

**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 instructors for driving safety courses offered, in New Mexico.  
[18.20.8.2 NMAC - Rp, 18 NMAC 20.8.2, 1-1-03]

**18.20.8.3       STATUTORY AUTHORITY:** NMSA 1978, Sections 66-10-1 through 66-10-12.  
[18.20.8.3 NMAC - Rp, 18 NMAC 20.8.3, 1-1-03]

**18.20.8.4       DURATION:** Permanent.  
[18.20.8.4 NMAC - Rp, 18 NMAC 20.8.4, 1-1-03]

**18.20.8.5       EFFECTIVE DATE:** January 1, 2003, unless a later date is cited at the end of a section.  
[18.20.8.5 NMAC - Rp, 18 NMAC 20.8.5, 1-1-03]

**18.20.8.6       OBJECTIVE:** The purpose of this rule is to provide minimum and uniform standards for the issuance, renewal, and revocation of driving safety school licenses and driving safety instructor certificates and to establish requirements for the operation of driving safety schools.  
[18.20.8.6 NMAC - Rp, 18 NMAC 20.8.6, 1-1-03]

**18.20.8.7       DEFINITIONS:**

- A.       ADA** means the Americans with Disabilities Act, 42 U.S.C.S Section 12101 et seq.
- B.       Bureau** means the Traffic Safety Bureau (TSB) of the New Mexico State Highway and Transportation Department.
- C.       certificate** means a document issued by the Bureau authorizing a person to serve as a driving safety school instructor.
- D.       clean driving record** means a person has no more than six (6) points on his/her driver's license, and has not within the last ten (10) years had his/her driver's license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been convicted in any jurisdiction of an alcohol or drug-related driving offense.
- E.       convicted or conviction** has the meaning given in NMSA 1978, Section 66-8-102.
- F.       course or credit hour** means fifty (50) minutes of instruction and ten (10) minutes of break time.
- G.       designee** means a person authorized to perform certain specified duties on behalf of the Bureau.
- H.       distance learning course** means a web-based driving safety course.
- I.       driving safety course or course** means a course of instruction approved by the Bureau pursuant to NMSA 1978, Section 66-10-11 and includes distance learning courses.
- J.       driving safety school or school or licensee** means a person licensed by the Bureau to offer driving safety courses.
- K.       driving safety instructor or instructor** means a person certified by the Bureau as qualified and trained to conduct driving safety courses.
- L.       extension site** means a location other than the main school site where a licensed driving safety school offers driving safety courses.
- M.       Implied Consent Act** means NMSA 1978 Sections 66-8-105 through 66-8-112.
- N.       limited history driving record** means a driving record from the Motor Vehicle Division of the Taxation and Revenue Department that includes driver's license revocations pursuant to the Implied Consent Act.
- O.       license** means the document issued by the Bureau authorizing a person to operate a driving safety school.
- P.       moral turpitude** means behavior that gravely violates the accepted moral standards of the community.
- Q.       person** means an individual, firm, partnership, association, corporation, or other legal entity.

**R. proctored exam** means an exam monitored by a person or by electronic or other means to ensure that the person taking the exam is the person who will get credit for passing the exam.

**S. revocation or revoked** means the involuntary permanent termination of a license or certificate by the Bureau for cause.

**T. student** means a person who has enrolled in a driving safety course.

**U. suspended or suspension** means the involuntary termination of a license or certificate by the Bureau for cause for a specified period of time.

[18.20.8.7 NMAC - Rp, 18 NMAC 20.8.7, 1-1-03]

#### **18.20.8.8 APPLICATION FOR DRIVING SAFETY SCHOOL LICENSE:**

**A. License required.** No person may operate a driving safety school without first having obtained a license from the Bureau.

**B. Application form.** A person wishing to obtain a license to operate a driving safety school must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

**C. Contents of application.** An application for a driving safety school license shall contain:

(1) the applicant's name, mailing address, telephone number, and, if the applicant has one, the applicant's e-mail address;

(2) a photocopy of the Certificate of Maximum Occupant Load issued by the state or local Fire Marshal stating the maximum occupancy allowed by the fire code for each room at the main school site and each extension site, if applicable, that will be used as a classroom;

(3) a list of all extension sites to be used for conducting driving safety courses;

(4) a list of all instructors who will conduct driving safety courses;

(5) a schedule of fees applicable to students who enroll in a driving safety course;

(6) the proposed curriculum, handouts, videos, and final examination questions for the driving safety course;

(7) the name, address, and telephone number of three (3) character and employment references who are not family members; and

(8) the applicant's resume or curriculum vitae.

