convenience and necessity or permit shall notify the Commission if records are substantially damaged or destroyed before the end of the retention period.

D. If a motor carrier transfers its certificate of public convenience and necessity or permit in accordance with these rules, the transferee of the certificate of public convenience and necessity or permit shall maintain the records of the transferor as required by these rules.

[18.3.7.14 NMAC - Rp, SCC Rule 241.01, 12-30-02]

18.3.7.15 CLAIMS REGISTER:

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

B. The record of each claim shall include the:

- (1) claim number,
- (2) date received,
- (3) amount claimed;
- (4) name of the claimant;
- (5) date and amount of the claim paid, or the date the claim was disallowed and the reasons for disallowance;
- (6) amount of salvage recovered, if any;
- (7) amount reimbursed by insurance companies or others; and
- (8) amount paid by the carrier.

[18.3.7.15 NMAC - Rp, SCC Rule 241.05, 12-30-02]

18.3.7.16 ACCOUNTS:

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

B. Generally accepted accounting principles. Every motor carrier operating pursuant to a certificate of public convenience and necessity or permit shall maintain its accounts in conformity with generally accepted accounting principles (GAAP) issued by the Financial Accounting Standards Board.

C. Verification of entries. Every motor carrier operating pursuant to a certificate of public convenience and necessity or permit shall document all accounting

entries and shall file all documentation in an orderly and systematic manner. All expenditures shall be fully supported by vouchers, receipts, canceled checks, or other original memoranda. All revenues shall be supported by invoices or other original memoranda.

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

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

[18.3.7.16 NMAC - Rp, SCC Rules 242.01, 242.02, and 242.03, 12-30-02]

HISTORY OF 18.3.7 NMAC**Pre-NMAC history.**

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;

SCCMC Rule No. 34, Report of Accident, filed on 3-5-82;

SCC Rule 241, Records of Motor Transportation Entities, filed on 1-5-93;

SCC Rule 242, Accounts, filed on 1-5-93;

SCC Rule 243, Annual Reports, filed on 1-5-93;

SCC Rule 244, Other Reports, filed on 1-5-93.

History of repealed material.

SCC Rule 241, Records of Motor Transportation Entities, filed on 1-5-93;

SCC Rule 242, Accounts, filed on 1-5-93;

SCC Rule 243, Annual Reports, filed on 1-

5-93; SCC Rule 244, Other Reports, filed on 1-5-93.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS PART 8 CHANGES IN CER- TIFICATES OF PUBLIC CONVE- NIENCE AND NECESSITY AND PER- MITS

18.3.8.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.

[18.3.8.1 NMAC - N, 12-30-02]

18.3.8.2 SCOPE:

A. This rule applies to all motor carriers operating pursuant to a certificate of public convenience and necessity or permit issued by the Commission.

B. This rule does not apply to the use of a certificate of public convenience and necessity or permit as collateral for indebtedness of the owner of the certificate of public convenience and necessity or permit.

[18.3.8.2 NMAC - Rp, SCC Rule 218.02, 12-30-02]

**18.3.8.3 STATUTORY
AUTHORITY:** NMSA 1978 Sections 8-8-4, 65-2-92 and 65-2-93.

[18.3.8.3 NMAC - N, 12-30-02]

18.3.8.4 DURATION:
Permanent.

[18.3.8.4 NMAC - N, 12-30-02]

18.3.8.5 EFFECTIVE DATE:
December 30, 2002, unless a later date is cited at the end of a section.

[18.3.8.5 NMAC - N, 12-30-02]

18.3.8.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Sections 65-2-92 and 65-2-93.

[18.3.8.6 NMAC - N, 12-30-02]

18.3.8.7 DEFINITIONS: See 18.3.1.7 NMAC.

[18.3.8.7 NMAC - N, 12-30-02]

**18.3.8.8 APPLICATION
REQUIRED:** The following actions constitute changes in a certificate of public convenience and necessity or permit requiring the prior approval of:

- A.** the Commission:
- (1) amendment of a certificate of public convenience and necessity or permit;
 - (2) lease of a certificate of public convenience and necessity or permit;
 - (3) voluntary transfer of a certificate of public convenience and necessity or permit;
 - (4) transfer by operation of law of a certificate of public convenience and necessity or permit;
 - (5) reinstatement of a certificate of public convenience and necessity or permit following involuntary suspension;
 - (6) change in the form of ownership of a certificate of public convenience and necessity or permit;
 - (7) cancellation of a certificate of public convenience and necessity or permit;

- B.** the Director:
- (1) voluntary suspension of a certificate of public convenience and necessity or permit; and
 - (2) reinstatement of a certificate of public convenience and necessity or permit following voluntary suspension.
- [18.3.8.8 NMAC - Rp, SCC Rules 218.01 and 218.04, 12-30-02]

18.3.8.9 AMENDMENT OF A CERTIFICATE OF PUBLIC CONVE- NIENCE AND NECESSITY OR PER- MIT:

A. Application. An applicant for amendment of a certificate of public convenience and necessity or permit shall file:

- (1) an application on the form prescribed by the Director containing the information and documents required by 18.3.2.13 NMAC;
- (2) copies of its current certificate of public convenience and necessity or permit and all endorsements; and
- (3) the fee required by Section 65-2-125 NMSA 1978.

B. Procedure. The Commission shall review an application for amendment of an existing certificate of public convenience and necessity or permit in accordance with 18.3.2.15 through 18.3.2.19 NMAC.

C. Qualifying provisions. If the Commission finds that the applicant for amendment of a certificate of public convenience and necessity has met the statutory requirements in NMSA 1978 Section 65-2-84 and 65-2-92, or that the applicant for amendment of a permit has met the statutory requirements in NMSA 1978 Section 65-2-87 and 65-2-92, the Commission shall issue an order conditionally approving the application. Then, unless the Commission prescribes a different period, the applicant must, within ninety (90)

days from the date of the order, comply with all qualifying provisions set forth in 18.3.2.21 NMAC and with any other qualifying provisions, terms, conditions, or limitations set forth by the Commission in its order. If the applicant fails to timely comply with all qualifying provisions, the Commission may dismiss the case without prejudice and close the docket.

D. Approval. Within five (5) business days after the date the Director certifies that the applicant has complied with all qualifying provisions, the Commission shall, over the signature of a single Commissioner, issue an endorsement to the existing certificate of public convenience and necessity or permit.
[18.3.8.9 NMAC - Rp, SCC Rules 218.05 and 218.06, 12-30-02]

18.3.8.10 LEASE OF ALL OR PART OF A CERTIFICATE OF PUB- LIC CONVENIENCE AND NECESSI- TY OR PERMIT:

A. Application.

- (1) A lessor-applicant shall file:
 - (a) an application on the form prescribed by the Director;
 - (b) copies of its current certificate of public convenience and necessity or permit and all endorsements;
 - (c) a complete description of all operating equipment to be leased; and
 - (d) a copy of the proposed lease, containing provisions:
 - (i) stating that the proposed lease may not go into effect until approved by the Commission;
 - (ii) stating which party to the lease shall be responsible for complying with the qualifying provisions in 18.3.2.12 NMAC; and
 - (iii) specifying the term of the lease.

(2) A lessee-applicant shall file:

- (a) an application on the form prescribed by the Director containing the information and documents required by 18.3.2.13 NMAC, except that the lessee-applicant shall not be required to provide the affidavits or other evidence required by paragraph (10) of subsection A of 18.3.2.13 NMAC to show that the service is required by the public convenience and necessity;
- (b) an application for amendment of a certificate of public convenience and necessity or permit if the lessee-applicant seeks to change the type of service or the territory to be served;
- (c) an application for a change in a tariff if the lessee-applicant seeks to change the rates or schedules for service; and
- (d) the fee required by Section 65-2-125 NMSA 1978.

B. Procedure. The Commission shall review an application for lease of all or part of an existing certificate of public convenience and necessity or permit in accordance with 18.3.2.15 through 18.3.2.19 NMAC.

C. Qualifying provisions. If the Commission finds that the lessee-applicant for lease of a certificate of public convenience and necessity has met the statutory requirements in NMSA 1978 Section 65-2-84, or that the lessee-applicant for lease of a permit has met the statutory requirements in NMSA 1978 Section 65-2-87, the Commission shall issue an order conditionally approving an application for lease of all or part of a certificate of public convenience and necessity or permit. Then, unless the Commission prescribes a different period, the lessee-applicant must, within ninety (90) days from the date of the order, comply with all qualifying provisions set forth in 18.3.2.21 NMAC and with any other qualifying provisions, terms, conditions, or limitations set forth by the Commission in its order. If the lessee-applicant fails to timely comply with all qualifying provisions, the Commission may dismiss the case without prejudice and close the docket.

D. Approval. Within five (5) business days after the date the Director certifies that the lessee-applicant has complied with all qualifying provisions, the Commission shall, over the signature of a single Commissioner, issue an order approving the application for lease of a certificate of public convenience and necessity or permit.
[18.3.8.10 NMAC - Rp, SCC Rule 218.06, 12-30-02]

18.3.8.11 VOLUNTARY TRANSFER OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT:

A. Application.

(1) The transferor-applicant shall file:

(a) an application on the form prescribed by the Director;

(b) copies of its current certificate of public convenience and necessity and all endorsements or permit;

(c) a joint affidavit on the form prescribed by the Director, executed by the transferor-applicant and the transferee-applicant certifying that all accrued taxes, rents, wages of employees and all other indebtedness incident to the transferor-applicant's operations have been paid in full, or that the transferee-applicant will assume responsibility for paying them if they have not been paid in full;

(d) a complete description of all

operating equipment to be transferred; and

(e) a tax clearance certificate from the New Mexico Taxation and Revenue Department certifying that all state tax indebtedness incident to the transferor-applicant's operations has been paid in full.

(2) The transferee-applicant shall file:

(a) an application containing the items required by 18.3.2.13 NMAC, except that the transferee-applicant shall not be required to provide the affidavits or other evidence required by paragraph (10) of subsection A of 18.3.2.13 NMAC to show that the service is required by the public convenience and necessity;

(b) an application for amendment of a certificate of public convenience and necessity or permit if the transferee-applicant seeks to change the type of service and the territory to be served;

(c) an application for a change in a tariff if the transferee-applicant seeks to change the rates or schedules for service; and

(d) the fee required by Section 65-2-125 NMSA 1978.

B. Procedure. The Commission shall review an application for transfer of an existing certificate of public convenience and necessity or permit in accordance with 18.3.2.15 through 18.3.2.19 NMAC.

C. Qualifying provisions. If the Commission finds that the transferee-applicant for transfer of a certificate of public convenience and necessity has met the statutory requirements in NMSA 1978 Section 65-2-84 and 65-2-93, or that the transferee-applicant for transfer of a permit has met the statutory requirements in NMSA 1978 Section 65-2-87 and 65-2-93, the Commission shall issue an order conditionally approving the application. Then, unless the Commission prescribes a different period, the transferee-applicant must, within ninety (90) days from the date of the order, comply with all qualifying provisions set forth in 18.3.2.21 NMAC and with any other qualifying provisions, terms, conditions, or limitations set forth by the Commission in its order. If the transferee-applicant fails to timely comply with all qualifying provisions, the Commission may dismiss the case without prejudice and close the docket.

