

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 1 TRANSPORTATION GENERAL PROVISIONS
PART 6 LEASING OF REAL PROPERTY FOR COMMERCIAL PURPOSES

18.1.6.1 ISSUING AGENCY: New Mexico Department of Transportation - P.O. Box 1149, Santa Fe, New Mexico 87504-1149.
[18.1.6.1 NMAC - N, 11/15/05]

18.1.6.2 SCOPE: General public interested in conducting commercial activities on department land.
[18.1.6.2 NMAC - N, 11/15/05]

18.1.6.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to NMSA 1978, Section 67-3-12G and NMSA 1978, Section 67-11-9.
[18.1.6.3 NMAC - N, 11/15/05]

18.1.6.4 DURATION: Permanent.
[18.1.6.4 NMAC - N, 11/15/05]

18.1.6.5 EFFECTIVE DATE: November 15, 2005, unless a later date is cited at the end of a section.
[18.1.6.5 NMAC - N, 11/15/05]

18.1.6.6 OBJECTIVE: The purpose of this regulation is to establish procedures for the conduct, permitting or authorization of commercial enterprises or activities on department land.
[18.1.6.6 NMAC - N, 11/15/05]

18.1.6.7 DEFINITIONS:

- A. "Commission"** means the New Mexico state transportation commission.
 - B. "Department"** means the New Mexico department of transportation.
 - C. "Department land"** means New Mexico state transportation commission or New Mexico department of transportation owned land or land leased to or from the state of New Mexico.
 - D. "Determination"** means the written documentation of a decision by the secretary or his or her designee including findings of fact required to support a decision. A determination becomes part of the department record for the commercial enterprise or activity.
 - E. "Person"** means any individual, firm, corporation, company, joint venture, voluntary association, partnership, trust, or unincorporated organization, or combination thereof.
 - F. "Public entity"** means any entity as defined by NMSA 1978, Section 11-1-2 of the Joint Powers Agreements Act (NMSA 1978, 11-1-1 to 11-1-7).
 - G. "Secretary"** means the New Mexico secretary of transportation or his or her designee.
- [18.1.6.7 NMAC - N, 11/15/05]

18.1.6.8 COMMERCIAL ENTERPRISES AND ACTIVITIES:

- A.**This rule provides for commercial enterprises or activities on department land where such development or activities is in the best interest of the department and serves the public interest. Since commercial use of department property generates proceeds or payments which will be deposited into the state road fund and may have other benefits to the department or the public, such uses are transportation, highway or department uses or purposes and do not constitute a determination that the property involved is excess of the department's needs or uses. This rule shall not apply to any lease or agreement between the department and a public entity for non-commercial purposes or use, nor shall it apply to commercial leases of department land made pursuant to acquisition of property for right-of-way purposes under the eminent domain code or special alternative condemnation procedure, for air space agreements, oil and gas leases, employee housing arrangements or residential leases of department property, including leases to security or law enforcement personnel.
- B. Authorized Use:** In furtherance of commercial enterprises or activities on department land for the purpose of providing goods and services to the users of the property or facilities or for generating payments to the state road fund, the department may sell, exchange, or lease department property and may use any other powers granted to it by law. Any commercial enterprise or activity is authorized so long as it is in the department's best interest or serves the public interest. The department shall report all proposed commercial activity to the

commission at its regularly scheduled meetings. The commission retains the authority to approve, disapprove and modify all proposed commercial activity.

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

- (1) a description of the commercial enterprise or activity to be authorized;
- (2) a description of the department land to be used for the commercial enterprise or activity;
- (3) the form of the commercial enterprise or activity, e.g. whether conducted by the department or by a person through license, permit or other appropriate authorization granted by the department;
- (4) the nature of any agreements into which the department will enter to accomplish the commercial enterprise or activity;
- (5) the method of establishing the commercial enterprise or activity, e.g. through competitive proposal process or otherwise;
- (6) if the commercial enterprise or activity is not established through a competitive process, the reasons that a competitive process was not chosen; and
- (7) a statement as to why the commercial enterprise or activity is in the best interest of the department or serves the public interest.

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

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

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

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

HISTORY OF 18.1.6 NMAC: [RESERVED]