**D. Completeness.** When the Bureau receives an application for a driving safety school license, the Bureau shall check the application for completeness.

(1) If the application is not complete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

[18.20.8.8 NMAC - Rp, 18 NMAC 20.8.8, 1-1-03]

#### **18.20.8.9 REVIEW BY THE BUREAU:**

**A. Standards for issuance of initial driving safety school license.** In reviewing applications for driving safety schools, the Bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to operate a driving safety school;

(3) the proposed driving safety school can certify that its facilities meet the accessibility requirements of the ADA; and

(4) the persons who will serve as driving safety instructors meet the requirements of this rule.

**B. Issuance of initial license.** If the Bureau determines that an applicant meets the standards prescribed in subsection A, the Bureau shall issue a license upon:

(1) payment of the \$400.00 license fee;

(2) payment of the \$35.00 extension site fee for each extension site, if applicable; and

(3) posting of a surety bond with the Bureau in the amount of \$5,000 issued by a company authorized to transact surety business in New Mexico. The surety bond shall be continuous and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records.

**C. Denial of license.** If the Bureau determines that an applicant does not meet the standards prescribed in subsection A of this section, the Bureau will issue a letter stating the reasons for denial of the license.

A person may reapply for a license at any time.  
[18.20.8.9 NMAC - Rp, 18 NMAC 20.8.9, 1-1-03]

**18.20.8.10 TERM OF DRIVING SAFETY SCHOOL LICENSE:**

**A. Term.** A license shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial licenses shall be valid from the date of issuance to the next June 30. Renewal licenses shall be valid from July 1 of the year of renewal to June 30 of the following year.

**B. License renewal.** A licensee must file an application for renewal of its license with the Bureau on or before June 1 of each year to ensure license renewal by July 1. A licensee who files an application for renewal after June 1 shall pay a late fee of \$25.00. The Bureau will review applications for renewal in the order in which they are received.

(1) The Bureau will renew a license for a period of one (1) year if:

(a) the Bureau or its designee finds that the driving safety school is in compliance with the requirements of this rule;

(b) the licensee has submitted all required reports to the Bureau; and

(c) the licensee pays the \$400.00 annual license fee and, if applicable, the \$35.00 extension site fee for each extension site and the \$25.00 late fee if the application was filed after June 1.

(2) The Bureau shall not renew the license of any driving safety school not in compliance with the requirements of this rule.

**C. Probation.** The Bureau may place a licensee on probation if the Bureau finds that the driving safety school is not in compliance with one or more of the requirements of this rule. The Bureau shall send a notice of probation to the licensee specifying the provisions of this rule with which the licensee is not in compliance. The Bureau shall determine the period of probation depending on the number and severity of the violations. The Bureau will review the licensee's operations periodically during the probation period.

**D. Early termination.** A license shall automatically terminate if a driving safety school ceases operation. The Bureau may suspend or revoke a license for cause as provided in this rule.

**E. Restriction on sale of license.** A driving safety school license may not be sold or transferred.  
[18.20.8.10 NMAC - Rp, 18 NMAC 20.8.10, 1-1-03]

**18.20.8.11 CLASSROOM COURSE REQUIREMENTS:** A licensee shall:

**A.** engage as driving safety instructors only those persons who have been certified by the Bureau. A licensee may not serve as an instructor unless the licensee has been certified by the Bureau as an instructor.

**B.** enroll no more than forty (40) students or the maximum occupancy allowed by the fire code, whichever is less, in a driving safety course.

**C.** not charge a student more than \$150.00, including tax, for enrolling in a driving safety course.

**D.** display the license issued by the Bureau in an appropriate and visible location.

**E.** display the placard issued by the Fire Marshal stating the maximum occupancy of each classroom in an appropriate and visible location in the classroom.

**F.** use classroom facilities that:

(1) have adequate space, lighting, heating, and ventilation;

(2) have seats and stable writing surfaces for each student in the class;

(3) have a whiteboard, blackboard, or flipchart;

(4) have a monitor of sufficient size for all students to see, if videos are used; and

(5) comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities.