D. Approval. Within five (5) business days after the date the Director certifies that the transferee-applicant has complied with all qualifying provisions, the Commission shall, over the signature of a single Commissioner, issue a new certificate of public convenience and necessity or permit.

[18.3.8.11 NMAC - Rp, SCC Rules 218.06

and 218.07, 12-30-02]

18.3.8.12 TRANSFER BY OPERATION OF LAW OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT: This section shall apply whenever the ownership of, or interest in, a certificate of public convenience and necessity or permit shall pass to another by operation of law, as upon inheritance, bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in performance of the terms of a loan, lease or executory sales contract, or otherwise than by voluntary transfer.

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

(1) the name of the entity from whom the certificate of public convenience or necessity or permit was transferred;

(2) the circumstances resulting in the transfer by operation of law; and

(3) a certified copy of a court order or other document admissible as evidence pursuant to the New Mexico Rules of Evidence, establishing that the transfer by operation of law has occurred. If the document appears to meet these requirements, the Commission shall find that the transfer by operation of law has occurred.

B. Procedure.

(1) **Disposal of certificate or permit.** If the transferee by operation of law does not wish to continue providing transportation services under the certificate of public convenience and necessity or permit, the transferee by operation of law shall apply for voluntary suspension of the certificate of public convenience and necessity or permit in accordance with 18.3.8.16 NMAC for the period of time needed to dispose of the certificate of public convenience and necessity or permit.

(2) **Continued provision of transportation service.** If the transferee by operation of law wishes to continue providing transportation services under the certificate of public convenience and necessity or permit, the transferee by operation of law shall file:

(a) an application for voluntary transfer of the certificate of public convenience and necessity or permit in accordance with 18.3.8.11 NMAC, except that a transferee by operation of law shall not be required to provide the affidavits or other

evidence required by paragraph (10) of subsection A of 18.3.2.13 NMAC to show that the service is required by the public convenience and necessity;

(b) an application for amendment of a certificate of public convenience and necessity or permit if the transferee by operation of law seeks to change the type of service and the territory to be served;

(c) an application for a change in a tariff if the transferee by operation of law seeks to change the rates or schedules for service.

(i) If the Commission finds that the transferee by operation of law does not meet the requirements for transfer of a certificate of public convenience and necessity or permit, the Commission may provide a reasonable period of time for the transferee by operation of law to meet the standards or to dispose of the certificate of public convenience and necessity or permit as provided in this rule.

(ii) The Commission may revoke a certificate of public convenience and necessity or permit that has been transferred by operation of law if the transferee by operation of law fails to obtain Commission approval of the transfer. [18.3.8.12 NMAC - Rp, SCC Rule 218.03, 12-30-02]

18.3.8.13 REINSTATEMENT OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT FOLLOWING INVOLUNTARY SUSPENSION:

A. Application. An applicant for reinstatement of a certificate of public convenience and necessity or permit that was suspended by the Commission pursuant to 18.3.2.28 NMAC may, upon expiration of the suspension period, file:

(1) an application on the form prescribed by the Director;

(2) a copy of the Commission order imposing involuntary suspension;

(3) a detailed statement describing how the motor carrier has remedied or will remedy each of the violations stated as grounds for involuntary suspension; and

(4) the fee required by Section 65-2-125 NMSA 1978.

B. Procedure. The Commission shall review an application for reinstatement of an existing certificate of public convenience and necessity or permit following involuntary suspension in accordance with 18.3.2.14 through 18.3.2.18 NMAC.

C. Qualifying provisions. If the Commission finds that the applicant for reinstatement of a certificate of public convenience and necessity following involuntary suspension has met the statutory

requirements in NMSA 1978 Section 65-2-84 or that the applicant for reinstatement of a permit following involuntary suspension has met the statutory requirements in NMSA 1978 Section 65-2-87, the Commission shall issue an order conditionally approving the application. Then, unless the Commission prescribes a different period, the applicant must, within ninety (90) days from the date of the order, comply with all qualifying provisions set forth in 18.3.2.21 NMAC and with any other qualifying provisions, terms, conditions, or limitations set forth by the Commission in its order. If the applicant fails to timely comply with all qualifying provisions, the Commission may dismiss the case without prejudice and close the docket.

D. Approval. Within five (5) business days after the date the Director certifies that the applicant has complied with all qualifying provisions, the Commission will return the surrendered certificate of public convenience and necessity or permit to the applicant. [18.3.8.13 NMAC - Rp, SCC Rule 218.07, 12-30-02]

18.3.8.14 CHANGE IN THE FORM OF OWNERSHIP OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT:

A. Application. An applicant for a change in the form of ownership of a certificate of public convenience and necessity or permit shall file:

(1) an application on the form prescribed by the Director;

(2) the information and documents required by paragraphs (1) through (7), (16), and (17) of subsection A of 18.3.2.13 for the proposed new entity; and

(3) a statement that all assets will or will not be transferred to the new entity.

B. Procedure. The Commission shall review an application for a change in the form of ownership of an existing certificate of public convenience and necessity or permit in accordance with 18.3.2.15 and 18.3.2.16 NMAC.

C. Approval. If the Director determines that only the form of ownership will change, the Director shall approve the application for a change in the form of ownership. The new entity shall file:

(1) proof of public liability insurance in the new entity's name in accordance with 18.3.4 NMAC, Insurance Requirements, and the insurance filing fee;

(2) a copy of either a certificate of workers' compensation insurance or a certificate of exemption from the Workers' Compensation Administration in the new

entity's name; and

(3) copies of all other documents required by 18.3.2.13 NMAC if they are different for the new entity.

D. More than a change in form. If the Director determines that the change will entail more than a change in form of ownership, the Director shall require the entity to file an application for voluntary transfer of a certificate of public convenience and necessity or permit in accordance with 18.3.8.11 NMAC. [18.3.8.14 NMAC - N, 12-30-02]

18.3.8.15 CANCELLATION OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT:

A. Application. An applicant for cancellation of all or part of its certificate of public convenience and necessity or permit shall file:

(1) an application on the form prescribed by the Director;

(2) copies of its current certificate of public convenience and necessity or permit and all endorsements it seeks to cancel in whole or in part; and

(3) the date on which the applicant proposes to terminate all or part of its service.

B. Procedure. The Commission shall review an application for cancellation of an existing certificate of public convenience and necessity or permit in accordance with 18.3.2.15, 18.3.2.16, and 18.3.2.17 NMAC, except that the applicant shall not be required to mail notice pursuant to subsection C of 18.3.2.17 NMAC.

C. Approval. The Commission may, over the signature of a single Commissioner, issue an order approving an application for cancellation of a certificate of public convenience and necessity or permit if the Commission finds that the applicant has met the requirements of NMSA 1978 Section 65-2-108.

D. Disputed application. If the need for cancellation is disputed, the Commission shall give the applicant an opportunity to request a hearing. [18.3.8.15 NMAC - Rp, SCC Rule 218.06, 12-30-02]

18.3.8.16 VOLUNTARY SUSPENSION OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT:

A. Application. An applicant for voluntary suspension shall file:

(1) an application on the form prescribed by the Director;

(2) copies of its current certificate of public convenience and necessity or permit and all endorsements it seeks to sus-

pend;

(3) a statement explaining:

(a) why such voluntary suspension is not adverse to the public interest, including whether any other motor carrier is capable of providing the service; and

(b) if applicable, why the applicant is not fit, willing, and able to render reasonably continuous and adequate service for the period of time for which voluntary suspension is requested;

(4) the period of time for which the applicant seeks to suspend service; and

(5) the fee required by Section 65-2-125 NMSA 1978.

B. Procedure. The Director shall review an application for voluntary suspension of an existing certificate of public convenience and necessity or permit in accordance with 18.3.2.15, 18.3.2.16, and 18.3.2.17 NMAC, except that the applicant shall not be required to mail notice pursuant to subsection C of 18.3.2.17 NMAC.

C. Approval. The Director may approve an application for voluntary suspension of a certificate of public convenience and necessity or permit if the Director finds that the applicant meets the requirements of Section 65-2-92 NMSA 1978.

D. Disputed application. If the Director finds that voluntary suspension of a certificate of public convenience and necessity or permit is adverse to the public interest, the Director shall give the applicant an opportunity to request a hearing.

[18.3.8.16 NMAC - Rp, SCC Rules 218.06 and 218.07, 12-30-02]

18.3.8.17 REINSTATEMENT OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR PERMIT FOLLOWING VOLUNTARY SUSPENSION:

A. Application. An applicant for reinstatement following voluntary suspension shall file:

(1) an application on the form prescribed by the Director;

(2) a copy of the application for voluntary suspension approved by the Director; and;

(3) a statement of the changes in circumstances and evidence that the applicant is fit, willing, and able to render reasonably continuous and adequate service if the reinstatement is approved; and

(4) the fee required by Section 65-2-125 NMSA 1978.

B. Procedure. The Commission shall review an application for reinstatement of an existing certificate of public convenience and necessity or permit following voluntary suspension in accor-

dance with 18.3.2.15, 18.3.2.16, and 18.3.2.17 NMAC, except that the applicant shall not be required to mail notice pursuant to subsection C of 18.3.2.17 NMAC.

C. Approval. The Director may approve an application for reinstatement of a certificate of public convenience and necessity or permit following voluntary suspension if the Director finds that it is not adverse to the public interest.

D. Disputed application. If the Director finds that reinstatement following voluntary suspension is adverse to the public interest, the Director shall give the applicant an opportunity to request a hearing.

[18.3.8.17 NMAC - Rp, SCC Rule 218.07, 12-30-02]

18.3.8.18 CONSOLIDATED CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITS:

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

B. Transfers.

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

(2) A motor carrier obtaining both additional and duplicate operating authority by transfer of an existing certificate of public convenience and necessity or permit from another carrier shall have its own existing certificate of public convenience and necessity or permit endorsed to add only the additional operating authority, thereby creating a single consolidated certificate of public convenience and necessity or permit to be operated under the transferee motor carrier's original NMPRC transportation number. The Commission shall extinguish the parts of the transferred certificate of public convenience and necessity or permit that duplicate operating authority already held by the transferee.

(3) A motor carrier transferring part of its certificate of public convenience and necessity or permit to another carrier shall have its existing certificate of public convenience and necessity or permit endorsed to exclude the part of the certificate of public convenience and necessity or permit transferred.

(4) A motor carrier transferring all of its certificate of public convenience and necessity or permit to another carrier shall have its NMPRC transportation number canceled.