**G.** ensure that the learning environment is conducive to learning and free from discrimination, intimidation, harassment, or any other disturbing influence. No person shall engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others.

**H.** use only the curriculum, handouts, videos, and final examination questions approved by the Bureau.

**I.** accommodate the special needs of hearing impaired students. Whenever a driving safety school becomes aware that an enrollee is hearing impaired, the school shall inform the hearing impaired student in writing that if a friend or family member of the enrollee cannot perform sign language interpretation for the student, the school will contact the Bureau to arrange for sign language interpretation. The driving safety school shall contact the Bureau at least twenty (20) days before the scheduled date of the driving safety course.

- J.** accommodate the special needs of non-English speaking students. Whenever a driving safety school becomes aware that an enrollee does not speak English, the school will make reasonable efforts to provide interpreter services. The driving safety school shall first inquire if a friend or family member of the enrollee can interpret for the student. If that is not possible, the driving safety school will make reasonable efforts to find a driving safety instructor or other person to interpret for the student during the driving safety course.
  - K.** provide at least six (6) course hours of instruction for each driving safety course.
  - L.** have a proctored final exam with a minimum of twenty (20) questions. A student must correctly answer at least seventy percent (70%) of the questions to pass the final exam.
  - M.** use completion certificates purchased from the Bureau at a cost of \$1.00 per certificate.
  - N.** not permit a student to attend any driving safety classes until the student has received written information stating all fees, including incidental costs, charged for the course, school policies for passing and failing, refund and reschedule policies, and attendance requirements.
- [18.20.8.11 NMAC - Rp, 18 NMAC 20.8.11 and 20.8.16, 1-1-03]

**18.20.8.12 SUSPENDED LICENSE COURSE:** This course is required only for students whose driver's license has been suspended by the Motor Vehicle Division of the Taxation and Revenue Department based on the point system. A licensee must obtain the prior approval of the Bureau to conduct a suspended license driving safety course. Such a course must meet all the requirements of 18.20.8.11 NMAC, except that a licensee shall provide at least eight (8) course hours of instruction for each suspended license driving safety course.

[18.20.8.12 NMAC - N, 1-1-03]

**18.20.8.13 DISTANCE LEARNING COURSE REQUIREMENTS:** A licensee offering distance-learning courses shall:

- A.** use only the curriculum, handouts, videos, and final exam questions approved by the Bureau.
- B.** provide six (6) or more hours of coursework, based on an average person completion time.
- C.** ask at least ten content questions randomly throughout each chapter or give a quiz with at least ten content questions at the end of each chapter. A student shall not be permitted to move on to the next chapter until the student successfully answers at least eight (8) out of ten (10) of the chapter content questions.
- D.** have a proctored final exam with a minimum of fifty (50) questions. A student must correctly answer at least thirty-five (35) questions to pass the final exam.
- E.** have a toll-free telephone number or e-mail help line available to students at all times and respond to students' questions within twenty-four (24) hours.
- F.** use completion certificates purchased from the Bureau at a cost of \$1.00 per certificate.
- G.** specify at least one certified instructor to act as liaison with the Bureau.

[18.20.8.13 NMAC - N, 1-1-03]

**18.20.8.14 OPERATING REQUIREMENTS:** A licensee:

- A.** shall adhere strictly to the requirements of this rule;
- B.** shall notify the Bureau at least thirty (30) days in advance if the driving safety school intends to cease operations;
- C.** shall make all driving safety school records available for inspection by the Bureau or its designee at any time; A licensee shall maintain its records in ink for a minimum of three (3) years for each student receiving instruction, including students who passed, failed, withdrew, cancelled, or transferred to another school.
- D.** shall, on a quarterly basis, provide the Bureau with a copy of the class roster for each driving safety course conducted which shall contain, at a minimum, the name of the instructor, and each student's name, date of birth, date of course completion, final exam test score, and completion certificate number.
- E.** shall have a written refund policy which must be issued to each student upon enrollment.
- F.** shall notify the Bureau of:
  - (1) any changes in address ten (10) days before opening for business at the new location;
  - (2) the addition or closing of extension sites within ten (10) days of their opening or closing; and
  - (3) the addition or deletion of instructors within ten (10) days of their hiring or leaving.
- G.** shall conduct all school operations in a professional and courteous manner.
- H.** shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations.
- I.** may use the phrases "licensed by the Traffic Safety Bureau" or "curriculum approved by the

Traffic Safety Bureau" but may not otherwise use the word "approved" or any of its synonyms in its advertising or promotional materials.

[18.20.8.14 NMAC - Rp, 18 NMAC 20.8.11, 1-1-03]

**18.20.8.15 EVALUATION OF DRIVING SAFETY SCHOOLS:**

**A. Responsibility.** The Bureau or its designee shall conduct periodic evaluations of driving safety schools using criteria developed by the Bureau. The Bureau shall prepare a written evaluation and shall provide a copy of the evaluation to the licensee upon request. The Bureau may in its discretion conduct evaluations of a driving safety school on its own initiative at any time and for any reason or in response to complaints from any person. The Bureau shall document, investigate, and discuss all complaints with the driving safety school.

**B. Relevant factors.** In conducting its evaluations, the Bureau shall consider:

(1) the number and nature of any comments or complaints received from students, instructors, judges, law enforcement officers, and others;

(2) whether the driving safety school consistently meets the requirements of this rule; and

(3) on-site quality assurance visits by the Bureau or its designee. On-site visits may address the adequacy of classroom facilities, instructors' traffic safety knowledge and teaching techniques, learning environment, quality of the curriculum, course materials, and examination questions, and customer service.

[18.20.8.15 NMAC - Rp, 18 NMAC 20.8.12, 1-1-03]

**18.20.8.16 INITIAL CERTIFICATION OF DRIVING SAFETY INSTRUCTORS:**

**A. Certification required.** No person or licensee may serve as a driving safety instructor without first having obtained a certificate from the Bureau.

**B. Application requirements.** A person wishing to obtain a certificate as a driving safety instructor must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

**C. Contents of application.** The application must be accompanied by:

(1) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau;

(2) a state police background check dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety at least sixty (60) days before the date the application is filed with the Bureau;

(3) a copy of the applicant's health certificate signed by a physician and dated no earlier than sixty (60) days before the date the application is filed with the Bureau stating that the applicant is free from all communicable diseases. Distance learning driving safety instructor applicants do not need to submit a health certificate.

(4) the name, address, and telephone number of three (3) character and employment references who are not family members; and

(5) the applicant's resume or curriculum vitae.

(6) transcripts from any post secondary educational or training institutions the applicant has attended.

**D. Completeness check.** When the Bureau receives an application for certification as a driving safety instructor, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

**E. Standards for issuance of driving safety instructor certificate.** In reviewing applications for driving safety instructors, the Bureau shall consider whether:

(1) the information provided is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to be a driving safety instructor;

(3) the applicant is at least twenty-one (21) years of age;

(4) the applicant has a high school diploma or equivalent;

(5) the applicant holds a valid driver's license;

(6) the applicant has not been convicted of a crime involving moral turpitude; and

(7) the applicant has a clean driving record.

**F. Approval for training.**

(1) If the Bureau determines that the applicant meets the standards in subsection E of this section, the Bureau shall grant approval to proceed with instructor training. An applicant must complete a Bureau sponsored or approved Instructor Training Course designed to teach instructional strategies, classroom management, or acquisition of teaching competencies.

(2) If the Bureau determines that the applicant does not meet the standards in subsection E of this section, the Bureau shall issue a letter stating the reasons it is not granting approval to proceed with instructor training.

**G. Final review.**

(1) If the Bureau determines that an applicant has successfully completed the instructor training course and is otherwise fit, the Bureau will issue a certificate upon payment of the \$50.00 instructor certification fee.

(2) If the Bureau determines that an applicant has not successfully completed the instructor training course or is otherwise not fit, the Bureau shall issue a letter stating its reasons for denial of certification.

**H. Term.** A driving safety instructor certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year. [18.20.8.16 NMAC - Rp, 18 NMAC 20.8.13, 20.8.14, and 20.8.15, 1-1-03]

**18.20.8.17 RECERTIFICATION OF DRIVING SAFETY INSTRUCTORS:**

**A. Certificate renewal.**

(1) A driving safety instructor must file an application for renewal of his or her certificate with the Bureau on or before June 1 each year to ensure certificate renewal by July 1. A driving safety instructor who files an application for renewal after June 1 shall pay a late fee of \$25.00.