[18.3.8.18 NMAC - Rp, SCC Rule 218.09, 12-30-02]

HISTORY OF 18.3.8 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;

SCCMC Rule No. 20, Legal Entry, filed on 3-5-82;

SCCMC Rule No. 21, Transfer of Certificates, filed on 3-5-82;

SCCMC Rule No. 22, Lease of Certificates, filed on 3-5-82;

SCCMC Rule No. 42, Consolidation of Certificates, filed on 3-5-82;

SCC Rule 218, Changes in Operating Authority, filed on 1-5-93.

History of repealed material.

SCC Rule 218, Changes in Operating Authority, filed on 1-5-93.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 3 MOTOR CARRIER
GENERAL PROVISIONS
PART 9 LEASING OF
EQUIPMENT**

18.3.9.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.
[18.3.9.1 NMAC - N, 12-30-02]

18.3.9.2 SCOPE: This rule
applies to all household goods carriers and
all motor carriers of persons (except charter
services and commuter vanpools) leasing
equipment.
[18.3.9.2 NMAC - N, 12-30-02]

**18.3.9.3 S T A T U T O R Y
AUTHORITY:** NMSA 1978 Sections 8-8-
4 and 65-2-83.
[18.3.9.3 NMAC - N, 12-30-02]

18.3.9.4 D U R A T I O N :
Permanent.
[18.3.9.4 NMAC - N, 12-30-02]

18.3.9.5 EFFECTIVE DATE:
December 30, 2002, unless a later date is
cited at the end of a section.
[18.3.9.5 NMAC - N, 12-30-02]

18.3.9.6 OBJECTIVE: The
purpose of this rule is to implement NMSA
1978 Section 65-2-105.
[18.3.9.6 NMAC - N, 12-30-02]

18.3.9.7 DEFINITIONS: See
18.3.1.7 NMAC.
[18.3.9.7 NMAC - N, 12-30-02]

**18.3.9.8 APPLICATION AND
PRIOR APPROVAL REQUIRED:**

A. Application. Prior to
leasing equipment, household goods carriers
and motor carriers of persons (except
charter services and commuter vanpools)
must file an application for approval of an
equipment lease with the Commission. The
application shall include:

(1) one (1) copy of each proposed
lease (or equipment interchange agree-
ment);

(2) proof that each vehicle to be
leased has passed an annual vehicle safety
inspection in accordance with 49 CFR Part
396 within the preceding twelve (12)
months;

(3) evidence that the proposed

lease does not circumvent any law or rule
pertaining to the status, service, classifica-
tion of facilities, or rates of motor carriers;
and

(4) the fee required by Section 65-
2-125 NMSA 1978

B. Procedure. The
Commission shall review applications for
approval of equipment leases in accordance
with 18.3.2.15 and 18.3.2.16 NMAC.

C. Qualifying provisions.
If the Commission finds that the proposed
lease does not circumvent any law or rule
pertaining to the status, service, classifica-
tion of facilities, or rates of motor carriers,
as required by NMSA 1978 Section 65-2-
105, the Commission shall issue an order
conditionally approving the proposed
equipment lease. Then the applicant must,
within the timeframe set forth in the order,
comply with any qualifying provisions,
terms, conditions, or limitations set forth by
the Commission in its order. If the applic-
ant fails to timely comply with all qualify-
ing provisions, the Commission may dis-
miss the case without prejudice and close
the docket.

D. Approval. Within five
(5) business days after the date the Director
certifies that the applicant has complied
with all qualifying provisions, the
Commission shall, over the signature of a
single Commissioner, issue an order
approving the equipment lease.

E. Disapproval. If the
Commission finds that the proposed equip-
ment lease circumvents any law or rule per-
taining to the status, service, classification
of facilities, or rates of motor carriers, the
Commission shall disapprove the proposed
equipment lease.
[18.3.9.8 NMAC - Rp, SCC Rules 223.02,
223.03, and 223.05, 12-30-02]

**18.3.9.9 REQUIREMENTS
FOR EQUIPMENT LEASES:**

A. An equipment lease,
including an equipment interchange agree-
ment, shall be in writing and signed by both
parties.

B. An equipment lease
shall specifically describe the equipment to
be leased.

C. Any misrepresentation
in the terms of a proposed equipment lease
or violation of the terms of any approved
equipment lease shall be considered a viola-
tion of these rules and may result in revoca-
tion of Commission approval of the equip-
ment lease or other appropriate sanctions.

D. The lessee shall carry a
copy of the equipment lease and the
Commission order approving the equipment
lease in every leased motor vehicle.

E. The lessee shall be

responsible for identifying the leased equip-
ment as required by 18.3.5.8 NMAC for the
duration of the lease and shall be responsi-
ble for removing all identification showing
it as the operating motor carrier before
relinquishing possession of the equipment.

F. Either party to an
equipment lease may cancel the equipment
lease by giving fifteen (15) days notice in
writing to the other party and to the
Commission.

G. A motor carrier seeking
to change the terms of an equipment lease
must obtain the prior approval of the
Commission by submitting a copy of the
proposed new lease to the Commission and
canceling the old lease in its entirety.

[18.3.9.9 NMAC - Rp, SCC Rules 223.06,
223.07, and 223.08, 12-30-02]

**18.3.9.10 RESPONSIBILITY
FOR COMPLIANCE WITH APPLICA-
BLE LAW:**

A. If an equipment lease
(or interchange agreement) is between two
authorized motor carriers, the equipment
lease shall specify which of the two author-
ized motor carriers will be responsible for
complying with all applicable laws and
these rules, including meeting the financial
responsibility requirements prescribed in
18.3.3 NMAC, Financial Responsibility,
and the safety requirements prescribed in
18.3.4 NMAC, Qualifications of Drivers,
and 18.3.5 NMAC, Operating
Requirements.

B. If the equipment lease
is between an authorized motor carrier and
a person who is not an authorized motor
carrier, the equipment lease shall specify
that the authorized motor carrier shall be
responsible for complying with all applica-
ble laws and these rules, including meeting
the financial responsibility requirements
prescribed in 18.3.3 NMAC, Financial
Responsibility, and the safety requirements
prescribed in 18.3.4 NMAC, Qualifications
of Drivers, and 18.3.5 NMAC, Operating
Requirements.

[18.3.9.10 NMAC - Rp, SCC Rules 223.06
and 223.07, 12-30-02]

HISTORY OF 18.3.9 NMAC

Pre-NMAC history. The material in this
rule was previously filed with the State
Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules
and Regulations, effective Sept. 1, 1967,
filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules
and Regulations, effective July 1, 1971,
filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules
and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules

and Regulations, effective July 1, 1973, filed on 2-5-74;
 SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;
 SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;
 SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;
 SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;
 SCCMC Rule No. 24, Lease and Interchange, filed on 3-5-82;
 SCC Rule 223, Leasing and Interchange of Equipment, filed on 1-5-93.

History of repealed material.

SCC Rule 223, Leasing and Interchange of Equipment, filed on 1-5-93.

**NEW MEXICO PUBLIC
 REGULATION
 COMMISSION**

**TITLE 18 TRANSPORTATION
 AND HIGHWAYS
 CHAPTER 3 MOTOR CARRIER
 GENERAL PROVISIONS
 PART 10 P A R E N T A L
 RESPONSIBILITY**

18.3.10.1 ISSUING AGENCY:
 New Mexico Public Regulation
 Commission.
 [18.3.10.1 NMAC - N, 12-30-02]

18.3.10.2 SCOPE: This rule
 applies to the issuance, renewal, suspension
 or revocation of any operating authority
 issued by the Commission.
 [18.3.10.2 NMAC - N, 12-30-02]

**18.3.10.3 S T A T U T O R Y
 AUTHORITY:** NMSA 1978 Sections 8-8-
 4 and 40-5A-1 to -13.
 [18.3.10.3 NMAC - N, 12-30-02]

18.3.10.4 D U R A T I O N :
 Permanent.
 [18.3.10.4 NMAC - N, 12-30-02]

18.3.10.5 EFFECTIVE DATE:
 December 30, 2002, unless a later date is
 cited at the end of a section.
 [18.3.10.5 NMAC - N, 12-30-02]

18.3.10.6 OBJECTIVE: The
 purpose of this rule is to implement the
 requirements of the Parental Responsibility
 Act, NMSA 1978 Sections 40-5A-1 to 40-

5A-13.
 [18.3.10.6 NMAC - N, 12-30-02]

18.3.10.7 DEFINITIONS: In
 addition to the definitions in NMSA 1978
 Section 40-5A-3, as used in this rule:

A. Commission means the
 New Mexico Public Regulation
 Commission.

B. holder means a sole
 proprietorship or partnership that has an
 operating authority from the Commission.

C. HSD means the New
 Mexico Human Services Department.

D. operating authority
 means a certificate of public convenience
 and necessity, permit, warrant, certificate of
 registration, or license issued by the
 Commission.

**E. statement of compli-
 ance** means a certified statement from HSD
 stating that an applicant or holder is in com-
 pliance with a judgment and order for sup-
 port.
 [18.3.10.7 NMAC - N, 12-30-02]

18.3.10.8 SANCTIONS:

A. If an applicant is sub-
 ject to, and not in compliance with, a judg-
 ment and order for support, the Commission
 shall deny an application for an operating
 authority.

B. If a holder is subject to,
 and not in compliance with, a judgment and
 order for support, the Commission shall
 have grounds for suspending or revoking
 the holder's operating authority.
 [18.3.10.8 NMAC - N, 12-30-02]

**18.3.10.9 HSD-CERTIFIED
 LIST:** Upon receipt of an HSD-certified
 list of obligors not in compliance with a
 judgment and order for support, the
 Director shall match the certified list of
 obligors against the current list of holders.
 Upon receipt of an application for an oper-
 ating authority, the Director shall match the
 applicant or holder against the current HSD-
 certified list. By the end of the month in
 which the HSD-certified list is received, the
 Director shall report to HSD the names of
 any applicants and holders who are on the
 HSD-certified list and the action the
 Director has taken with regard to such
 applicants and holders.
 [18.3.10.9 NMAC - N, 12-30-02]

18.3.10.10 INITIAL ACTION:

A. Upon determination
 that an applicant or holder appears on the
 HSD-certified list, the Director shall notify
 the applicant or holder by letter that such
 individual must provide the Director with a
 statement of compliance within thirty (30)
 days of the date the Director mailed the

notification.

B. The notice letter to
 applicants and holders shall advise that fail-
 ure to timely provide the statement of com-
 pliance shall result in commencement of a
 formal hearing before the Commission to
 determine whether an application should be
 rejected or an operating authority suspend-
 ed or revoked.

[18.3.10.10 NMAC - N, 12-30-02]

**18.3.10.11 PROCEEDING TO
 REJECT APPLICATION OR SUSPEND
 OR REVOKE LICENSE:** If an applicant
 or holder fails to provide the statement of
 compliance, the Director shall file and serve
 a complaint upon the applicant or holder. If
 the Director's complaint is due solely to the
 failure of an applicant or holder to comply
 with a judgment and order for support, and
 there are no additional grounds based on
 violations of the Motor Carrier Act or
 Commission rules or orders, the complaint
 shall state:

A. the grounds for the
 Director's proposed rejection of the appli-
 cation or suspension or revocation of the
 operating authority; and

B. that a hearing shall be
 held before the Commission on a date that is
 at least thirty (30) days after the date the
 complaint is personally served, unless the
 respondent applicant or holder provides the
 Director with a statement of compliance
 prior to the hearing date.

[18.3.10.11 NMAC - N, 12-30-02]

**18.3.10.12 EVIDENCE AND
 PROOF:** In any hearing under subsection
 B of 18.3.10.11 NMAC, relevant evidence
 is limited to the accuracy or veracity of the
 listing of the applicant or holder's name on
 the HSD-certified list. The listing of the
 applicant's or holder's name on the HSD-
 certified list is conclusive evidence requir-
 ing the Commission to reject the application
 or suspend or revoke the operating authori-
 ty, and is rebuttable only with a statement of
 compliance. Upon presentation of the state-
 ment of compliance, the Commission shall
 dismiss the complaint if it is based solely
 upon the applicant or holder's failure to
 comply with a judgment and order for sup-
 port.

[18.3.10.12 NMAC - N, 12-30-02]

18.3.10.13 ORDER: When the
 Commission rejects an application or sus-
 pends or revokes an operating authority
 solely because the applicant or holder is not
 in compliance with a judgment and order
 for support, the final order shall state that:

A. the respondent whose
 application has been rejected may reapply
 for an operating authority at any time by fil-

ing a statement of compliance and an application with the Commission;

B. the respondent whose operating authority has been suspended may have its operating authority reinstated at any time by providing a statement of compliance to the Commission; and

C. the respondent whose operating authority has been in revoked may reapply for an operating authority at any time by filing a statement of compliance and an application with the Commission.

[18.3.10.13 NMAC - N, 12-30-02]

HISTORY OF 18.3.10 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC Rule 95-04-TR, Parental Responsibility Act Rule, filed on 10-18-95.

History of repealed material.

SCC Rule 95-04-TR, Parental Responsibility Act Rule, filed on 10-18-95.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS PART 11 HOUSEHOLD GOODS CARRIERS

18.3.11.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.
[18.3.11.1 NMAC - N, 12-30-02]

18.3.11.2 SCOPE: This rule
applies to all household goods carriers
(HGCs) and household goods agents sub-
ject to the jurisdiction of the Commission.
[18.3.11.2 NMAC - N, 12-30-02]

**18.3.11.3 STATUTORY
AUTHORITY:** NMSA 1978 Sections 8-8-
4 and 65-2-83.
[18.3.11.3 NMAC - N, 12-30-02]

18.3.11.4 DURATION:
Permanent.
[18.3.11.4 NMAC - N, 12-30-02]

18.3.11.5 EFFECTIVE DATE:
December 30, 2002, unless a later date is
cited at the end of a section.
[18.3.11.5 NMAC - N, 12-30-02]

18.3.11.6 OBJECTIVE: The

purpose of this rule is to implement NMSA
1978 Sections 65-2-95, 65-2-100, 65-2-102
and 65-2-103.

[18.3.11.6 NMAC - N, 12-30-02]

18.3.11.7 DEFINITIONS: In
addition to the definitions in NMSA 1978
Section 65-2-82 and 18.3.1.7 NMAC, as
used in this rule:

A. accessorial services
means services such as packing, marking,
unpacking, and appliance servicing, assem-
bling, and disassembling that the shipper
requests to be performed or are necessary
because of special circumstances;

B. bill of lading means the
receipt for the shipper's household goods
and the contract for their transportation;

C. binding estimate
means an agreement made in advance
between the shipper and the HGC that guar-
antees the total cost of the move based on
the quantities and services shown on the
estimate;

**D. exclusive use of a vehi-
cle** means an agreement that the shipper's
shipment will be moved by itself on the
HGC's transporting motor vehicle;

E. expedited service
means an agreement between the shipper
and the HGC to perform transportation by a
set date in exchange for a higher charge;

**F. guaranteed pickup
and delivery service** means an agreement
between the shipper and the HGC to pick up
and deliver the shipment on specified dates
that provides for the HGC to reimburse the
shipper for delays;

G. household goods
means personal effects and property used or
to be used in a dwelling when a part of the
equipment or supply of such dwelling and
such other similar property as the FMCSA
may provide by regulation; except that this
definition shall not include property moving
from a factory or store, other than property
that the householder has purchased with the
intent to use in his or her dwelling and is
transported at the request of, and the trans-
portation charges are paid to the carrier by,
the householder;

H. inventory means the
detailed descriptive list of the shipper's
household goods showing the number and
condition of each item;

I. non-binding estimate
means the carrier's approximation of the
cost of the move based on the estimated
weight of the shipment and the accessorial
services requested. A non-binding estimate
is not binding on the carrier and final
charges are based on the actual weight and
tariff provisions in effect;

J. storage in transit
means temporary storage of the shipper's

shipment pending further transportation.
[18.3.11.7 NMAC - N, 12-30-02]

18.3.11.8 COST ESTIMATES:
A HGC may provide a cost estimate upon
request of a prospective shipper. A cost
estimate must be in writing and must clearly
describe the shipment and all services
requested. A HGC shall provide a copy of
the estimate to the shipper.

**A. Binding estimates of
total cost.**

(1) A HGC may charge for pro-
viding a binding estimate.

(2) A shipper shall not be required
to pay more than the amount of the binding
estimate unless the HGC is asked or
required to provide more services than those
included in the binding estimate.

(3) If the shipper agrees to a bind-
ing estimate, the shipper must pay the
charges due at the time of delivery. If the
shipper cannot pay at the time the shipment
is delivered, the HGC may place the ship-
ment in storage at the shipper's expense
until the charges are paid.

(4) Whenever a HGC provides a
binding estimate and the shipper elects to
use the services offered by the HGC, the
HGC shall retain a copy of the binding esti-
mate in the HGC's files for a period of three
(3) years.

**B. Non-binding estimates
of approximate cost.**

(1) A HGC shall not charge for
providing a non-binding estimate.

(2) If the HGC provides a non-
binding estimate, the shipper shall not be
required to pay more than the amount of the
original estimate, plus ten percent, at the
time of delivery. The shipper shall then
have thirty (30) days after delivery to pay
any remaining charges.

(3) If the HGC is asked or
required to provide more services than those
included in the estimate, the HGC may
demand full payment for the added services
at the time of delivery.

(4) If the shipper cannot pay the
required charges at the time the shipment is
delivered, the HGC may place the shipment
in storage at the shipper's expense until the
charges are paid.

(5) Whenever a HGC provides a
non-binding estimate and the shipper elects
to use the services offered by the HGC, the
HGC shall retain a copy of the non-binding
estimate in the HGC's files for a period of
three (3) years.

[18.3.11.8 NMAC - Rp, SCC Rule 268.03,
12-30-02]

**18.3.11.9 LIMITATIONS ON
SERVICE OPTIONS:** A HGC may offer
the following service options. However, a

HGC may not charge for these or any other services unless the charge is included in the HGC's Commission-approved tariff.

A. Space reservation. A HGC may not enter into an agreement for the shipper to pay for a minimum number of cubic or linear feet in the HGC's transporting vehicle, regardless of how much space is actually occupied by the shipment, when the shipment completely occupies the transporting vehicle.

B. Expedited service. A HGC may subject shipments weighing less than the minimums specified in this subsection to reasonable delay for consolidation aboard a single vehicle. When a shipper orders expedited service with a specified delivery date and the HGC is unable to consolidate the shipment with other shipments, the HGC may base transportation charges on the specified minimum weights.

(1) Shipments moving zero (0) to fifty (50) miles, three thousand (3,000) pounds minimum;

(2) Shipments moving fifty (50) miles to one hundred (100) miles, five thousand (5,000) pounds minimum;

(3) Shipments moving one hundred one (101) miles to two hundred (200) miles, eight thousand (8,000) pounds minimum;

(4) Shipments moving two hundred one (201) miles to three hundred (300) miles, ten thousand (10,000) pounds minimum;

(5) Shipments moving three hundred one (301) miles and up, twelve thousand (12,000) pounds minimum.

C. Exclusive use of a vehicle.

(1) A HGC may require a minimum charge for exclusive use of a vehicle.

(2) A HGC may not enter into an exclusive use of vehicle agreement with a shipper when the shipment completely occupies the transporting vehicle.

D. Guaranteed pickup and delivery. The liability provided by a guaranteed pickup and delivery agreement is in addition to and shall in no way limit the liability of the HGC otherwise provided by law.

E. Storage in transit.

(1) A shipper may place a shipment that is in transit in storage one or more times for an aggregate of no more than one hundred eighty (180) days.

(2) Upon the expiration of the one hundred eighty (180) day period, the storage facility shall be considered the final destination and all accrued charges shall become due and payable.

(3) The shipper or the shipper's agent may add to or remove goods from storage and the HGC shall adjust the

charges to the new weight of the shipment.

F. Accessorial services.

A HGC shall clearly describe on the bill of lading each accessorial service provided to a shipper.

G. Advanced charges.

A HGC may bill a shipper for services not performed by the HGC but by a third party at the shipper's request only if such services are clearly described on the bill of lading and supported by a copy of the third party's invoice.

[18.3.11.9 NMAC - N, 12-30-02]

18.3.11.10 BILL OF LADING:

A. Before accepting household goods for transport, a HGC shall prepare and deliver to the shipper a complete bill of lading for every shipment it will transport.

B. A copy of the bill of lading should accompany the shipment at all times.

C. A HGC shall retain a copy of the bill of lading in its files for a period of three years.

D. All bills of lading shall comply with, be governed by, and have the consequences stated in the Uniform Commercial Code of New Mexico and any other applicable law.

[18.3.11.10 NMAC - Rp, SCC Rule 262.01, 12-30-02]

18.3.11.11 CONTENTS OF THE

BILL OF LADING: Use of the Uniform Bill of Lading meets the requirements of this rule. If another form is used, the bill of lading must contain at least the following information:

A. the number of the bill of lading;

B. the name, address, telephone number and NMPRC transportation number of the issuing HGC;

C. the name and address of any other HGCs participating in the shipment, if known;

D. the date the shipment was received by the HGC;

E. the name, address and, if available, telephone number of the shipper;

F. the points of origin and destination;

G. a description of the items tendered and received for transportation;

H. the weight, volume, or measurement of the items tendered and received for transportation, if applicable to the rating of the freight;

I. where applicable, the valuation of the shipment on which the bill of lading was issued;

J. if known, the amount of charges, method of payment and, if a COD shipment, the amount of the COD charges and the name of the person who is to pay the charges;

K. agreed pick-up and delivery date, if any; and

L. identification number assigned to the shipment by the HGC, if any.

[18.3.11.11 NMAC - Rp, SCC Rule 262.02, 12-30-02]

18.3.11.12 INVENTORY:

A. Required. A HGC shall prepare an inventory of each shipment prior to transport.

(1) The inventory shall consist of a description of each article in the shipment, shall list any damage or unusual wear, and shall indicate which containers were packed or crated by the HGC and which were packed or crated by the shipper.