A person may obtain an application for renewal by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

(2) The application for renewal shall be accompanied by the documents specified in paragraphs (1), (2), and (3) of subsection C of 18.20.8.16 NMAC.

(3) The Bureau will review applications for renewal in the order in which they are received.

**B. Continuing education requirements.**

(1) Driving safety instructors must complete a minimum of eight (8) credit hours of continuing education each year to qualify for recertification.

(2) A driving safety instructor can satisfy this requirement in whole or in part by attending Bureau sponsored:

(a) traffic safety issues forums and workshops; and

(b) education courses and workshops.

(3) The Bureau may, in its discretion, approve continuing education credit on the basis of one continuing education credit hour for every hour of attendance at the following types of programs if a copy of the workshop agenda or course curriculum is submitted to the Bureau:

(a) drug or alcohol workshops;

(b) counseling or treatment workshops; or

(c) education courses or workshops.

**C. Approval/disapproval of application for certificate renewal.**

(1) The Bureau will renew the certificate of a driving safety instructor for a period of one year if the driving safety instructor:

(a) pays the \$50.00 annual certification fee;

(b) meets the standards specified in subsection E of 18.20.8.16 NMAC;

(c) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the Bureau or its designee in the preceding year; and

(d) has completed eight (8) credit hours of continuing education in the year preceding the application for renewal.

(2) The Bureau shall not renew the license of any driving safety instructor who:

(a) fails to complete eight (8) hours of continuing education in the year preceding the application for renewal; or

(b) fails to meet the standards specified in subsection E of 18.20.8.16 NMAC.

[18.20.8.17 NMAC - N, 1-1-03]

**18.20.8.18 SUSPENSION OR REVOCATION OF A LICENSE OR CERTIFICATE:**

**A. Grounds.** The Bureau may suspend or revoke the license or certificate of a licensee or driving safety instructor:

- (1) who makes a false statement on an application;
- (2) who fails to follow the approved curriculum;
- (3) who poses an immediate danger to the physical or mental safety or health of a student;
- (4) who is convicted of any alcohol or drug-related driving offense;
- (5) who has refused to submit to or failed chemical tests pursuant to the Implied Consent Act;
- (6) whose New Mexico driver's license is suspended or revoked;
- (7) who fails to notify the Bureau in writing within ten days that his/her driver's license has been suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or that he/she been convicted in any jurisdiction of an alcohol or drug-related driving offense or an offense involving moral turpitude;
- (8) whose conduct in the performance of official duties is unethical, including but not limited to, verbal abuse, intimidation, or sexual harassment of students;
- (9) who fails to comply with any requirement of this rule or any lawful order of the Bureau;
- (10) who becomes employed or remains employed by a driving safety school whose license has been revoked pursuant to this rule;
- (11) who employs or continues to employ a driving safety instructor whose certificate has been revoked pursuant to this rule; or
- (12) who fails to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 et seq. or any rule implementing that Act.

**B. Procedure.** The Bureau shall use the procedures prescribed in the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 et seq., in all suspension and revocations proceedings held pursuant to this rule.

**C. Consequences of suspension or revocation.**  
A driving safety school shall not offer or conduct any driving safety courses if its license is suspended or revoked. A driving safety instructor shall not conduct any driving safety courses if his or her certificate is suspended or revoked.

**D. Notice of suspension or revocation.**

- (1) The Bureau shall immediately notify by certified mail, return receipt requested, each driving safety instructor employed by a driving safety school whose license has been suspended or revoked that the driving safety school's license has been suspended or revoked and that the driving safety instructor may not conduct any driving safety courses for that driving safety school unless and until the license is reinstated by the Bureau.
- (2) The Bureau shall immediately notify by certified mail, return receipt requested, each driving safety school that employs a driving safety instructor whose certificate is suspended or revoked that the driving safety instructor's certificate has been suspended or revoked and that the driving safety school may not employ that driving safety instructor unless and until the certificate is reinstated by the Bureau.
- (3) The Bureau will notify all Motor Vehicle Division field offices that the driving safety school's license or the driving safety instructor's certificate has been revoked or suspended.
- (4) The Bureau will notify all state, metropolitan, magistrate, and municipal courts that the driving safety school's license has been revoked or suspended and that the driving safety school is no longer an approved school.