(2) The HGC and the shipper shall each sign the inventory, and the shipper shall then be solely responsible for its accuracy.

(3) At the time the shipment is delivered, the shipper shall be given the opportunity to check the items delivered against the items listed on the inventory. If new damage is discovered, the shipper shall be given the opportunity to record it on the inventory.

(4) The HGC shall retain a legible copy of the inventory in its files for a period of three (3) years.

B. Exception. A shipper may waive in writing the requirement for an inventory if:

(1) the pickup and delivery points for the shipment are no more than thirty (30) miles apart;

(2) the shipment is billed at an hourly rate; and

(3) the shipper has exclusive use of the vehicle.

[18.3.11.12 NMAC - Rp, SCC Rule 268.04, 12-30-02]

18.3.11.13 WEIGHING:

A. A HGC shall follow weighing practices designed to assure reasonable accuracy.

B. Each time a weighing is performed the HGC shall obtain a weight ticket showing the date and place of weighing and the weight obtained. The person who performed the weighing shall sign the ticket.

C. The weight of a shipment shall be the difference between the tare weight of the vehicle on which the shipment is loaded and the gross weight of the same vehicle after the shipment is loaded.

D. While weighing, the HGC's vehicle shall have full fuel tanks and shall contain the equipment required to transport the shipment, including pads, dollies and ramps.

E. Shipments weighing less than one thousand (1,000) pounds may be weighed separately on a certified scale.

F. The shipper or its agent has the right to observe all weighings.

G. A shipper or its agent may request a reweigh prior to the HGC unloading the shipment. Charges shall be based on the reweigh.

H. No HGC shall charge for weighing or reweighing.

[18.3.11.13 NMAC - Rp, SCC Rule 268.05, 12-30-02]

18.3.11.14 RECEIPT FOR DELIVERY:

A. A HGC shall provide the shipper with a receipt for delivery that includes at a minimum the bill of lading, a copy of the inventory and, if applicable, the weigh tickets.

B. No HGC shall require a shipper to sign a receipt that relieves the HGC from all liability for loss or damage to the shipment.

[18.3.11.14 NMAC - N, 12-30-02]

18.3.11.15 LIABILITY FOR LOSS AND DAMAGE:

A HGC is required to assume, at a minimum, liability for the released value of the shipper's goods.

A. Released value.

(1) A HGC shall not charge for assuming liability for the released value of a shipment.

(2) A HGC shall specify in its tariff a rate per pound for released value liability.

(3) A HGC shall settle loss or damage claims based on the pound weight of the lost or damaged article multiplied by the tariffed rate.

(4) The shipper must declare acceptance of released value liability on the bill of lading.

B. Declared value.

(1) A HGC shall specify in its tariff a rate per thousand dollars, or fraction thereof, for declared value liability.

(2) The shipper must declare a specific dollar amount for the declared value of the shipment.

(3) A HGC shall settle loss or damage claims based on the declared value of the lost or damaged items up to the maximum liability for the entire shipment.

(4) The shipper must declare acceptance of declared value liability on the bill of lading.

C. Replacement value.

(1) A HGC shall specify in its tariff a rate per thousand dollars, or fraction thereof, for replacement value liability.

(2) The shipper must declare a specific dollar amount for the replacement cost value of the shipment.

(3) A HGC shall settle loss or damage claims based on the replacement cost of the lost or damaged items up to the maximum liability for the entire shipment.

(4) The shipper must declare acceptance of replacement cost liability on the bill of lading.

D. Articles of extraordinary value. A HGC may, but is not required to, assume liability for documents, currency, jewelry, precious stones, accounts, bills, deeds, securities, notes, stamp or coin collections, letters, art, or other articles of peculiar inherent value, if the articles are listed on the bill of lading with a specific value for each article. If the HGC refuses to assume such liability, the HGC shall notify the shipper in writing before accepting such articles for shipment. [18.3.11.15 NMAC - N, 12-30-02]

18.3.11.16 CLAIMS:

A. Upon discovery of a claim for loss, damage, overcharge, or any other matter, the shipper shall immediately notify the HGC in writing and give the HGC a reasonable opportunity to inspect the item that is the basis for the claim and the original package, if any. The claim shall be accompanied by the original or a true copy of the bill of lading.

B. A HGC shall not be responsible for loss or damage occurring:

(1) after the shipper or the shipper's agent has been given the opportunity to check the items delivered against the items listed on the inventory and has signed the inventory without noting any loss or damage;

(2) when the shipper directs the HGC to deliver the shipment to a place where the shipper or the shipper's agent is not present; or

(3) when the HGC is directed to load a shipment at a place where the shipper or the shipper's agent is not present.

C. A HGC shall be responsible for the repair or replacement of a lost or damaged article that is a matched piece or part of a set but shall not be liable for replacing the entire set.

D. When liability is measured by weight of a container or carton, and actual weights are unobtainable, the following items shall be deemed to have the following weights, unless specific evidence is presented to the contrary:

(1) Dish-Pack Drum, 60 pounds;

(2) Cartons less than 1 1/2 cu. ft.,

20 pounds;

(3) Cartons 1 1/2 cu. ft. to less than 3 cu. ft., 25 pounds;

(4) Cartons 3 cu. ft. to less than 4 1/2 cu. ft., 30 pounds;

(5) Cartons 4 1/2 cu. ft. to less than 6 cu. ft., 35 pounds;

(6) Cartons 6 cu. ft. to less than 6 1/2 cu. ft., 45 pounds;

(7) Cartons 6 1/2 cu. ft. and over, 50 pounds;

(8) Wardrobe Carton, 50 pounds;

(9) Mattress or Box Spring Carton Not Exceeding 54" X 75", 60 pounds;

(10) Mattress or Box Spring Carton Exceeding 54"X 75", 80 pounds;

(11) Crib Mattress Carton, 22 pounds;

(12) Cartons containing books, phonograph records, tapes or CDs, 50 pounds;

(13) Cartons containing lampshades, 5 pounds; and

(14) Items not identified on the inventory as to contents will be settled for the heaviest weight on the schedule for the container.

E. A shipper may file a complaint with the Commission as provided in 18.1.2 NMAC, Transportation Division Procedures, regarding any unsatisfied claims.

[18.3.11.16 NMAC - N, 12-30-02]

18.3.11.17 NOTICE TO PROSPECTIVE SHIPPERS:

An HGC shall deliver to every shipper a written notice containing a statement in substantially the following form: "This motor carrier operates pursuant to NMPRC Operating Authority No. _____, issued by the New Mexico Public Regulation Commission, and the tariff approved by the Commission. If you have any questions or problems with the service provided by this company, contact the New Mexico Public Regulation Commission, Transportation Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269, 1-800-947-4722."

[18.3.11.17 NMAC - N, 12-30-02]

18.3.11.18 HOUSEHOLD GOODS AGENTS:

A. Any contract or agreement between a HGC and its agent shall be in writing and shall specify the territory in which the agent is to serve. Each party shall keep a copy of the contract as part of its records at its principal place of business.

B. Each HGC shall file a current, accurate list of its agents and their telephone numbers and physical locations and mailing addresses with its annual report. A HGC shall report any additions to

or deletions from the list to the Commission as they occur.

C. A HGC's agent shall operate under the trade name of the HGC it represents, shall display the trade name of the HGC prominently in its advertising and shall, in all representations to the public, prominently display the name of the HGC and the fact that the agent is acting as the HGC's agent.

D. A HGC's agent shall prominently display the trade name of the HGC principle on all vehicles owned by the agent and used in the pick-up and delivery of intrastate shipments.

E. A HGC's agent shall maintain at its place of business for inspection by the public copies of the tariffs under which the HGC operates.

F. A HGC's agent shall retain as part of its records for a period of three (3) years all documents relating to every shipment that it negotiates or handles, including but not limited to all estimates, contracts, bills of lading, waybills, and freight bills.
[18.3.11.18 NMAC - Rp, SCC Rule 268.09, 12-30-02]

18.3.11.19 JOINT TRANSPORTATION BETWEEN HGCS:

A. No HGC shall arrange any shipment to, from, or between points it is not authorized to serve.

B. An HGC may share in the revenue from a shipment only if it has authority to haul it. All charges for joint transportation shall be collected by the HGC domiciled in New Mexico who booked or transported it and that HGC shall account to all participating HGCS for their share of the charges.

C. Each bill of lading, route manifest, and freight bill shall bear the name of every HGC participating in the transportation of the shipment.
[18.3.11.19 NMAC - Rp, SCC Rule 268.07, 12-30-02]

18.3.11.20 PROVISIONS REGARDING SPECIFIC TYPES OF ARTICLES:

A. Hazardous matter. A HGC shall not accept or transport hazardous matter or articles that cannot be taken from the premises without damaging the articles or the premises. When a HGC reasonably believes articles or contents of packages must be inspected for compliance with this rule, the HGC shall make or cause such inspection, and may subsequently require sufficient evidence to determine the actual character of the articles. The shipper shall reimburse the HGC according to labor rates published in the HGC's tariff.

B. Perishable articles. A HGC shall not accept perishable articles or articles requiring refrigeration. A HGC may, in its discretion, accept frozen foods under the following conditions:

(1) the food is contained in a regular food freezer and is frozen solid at the time of loading;

(2) both the point of origin and the destination of the shipment are within New Mexico;

(3) no storage or delay is required in transit;

(4) delivery may be accomplished within twenty-four hours of the time of loading; and

(5) notwithstanding any other provision of this rule, the HGC shall in no case be liable for the condition or flavor of the food.

[18.3.11.20 NMAC - N, 12-30-02]

18.3.11.21 IMPRACTICABLE OPERATIONS AND SERVICE:

No HGC shall be required to perform any service at a place which is inaccessible, or where the operation of motor vehicles or presence of personnel would subject either to unreasonable risk, loss or damage such as, but not limited to, road conditions, buildings, riots, strikes, war, civil disturbances, and all other hazards.

A. When, due to inaccessibility or otherwise, a HGC cannot perform pickup, delivery, or other services, the HGC will make the motor vehicle available at the nearest accessible point deemed reasonably safe for its operation and personnel.

B. When a HGC, due to inaccessibility or otherwise, cannot operate its motor vehicle to the point of pick-up or delivery, upon permission of the shipper or consignee the HGC may utilize smaller equipment and more labor to continue the move and may charge additionally as provided in the HGC's tariff.

C. When a shipper will not accept delivery at the nearest point of safe approach, the HGC may place the shipment in the nearest public warehouse or storage facility. At that time, the shipment shall be deemed delivered and all charges shall be due and payable immediately. For the purpose of applying this rule, transportation charges shall be computed from origination to the point where the shipment was originally tendered for delivery, and from there to the public warehouse or storage facility, on a continuous mileage or hourly basis, whichever is applicable.

[18.3.11.21 NMAC - N, 12-30-02]

18.3.11.22 MISCELLANEOUS PROVISIONS:

A. Packing and marking.

The HGC shall properly pack fragile or breakable articles and mark the fragile character of the contents on the containers in distinct letters.

B. Minimum shipment charge. Unless otherwise provided, shipments moving on a weight or time basis shall be subject to a minimum charge based on one thousand (1,000) pounds or one (1) hour, at rates provided in the HGC's tariff.

C. Failure to make delivery. When, through no fault of its own, the HGC is unable to locate a consignee at the address furnished by the shipper, or if the consignee is unable to accept or declines delivery, the HGC shall mail, telephone, or fax notification of failure to make delivery to the shipper or consignee and shall place the shipment in storage. If the shipper requests subsequent delivery, the HGC may assess charges for delivery from storage to the destination in addition to the transportation and storage charges already accrued.

D. Pickup or delivery at warehouses and docks. If a shipper orders pickup or delivery at a warehouse, dock or other point which charges a fee for pickup or delivery, the shipper will pay such fee in addition to paying the HGC's rates for loading or unloading at the warehouse dock, door, or other point accessible to the HGC's vehicle.

E. Reasonable dispatch. Each HGC accepting shipments of household goods shall transport the shipment with reasonable dispatch, within the time specified in the bill of lading. The HGC shall notify the shipper of any delay as soon as it becomes apparent to the HGC that it will be unable to comply with the anticipated delivery date.

[18.3.11.22 NMAC - Rp, SCC Rule 268.08, 12-30-02]

HISTORY OF 18.3.11 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;

SCC Rule 262, Bills of Lading and Route Manifests, filed on 1-5-93;

SCC Rule 268, Household Goods Carriers, filed on 1-5-93.

History of repealed material.

SCC Rule 262, Bills of Lading and Route Manifests, filed on 1-5-93;

SCC Rule 268, Household Goods Carriers, filed on 1-5-93.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS PART 12 TOWING SERVICES

18.3.12.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.
[18.3.12.1 NMAC - N, 12-30-02]

18.3.12.2 SCOPE: This rule
applies to all towing services providing
non-consensual tows and all repossession
services using towing equipment and is in
addition to all other applicable requirements
of these rules.
[18.3.12.2 NMAC - Rp, SCC Rule 267.01,
12-30-02]

**18.3.12.3 STATUTORY
AUTHORITY:** NMSA 1978 Sections 8-8-
4 and 65-2-83.
[18.3.12.3 NMAC - N, 12-30-02]

18.3.12.4 DURATION:
Permanent.
[18.3.12.4 NMAC - N, 12-30-02]

18.3.12.5 EFFECTIVE DATE:
December 30, 2002, unless a later date is
cited at the end of a section.
[18.3.12.5 NMAC - N, 12-30-02]

18.3.12.6 OBJECTIVE: The
purpose of this rule is to establish require-
ments for towing services subject to the lim-
itations in 49 U.S.C 14501.
[18.3.12.6 NMAC - N, 12-30-02]

18.3.12.7 DEFINITIONS: In
addition to the definitions in 18.3.1.7

NMAC, as used in this rule:

A. MVD means the Motor
Vehicle Division of the New Mexico
Taxation and Revenue Department;

B. non-consensual tow
means the compensated transportation of a
motor vehicle by a towing service, if such
transportation is performed at the request of
a law enforcement officer without the prior
consent or authorization of the owner or
operator of the motor vehicle;

C. normal business hours
means nine consecutive hours from 8:00
a.m. to 5:00 p.m. on every weekday exclud-
ing holidays;

D. owner means a person
who holds legal title to a motor vehicle or a
person legally entitled to possession of the
motor vehicle;

E. proof of ownership
means a certificate of title or evidence of
current registration of a motor vehicle and
sufficient other documentation to identify
an individual as the person described in the
documents or the person's agent;

G. storage means the safe-
keeping of motor vehicles entrusted to the
custody of a towing service;

**H unclaimed motor
vehicle** means a motor vehicle whose legal
ownership is not claimed or asserted to the
towing service by any person within a peri-
od of thirty (30) days from the time the
motor vehicle is entrusted to the towing
service.

[18.3.12.7 NMAC - Rp, SCC Rule 202.03,
12-30-02]

18.3.12.8 MINIMUM EQUIP- MENT STANDARDS:

A. A towing service shall
be equipped with only those winches and
towing equipment that have been produced
and constructed by a manufacturer of such
equipment that regularly produces winches
and towing equipment of guaranteed quali-
ty.

B. The Director may
approve the use of non-guaranteed quality
winches or towing equipment if the owner
submits an application for use of such
equipment, accompanied by a verified state-
ment from a reputable testing laboratory
regularly engaged in the testing of the same
equipment certifying that the capacity of the
winch or towing equipment is not less than
that mandated for the class of tow truck
with which it will be used. The towing
service shall bear all costs of testing and
certification.

[18.3.12.8 NMAC - Rp, SCC Rule 267.03,
12-30-02]

18.3.12.9 CLASSIFICATION OF TOWING EQUIPMENT:

The stan-

dards for each class of towing service shall
be determined solely by the manufacturer's
specifications for the capabilities of tow and
vehicle carrier trucks and towing equip-
ment.

A. Class A - operating
authority for towing up to 8,000 pounds;

B. Class B - operating
authority for towing between 8,001 and
12,000 pounds;

C. Class C - operating
authority for towing between 12,001 and
25,000 pounds;

D. Class D - operating
authority for towing 25,001 pounds and
over.

[18.3.12.9 NMAC - Rp, SCC Rule 267.04,
12-30-02]

**18.3.12.10 CLASS A TOWING
EQUIPMENT:** A Class A towing service
shall maintain equipment adequate to trans-
port motor vehicles, provided that the total
gross weight of the vehicle, special equip-
ment, special bodies and lading shall not
exceed 8,000 pounds.

A. Tow truck specifica- tions.

(1) GVW rating of not less than
10,000 pounds;

(2) Minimum of 60" cab to axle
length;

(3) Automatic or manual trans-
mission;

(4) Dual rear wheels. (This
requirement does not apply to repossession
services.)

B. Towing equipment specifications.

(1) Lifting capacity of not less
than four (4) tons;

(2) Winching capacity of not less
than four (4) tons, single line pull;

(3) 3/8" cable for winch;

(4) Tow bar, cradle, sling attach-
ment, underreach, or roll-back vehicle carri-
er.

C. Vehicle carrier truck specifications.

(1) GVW of not less than 10,000
pounds;

(2) Minimum of 96" cab to axle
length;

(3) Dual rear wheels;

(4) Automatic or manual trans-
mission.

D. Vehicle carrier bed specifications.

(1) Minimum of 17' of length;

(2) Winching capacity of not less
than four (4) tons;

(3) 3/8" cable for winch.

[18.3.12.10 NMAC - Rp, SCC Rule 267.05,
12-30-02]

18.3.12.11 CLASS B TOWING

EQUIPMENT: A Class B towing service shall maintain equipment adequate to transport passenger cars, trailers, semi-trailers, trucks and truck-tractors, provided that the total gross weight of vehicle, special equipment, special bodies and lading shall exceed 8,001 pounds, but shall not exceed 12,000 pounds. Unless otherwise specifically restricted by its operating authority, a Class B towing service may also render Class A service but must charge the tariffed rates for Class A service when it does so and must use Class B equipment.

A. Tow truck specifications.

- (1) GVW rating of not less than 11,000 pounds;
- (2) Minimum of 60" cab to axle length;
- (3) Dual rear wheels;
- (4) Automatic or manual transmission.

B. Towing equipment specifications.

- (1) Lifting capacity of not less than eight (8) tons;
- (2) Winching capacity of not less than eight (8) tons;
- (3) 3/8" cable for winch;
- (4) Tow bar, cradle, or sling attachment, underreach, or roll-back vehicle carrier.

C. Vehicle carrier truck specifications.

- (1) GVW of not less than 14,000 pounds;
- (2) Minimum of 108" cab to axle length;
- (3) Dual rear wheels;
- (4) Automatic or manual transmission.

D. Vehicle carrier bed specifications.

- (1) Minimum of 17' of length;
- (2) Winching capacity of not less than four (4) tons;
- (3) 3/8" cable for winch.

[18.3.12.11 NMAC - Rp, SCC Rule 267.06, 12-30-02]

18.3.12.12 CLASS C TOWING

EQUIPMENT: A Class C towing service shall maintain equipment adequate to transport trailers, semi-trailers, trucks, truck-tractors and other vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall exceed 12,001 pounds, but shall not exceed 25,000 pounds. Unless otherwise specifically restricted by its operating authority, a Class C towing service may also render Class A or Class B service but must charge the tariffed rates for Class A or Class B service when it does so and must use Class

C equipment.

A. Tow truck specifications.

- (1) GVW rating of not less than 25,000 pounds;
- (2) Dual rear wheels;
- (3) Automatic or Manual transmission;
- (4) Full air brakes, constructed so as to lock power wheels upon air failure.

B. Towing equipment specifications.

- (1) Lifting capacity of not less than ten (10) tons;
- (2) Combined winching capacity of not less than ten (10) tons;
- (3) 7/16" cable for winch;
- (4) Tow bar, cradle or sling attachment, underreach, or roll-back vehicle carrier.

C. Use of lowboy. A towing service may use a tractor to tow a trailer when the trailer is part of a damaged or disabled unit. A towing service may use a lowboy when a tractor, trailer, or other Class C vehicle cannot be towed by a tractor. A towing service may transport the contents of a damaged or disabled unit by means of a carrier or trailer when appropriate.

[18.3.12.12 NMAC - Rp, SCC Rule 267.07, 12-30-02]

18.3.12.13 CLASS D TOWING

EQUIPMENT: A Class D towing service shall maintain equipment adequate to transport trailers, semi-trailers, trucks, truck-tractors and other vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall exceed 25,001 pounds. Unless otherwise specifically restricted by its operating authority, a Class D towing service may also render Class A, Class B, or Class C service but must charge the tariffed rates for Class A or Class B or Class C service when it does so and must use Class D equipment.

A. Tow truck specifications.

- (1) GVW rating of not less than 49,000 pounds;
- (2) Manual transmission;
- (3) Dual axle (tandem) rear wheels;
- (4) Minimum of 120" cab to axle length;
- (5) Full air brakes constructed so as to lock power wheels upon air failure.

B. Towing equipment specifications.

- (1) Lifting capacity of not less than twenty-five (25) tons;
- (2) Combined winching capacity of not less than twenty-five (25) tons;
- (3) 5/8" cable for winch;

(4) Tow bar, cradle or sling attachment, underreach, or roll-back vehicle carrier.

C. Use of lowboy. A towing service may use a tractor to tow a trailer when the trailer is part of a damaged or disabled unit. A towing service may use a lowboy when a tractor, trailer, or other Class D vehicle cannot be towed by a tractor. A towing service may transport the contents of a damaged or disabled unit by means of a carrier or trailer when appropriate.