[18.20.8.18 NMAC - Rp, 18 NMAC 20.8.17, 20.8.18, and 20.8.22, 1-1-03]

**18.20.8.19 IMMEDIATE SUSPENSION OF A LICENSE OR CERTIFICATE:**

**A. Grounds.** The Bureau may immediately suspend the license of a driving safety school or the certificate of a driving safety instructor if the Bureau finds that the licensee or driving safety instructor poses an immediate danger to the physical or mental safety or health of a student.

**B. Notice of immediate suspension.** The Bureau shall commence proceedings to immediately suspend a license or certificate by issuing a written notice of immediate suspension to the licensee or driving safety instructor, which shall contain at least the following:

- (1) the name and last known address of the licensee or driving safety instructor whose license or certificate the bureau is immediately suspending.
- (2) a statement that the Bureau is immediately suspending the driving safety school's license or driving safety instructor's certificate for a period of thirty (30) days and the effective date of the immediate

suspension.

(3) a general description of the facts alleging that the licensee or driving safety instructor poses an immediate danger to the physical or mental safety or health of a student that warrants immediate suspension. The description shall be in sufficient detail to apprise a person of ordinary intelligence of the nature of the violation.

(4) statement that the licensee or driving safety instructor has ten (10) days from the date of receipt of the notice of immediate suspension to request a hearing. The licensee or driving safety instructor may request a hearing by mailing, certified and return receipt requested, or hand-delivering a letter to the Bureau.

(5) the street and post office addresses of the Bureau where requests for a hearing may be made.

**C. Hearing.** The Bureau shall grant a timely request for a hearing.

(1) The State Highway and Transportation Department shall appoint a hearing examiner.

(2) The hearing shall be held as soon as possible, but not later than thirty (30) days from the effective date of the immediate suspension.

(3) The immediate suspension will remain in effect until the conclusion of the hearing.

(4) The hearing may be held telephonically if both parties agree.

**D. Hearing purpose.** The hearing is for the sole purpose of determining if the Bureau has reasonable grounds to believe that the licensee or driving safety instructor poses an immediate danger to the physical or mental safety or health of a student.

(1) If the hearing examiner finds that no immediate danger exists, the Bureau will withdraw the immediate suspension but may initiate revocation proceedings pursuant to 18.20.8.18 NMAC.

(2) If the hearing examiner finds that an immediate danger exists, the Bureau shall initiate revocation proceedings pursuant to 18.20.8.18 NMAC within ten (10) days of the end of the hearing. The immediate suspension will remain in effect until the conclusion of the revocation procedure.

**E. Grounds for withdrawal of immediate suspension.**

(1) The Bureau shall withdraw an immediate suspension if:

(a) a hearing is timely requested and the Bureau has not held the hearing within thirty (30) days of the effective date of the immediate suspension, unless the licensee or instructor requests a later hearing date and agrees in writing that the immediate suspension will remain in effect until the conclusion of the later hearing;

(b) the hearing examiner finds that an immediate danger does exist but the Bureau does not initiate revocation proceedings pursuant to 18.20.8.18 NMAC within ten (10) days of the ruling; or

(c) the licensee or driving safety instructor does not request a hearing and the Bureau does not initiate revocation proceedings pursuant to 18.20.8.18 NMAC within thirty (30) days of the effective date of the immediate suspension.

(2) The Bureau may, in its discretion, withdraw an immediate suspension for any reason but shall document its decision in writing.

[18.20.8.19 NMAC - Rp, 18 NMAC 20.8.19, 20.8.20, and 20.8.21, 1-1-03]

#### **18.20.8.20 EXEMPTION OR VARIANCE:**

**A.** Any school may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the school and its customers, and on its competitors and their customers, if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the Driving School Licensing Act; and

(5) state why the proposed alternative is in the public interest and is better than the requirement in the rule.

**B.** Such petition may include a motion that the Bureau stay the affected portion of this rule for the transaction specified in the motion.

**C.** Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the licensee or other person with authority to bind the licensee.

**D.** The Bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[18.20.8.20 NMAC - N, 1-1-03]



**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.