[18.3.12.13 NMAC - Rp, SCC Rule 267.08, 12-30-02]

18.3.12.14 MOVING DAMAGED, DISABLED OR ABANDONED MOTOR VEHICLES:

A. Permission required. No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle which has been damaged or disabled in an accident or which has been abandoned on a highway without having first obtained permission from a law enforcement officer, except when:

(1) no law enforcement officer is available within a period of three (3) or more hours; and

(2) the accident or abandonment has occurred at a point on the highway which may be dangerous to other motor vehicles using the highway and it is not possible to detour other motor vehicles around the damaged, disabled, or abandoned motor vehicle. The motor vehicle shall be moved only the distance necessary to remove the hazard to other motor vehicles using the highway.

B. Additional requirements. When towing motor vehicles, a towing service shall:

(1) ensure that at least two wheels of the motor vehicle, front or rear, are clear of the highway;

(2) use a cradle or bar to provide a rigid space between the motor vehicle and the tow truck; and

(3) use a cradle or rigid bar without lifting the front or rear wheels if the total gross weight of the motor vehicle, including lading, exceeds ten thousand (10,000) pounds.

C. Prohibitions. A towing service shall not:

(1) transport a motor vehicle of any type by pushing;

(2) transport a disabled motor vehicle on a dolly or other wheeled auxiliary device, except when the auxiliary device is specifically designed for, and used only for, the towing of disabled motor vehicles;

(3) use a wheeled auxiliary device unless it is necessary to prevent further mechanical damage to the motor vehicle being moved;

(4) use a wheeled auxiliary device unless the nature of the existing damage prohibits moving the motor vehicle in any other way.

[18.3.12.14 NMAC - Rp, SCC Rule 267.09, 12-30-02]

18.3.12.15 SECUREMENT: A towing service shall secure every towed motor vehicle to the towing vehicle in accordance with 49 CFR 393, subpart F, Coupling Devices and Towing Methods, and subpart I, Protection Against Shifting and Falling Cargo.

[18.3.12.15 NMAC - N, 12-30-02]

18.3.12.16 USE OF DOLLY OR SUPPLEMENTARY WHEELS:

A. A towing service shall not use a wheeled auxiliary device when such use could jeopardize the safety of the public.

B. Only Class A and Class B towing services may use dollies or supplementary wheels.

C. Class C and Class D towing services may use converter dollies when necessary to transport Class C or Class D motor vehicles.

D. A towing service may use a dolly when both ends of the motor vehicle to be towed are damaged or it is necessary to prevent further damage.

[18.3.12.16 NMAC - Rp, SCC Rule 267.10, 12-30-02]

18.3.12.17 DISCONNECTION OF DRIVELINE: A towing service may disconnect or remove the driveline from a motor vehicle to be towed when:

A. it is necessary to prevent mechanical damage to the motor vehicle; or

B. the motor vehicle's front end is so damaged, or for some other reason, it cannot be towed by lifting the rear end.

[18.3.12.17 NMAC - Rp, SCC Rule 267.11, 12-30-02]

18.3.12.18 SAFETY CONSIDERATIONS:

A. Unsafe conditions. A towing service is not obligated to transport shipments when, in the service's judgment, weather or road conditions make it impracticable or unsafe to operate.

B. Passengers prohibited. No person, other than an employee of the towing service, shall ride in a disabled motor vehicle while it is being transported.

C. Chains or cable across highway. A towing service shall not stretch or place any motor vehicles, cables or chains across any highway unless and until flagmen are placed a minimum distance of three hundred (300) feet from the obstruction in each direction along the highway to stop or warn approaching traffic. A towing service shall equip flagmen with red flags during daylight hours and electric lanterns with red lights during hours of darkness.

[18.3.12.18 NMAC - Rp, SCC Rule 267.12, 12-30-02]

18.3.12.19 SAFETY EQUIPMENT REQUIREMENTS: All towing services must maintain the following safety equipment on each tow truck at all times for the described use:

A. flashing blue, amber or a combination of both colors of lights, front and rear, which shall be in operation whenever a towing service is standing on a roadway for the purpose of removing a motor vehicle and at all times while transporting a motor vehicle;

B. stop, tail, and turn signals on any motor vehicle in tow that can be operated from the towing vehicle;

C. spot lights that are capable of lighting the scene of disability after dark and additional spotlights or work lights positioned behind the cab of the towing service that can be used to illuminate the motor vehicle being serviced;

D. one (1) hand axe;

E. one (1) wrecking bar at least four (4) feet in length;

F. at least one (1) broom, one (1) shovel, and one (1) bag or container for removal of broken glass and debris from highway;

G. one (1) ten (10) unit type first-aid kit;

H. at least three (3) triangle-type reflectors;

I. at least six (6) twenty-minute flares;

J. at least four (4) red signal flags (minimum dimensions - two feet by two feet (2' x 2')); and

K. at least one (1) charged fire extinguisher having a minimum capacity of ten (10) pounds of dry chemical capable of extinguishing Class A, B and C fires. [18.3.12.19 NMAC - Rp, SCC Rule 267.13, 12-30-02]

18.3.12.20 DEADHEAD MILEAGE: A towing service shall use deadheading only when it is not towing a motor vehicle to its base of operation or to a storage facility. A towing service shall calculate deadhead miles as total miles less loaded miles.

A. Total mileage calculation. Total mileage shall equal the sum of:

(1) the miles from the base of operation to the loading pick up point;

(2) the miles from the loading pick-up point to the destination; and

(3) the miles from the destination back to the original base of operation.

B. Loaded miles calculation. Loaded miles shall equal the number of miles from the loading pick-up point to the destination.

C. When charges optional. A towing service may, but is not required to, assess deadhead charges during normal business hours and within municipal limits.

D. Excess deadhead charges. A towing service shall assess excess deadhead charges for the entire distance when it is called to pull a stuck motor vehicle out of ice, snow, mud, or sand. Excess deadhead charges shall be in addition to:

(1) tariffed charges for the first mile or less, if the service can be rendered within thirty (30) minutes; or

(2) hourly charges for accessorial services, if more than thirty (30) minutes is required to render the service.

[18.3.12.20 NMAC - Rp, SCC Rule 267.15, 12-30-02]

18.3.12.21 TOWING MULTIPLE MOTOR VEHICLES IN ONE TRIP:

When a towing service tows two or more disabled motor vehicles during one trip, it shall charge for the second and succeeding motor vehicles the day or night charge for the first mile or less, determined by the hour the service is requested, plus the deadhead mileage charge for each vehicle, provided that a towing service may not bill for the same mileage for unrelated tows.

[18.3.12.21 NMAC - Rp, SCC Rule 267.19, 12-30-02]

18.3.12.22 ALTERED, MUTILATED, OR MISSING VIN:

A towing service must notify the local law enforcement agency or the New Mexico State Police in writing as soon as it discovers an altered, mutilated, or missing VIN on a motor vehicle in its custody, unless the motor vehicle has been impounded by a law enforcement officer aware of the altered, mutilated, or missing VIN.

[18.3.12.22 NMAC - Rp, SCC Rule 267.20, 12-30-02]

18.3.12.23 STORAGE FACILITIES: Towing service includes the storage of motor vehicles. Towing service begins when the motor vehicle is entrusted to the towing service and ends when the towing

service delivers the motor vehicle to the owner or the owner's agent.

A. A towing service must maintain at least one of the following classes of storage facility:

(1) Type 1 - a fenced and locked area;

(2) Type 2 - a fenced, lighted, and locked area; or

(3) Type 3 - an enclosed, roofed and locked structure.

B. A towing service must either be located at the storage facility or must have a person working at the storage facility during normal business hours who is able to provide the services specified in subsection A and paragraphs (1) and (2) of subsection B of 18.3.12.24 NMAC.

[18.3.12.23 NMAC - Rp, SCC Rule 267.21, 12-30-02]

18.3.12.24 STORED MOTOR VEHICLES:

A. Inspection. Unless a stored motor vehicle has been impounded, the owner, the owner's agent, or the lienholder of a stored motor vehicle shall have the right, without charge, during normal business hours, to:

(1) inspect the motor vehicle;

(2) remove proof of ownership from the motor vehicle; or

(3) remove personal property from the motor vehicle if he or she presents proof of ownership.

B. Release of vehicle.

(1) The owner, the owner's agent, or the lienholder of a motor vehicle may obtain possession of the motor vehicle by paying all just and reasonable charges and providing proof of ownership:

(a) as a matter of right, during normal or extended business hours; or

(b) at the option of the towing service, during non-business hours.

(2) A towing service must give notice to the owner, the owner's agent, or the lienholder of a motor vehicle that if the person disputes the charges or feels the motor vehicle was illegally towed, the person may file a complaint with the Commission as provided in 18.1.2 NMAC, Transportation Division Procedures.

(3) If a towing service elects to deliver a motor vehicle during non-business hours, it must assess the tariffed administrative charge for such delivery.

[18.3.12.24 NMAC - Rp, SCC Rule 267.23, 12-30-02]

18.3.12.25 IMPOUNDED MOTOR VEHICLES: If a law enforcement agency places a hold on a motor vehicle it impounds and entrusts to the custody of a towing service, the towing service shall

not, without specific written authorization of the law enforcement agency:

A. release the impounded motor vehicle to any person, including the owner, the owner's agent, or a lienholder; or

B. allow the owner of the impounded motor vehicle, the owner's agent, or a lienholder to inspect the motor vehicle or remove proof of ownership or personal property from the motor vehicle.

[18.3.12.25 NMAC - Rp, SCC Rule 267.22, 12-30-02]

18.3.12.26 NOTICE TO OWNERS OF STORED AND IMPOUNDED MOTOR VEHICLES:

A. Identification of owner.

(1) **On site.** Before a towing service tows a motor vehicle, it shall request ownership information from the authorizing law enforcement officer on scene.

(2) **From the storage facility.** If a towing service does not already have ownership information on a motor vehicle, it shall obtain the name and address of the registered owner and any lienholder of the motor vehicle.

(a) If the motor vehicle has New Mexico plates, and the towing service has a computer with Internet access, the towing service shall obtain the information on-line within one (1) business day after the motor vehicle comes into its possession. Otherwise, the towing service shall request the information from MVD on forms prescribed by MVD within three (3) business days after the motor vehicle comes into its possession,

(b) If the motor vehicle has out-of-state license plates or the towing service has other reason to believe that the motor vehicle is registered in a state other than New Mexico, the towing service must request the information from the appropriate agency of that state within three (3) business days after the motor vehicle comes into its possession.

B. Notification of owner.

(1) Upon receipt of the information identifying the registered owner or any lienholder of the motor vehicle, the towing service shall, within two (2) business days after receipt of such information, notify the registered owner and the lienholder, if any, that the towing service has the motor vehicle in its possession.

(2) The towing service shall use the notice form prescribed by MVD, and shall mail the notice by certified mail, return receipt requested, to the registered owner and the lienholder, if any.

(3) This requirement applies even if the VIN is altered, mutilated, or missing.

C. Penalty for failure to

notify. A towing service that fails to notify the registered owner and any lienholder of an unclaimed motor vehicle in accordance with this section shall not collect any charges or liens for storage, except when the certified letter is returned to the towing service by the United States Postal Service for failure of delivery.

D. Exception. A towing service shall not be required to give the notice required by subsection B of this section to the owner if, before the notice is required to be sent, the owner of the motor vehicle identifies himself to the towing service and makes any arrangement the towing service deems necessary for the payment of the towing and storage charges. However, the towing service shall still be required to give the notice to the lienholder of the motor vehicle.

[18.3.12.26 NMAC - Rp, SCC Rule 267.23, 12-30-02]

18.3.12.27 DISPOSAL OF UNCLAIMED MOTOR VEHICLES:

A. Before a towing service may dispose of a motor vehicle deemed unclaimed, it must first perfect a lien against the motor vehicle, as provided by New Mexico law, and obtain a new certificate of title.

B. A dismantler licensed by the New Mexico Motor Vehicle Division need not obtain a new certificate of title before dismantling an unclaimed motor vehicle if:

(1) the dismantler lists the unclaimed motor vehicle on a dismantler's notification form; and

(2) the motor vehicle is at least eight years of age and in such a state of repair that it will not be placed into service.

[18.3.12.27 NMAC - Rp, SCC Rule 267.24, 12-30-02]

18.3.12.28 TOWING SERVICE RESPONSIBILITY:

A towing service shall be responsible for the safekeeping and delivery of a motor vehicle and its contents entrusted to it or which come into its custody in the course of its authorized operations.

[18.3.12.28 NMAC - N, 12-30-02]

18.3.12.29 INCOME AND EXPENSE RECORDS:

A towing service shall maintain complete and permanent records of income and costs of operation for non-consensual tows performed in New Mexico separate and apart from any other towing services and from any other business conducted by the towing service.

[18.3.12.29 NMAC - N, 12-30-02]

HISTORY OF 18.3.12 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 72-12, N.M. Wrecker Tariff No. 1-B, Issued September 29, 1969, filed on 10-2-72;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;

SCC 77-3, N.M. Wrecker Tariff No. 1-D, Issued July 1, 1976, filed on 6-6-77;

SCC 79-2, N.M. Wrecker Tariff No. 3-D, Issued April 15, 1979, filed on 5-25-79;

SCC 86-4, In the Matter of Minimum Specifications for Wreckers-General Order No. 42 (1986 Revision), filed 9-29-86;

SCC 92-4-TR, New Mexico Wrecker Rules, filed on 7-29-92;

SCCMC Rule No. 14, Equipment Required on Certain Vehicles, filed on 3-5-82;

SCC Rule 202, Definitions, filed on 1-5-93;

SCC Rule 267, Wrecker Services, filed on 1-5-93.

History of repealed material.

SCC Rule 202, Definitions, filed on 1-5-93;
SCC Rule 267, Wrecker Services, filed on 1-5-93.

NEW MEXICO PUBLIC REGULATION COMMISSION

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 3 MOTOR CARRIER
GENERAL PROVISIONS
PART 13 REGISTRATION OF
INTERSTATE CARRIERS**

18.3.13.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.
[18.3.13.1 NMAC - N, 12-30-02]

18.3.13.2 SCOPE: This rule applies to interstate motor carriers that choose New Mexico as their base state.
[18.3.13.2 NMAC - N, 12-30-02]

**18.3.13.3 S T A T U T O R Y
AUTHORITY:** NMSA 1978 Sections 8-8-4 and 65-2-83.
[18.3.13.3 NMAC - N, 12-30-02]

18.3.13.4 D U R A T I O N :
Permanent.
[18.3.13.4 NMAC - N, 12-30-02]

18.3.13.5 EFFECTIVE DATE:
December 30, 2002, unless a later date is cited at the end of a section.
[18.3.13.5 NMAC - N, 12-30-02]

18.3.13.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Section 65-2-115.1
[18.3.13.6 NMAC - N, 12-30-02]

18.3.13.7 DEFINITIONS: In addition to the terms in 18.3.1.7 NMAC, as used in this rule:

A. FMCSA authorized carrier means a motor carrier authorized by the Federal Motor Carrier Safety Administration to engage in compensated transportation as a common or contract carrier in interstate or foreign commerce under the provisions of 49 U.S.C. 13902;

B. single state registration system means procedures adopted for the registration of FMCSA authorized carriers with states in accordance with 49 CFR Part 367.

[18.3.13.7 NMAC - Rp, SCC Rule 215.01, 12-30-02]

**18.3.13.8 S I N G L E S T A T E
REGISTRATION OF FMCSA AUTHORIZED CARRIERS:**

A. The Commission has determined that New Mexico is eligible to participate in, and elects to participate in, the single state registration system and agrees to utilize the procedures developed by the National Conference of State Transportation Specialists in accordance with 49 U.S.C. 14504 for the single state registration of FMCSA authorized carriers.

B. FMCSA authorized carriers registering in New Mexico shall pay all fees required by NMSA 1978 Section 65-2-115.1 in guaranteed funds.
[18.3.13.8 NMAC - Rp, SCC Rule 215.03, 12-30-02]

18.3.13.9 P R O O F O F R E G I S T R A T I O N: An FMCSA authorized carrier shall carry a single-state registration receipt in each motor vehicle it operates in New

Mexico.

[18.3.13.9 NMAC - Rp, SCC Rule 215.07, 12-30-02]

HISTORY OF 18.3.13 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;

SCCMC Rule No. 46, Standards for Operations of Interstate Carriers, filed on 3-5-82;

NMSCC Rule No. 40, NMSCC Cab Card, filed on 3-5-82;

SCC Rule 215, Registration of Interstate Carriers, filed on 1-5-93;

SCC Rule 215, Registration of Interstate Carriers, filed on 10-27-93.

History of repealed material.

SCC Rule 215, Registration of Interstate Carriers, filed on 10-27-93.

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.11 NMAC, sections 7 & 9.

2.81.11.7 DEFINITIONS:

A. "Retiree Health Care Authority" or "Authority" or "NMRHCA" means, the Retiree Health Care Authority established by chapter 6 laws of New Mexico, 1990 [Sections 10-7C-1 et seq. NMSA 1978].

B. "Board" means, the board of directors of the NMRCHA.

C. "Subsidy" means a set portion of the cost of an eligible retiree's

monthly coverage, a varying percentage of which is borne by the authority as determined by the board.

D. "Credited service" means the number of full years of [state] employment [~~reflected in a retiree's earned service credit as calculated by the appropriate state retirement agency~~]with a participating employer as verified by the authority.

E. "Disabled retiree" means an eligible retiree who has been authorized to retire due to disability by the appropriate state retirement agency.

F. "State retirement agency" means each of the agencies created and authorized by law to administer the educational retirement act, the public employees retirement act, the judicial retirement act, the magistrate retirement act, the public employees retirement reciprocity act, or the retirement program of an independent public employer on or before July 1, 1990. [2.81.11.7 NMAC - N, 02-14-02; A, 12-30-02]

2.81.11.9 SUBSIDIES FOR DISABLED RETIREES:

Notwithstanding any other provision of this rule[.], ~~the subsidy paid by the NMRHCA for a disabled retiree with at least five full years of credited service, and to the dependents of such a retiree, shall be at the 100 percent level, corresponding to the 20 year level set forth in Section 2.81.11.8 NMAC.~~

A. The subsidy paid by the NMRHCA for a disabled retiree with a "duty disability," as described in 2.81.7.10 NMAC, subsection B, and to the dependents of such a retiree, shall be at the 100 percent level, corresponding to the 20-year level set forth in the foregoing subsection, regardless of such retiree's period of credited service.

B. The subsidy paid by the NMRHCA for a disabled retiree with a "non-duty disability," as described in 2.81.7.10 NMAC, subsection C, and to the dependents of such a retiree, shall be at the 100 percent level, corresponding to the 20-year level set forth in the foregoing subsection, provided, that, as a condition of eligibility for benefits, such retiree has five or more years of credited service. [2.81.11.9 NMAC - N, 02-14-02; A, 12-30-02]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.1.5 NMAC and 2.81.1.20 NMAC. This regulation was also renumbered and reformatted to

comply with current NMAC requirements.

2.81.1.5 EFFECTIVE DATE: June 15, 1998 unless a later date is cited at the end of a section. [6-15-98; 2.81.1.5 NMAC - Rn & A, 2 NMAC 81.1.5, 12-30-02]

2.81.1.20 DUTIES AND POWERS OF THE BOARD:

A. Board's Authority Vested by the Constitution of the State:

~~The board retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the Constitution of the state of New Mexico and statutes, including those prescribed by Sections 10-7C-1 et seq. NMSA 1978 and such other power and authority as may be conferred upon the board from time to time. [The authority of the board shall be liberally construed in all doubtful cases to be inclusive of the actions taken by the board.]~~

B. Board Hearing Authority Delegable:

In any instance in which the board is authorized to conduct an adjudicatory hearing pursuant to the New Mexico Retiree Health Care Act, or pursuant to these regulations, the board may delegate the authority to conduct such an adjudication to a hearing authority, designation of which shall be in the sole and exclusive authority of the board, pursuant to procedures to be adopted by the hearing authority in consultation with the board's general counsel. Upon completion of the hearing, the hearing authority shall issue a disposition to the board, and, upon the application of either party to the adjudication, the board shall determine by majority vote whether to adopt the hearing authority's disposition as its own or to consider the matter further itself. In the event the board votes to consider the matter further, it shall also determine whether such consideration will include the parties' written submissions only, such written submissions plus oral argument before the board, or rehearing of all or part of the matter before the board.

C. Authority of the Board to be Liberally Construed:

The authority of the board shall be liberally construed in all doubtful cases to be inclusive of the actions taken by the board. [6-15-98; 2.81.1.20 NMAC - Rn & A, 2 NMAC 81.1.20, 12-30-02]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.6.5. This regulation is being amended and renumbered as a whole by the addition of a new section to part 6. This regulation was also renumbered and reformatted to comply with current NMAC requirements.

2.81.6.5 EFFECTIVE DATE: June 15, 1998 unless a later date is cited at the end of a section.

[6-15-98; 2.81.6.5 NMAC - Rn & A, 2 NMAC 81.6.5, 12-30-02]

2.81.6.10 ENROLLMENT IN OPTIONAL, VOLUNTARY, OR SUPPLEMENTAL PLANS:

Eligible retirees, and their spouses, and dependents, may enroll in optional, voluntary, or supplemental plans such as dental, vision, and life without enrolling in an NMRHCA medical plan of benefits. The eligible retirees and their spouses and dependents enrolling in such optional, voluntary, and supplemental plans shall pay a monthly premium which will cover the total cost for each benefit plan they elect to receive.

[2.81.6.10 NMAC - N, 12-30-02]

End of Adopted Rules and Regulations Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2003

Volume XIV	Submittal Deadline	Publication Date
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
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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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