

This rule was filed as: 18 NMAC 27.3.

**TITLE 18           TRANSPORTATION AND HIGHWAYS**  
**CHAPTER 27       HIGHWAY CONSTRUCTION GENERAL PROVISIONS**  
**PART 3            LOCAL GOVERNMENT ROAD FUND GUIDELINES FOR WAIVER OF LOCAL**  
**ENTITIES MATCHING FUNDS DUE TO FINANCIAL HARDSHIP**

18.27.3.1           ISSUING AGENCY: New Mexico State Highway and Transportation Department  
Post Office Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5498  
[11/30/98; 18.27.3.1 NMAC – Rn, 18 NMAC 27.3.1, Recompiled 11/16/01]

18.27.3.2           SCOPE: This rule covers all Counties, Municipalities or entities experiencing financial hardship.  
[11/30/98; 18.27.3.2 NMAC – Rn, 18 NMAC 27.3.2, Recompiled 11/16/01]

18.27.3.3           STATUTORY AUTHORITY: NMSA 1978, Section 67-3-11, 67-3-28 and 67-3-28.2.  
[11/30/98; 18.27.3.3 NMAC – Rn, 18 NMAC 27.3.3, Recompiled 11/16/01]

18.27.3.4           DURATION: Permanent.  
[11/30/98; 18.27.3.4 NMAC – Rn, 18 NMAC 27.3.4, Recompiled 11/16/01]

18.27.3.5           EFFECTIVE DATE: November 30, 1998, unless a later date is cited at the end of a section or  
paragraph.  
[11/30/98; 18.27.3.5 NMAC – Rn, 18 NMAC 27.3.5, Recompiled 11/16/01]

18.27.3.6           OBJECTIVE: The New Mexico Legislature occasionally provides a certain amount of Local  
Government Road Funds to be used by the State Highway and Transportation Department in place of normally  
required Local Government Matching Funds for Cooperatives, School Bus Routes, Municipal Arterial or County  
Arterial Projects, in any given fiscal year, in the event of financial hardship by an eligible entity as determined by  
the Secretary of the State Highway and Transportation Department and as authorized by the State Highway  
Commission.  
[11/30/98; 18.27.3.6 NMAC – Rn, 18 NMAC 27.3.6, Recompiled 11/16/01]

18.27.3.7           DEFINITIONS:  
A.       "Commission" means State Highway Commission.  
B.       "Department" means New Mexico State Highway and Transportation Department.  
C.       "DFA" means Department of Finance & Administration.  
D.       "LGRF" means Local Government Road Fund.  
E.       "Secretary" means Cabinet Secretary of the New Mexico State Highway and Transportation  
Department.  
[11/30/98; 18.27.3.7 NMAC – Rn, 18 NMAC 27.3.7, Recompiled 11/16/01]

18.27.3.8           GUIDELINES: The following guidelines are established for administration of funds authorized  
by the legislature.

A.       Only entities which submitted requests for Cooperative, School Bus Routes, Municipal Arterial, or  
County Arterial projects from the Local Government Road Fund Program by the deadline specified by the District  
Engineer shall be eligible for waivers.

B.       Entities eligible for participation in the LGRF Program may request a waiver of their matching  
share in whole or in part due to financial hardship. All project requests including all waiver requests with supporting  
documentation shall be submitted to the District Engineer or designee for their respective areas.

C.       Waiver of matching funds shall not be considered if an entity already has a project under  
agreement using current fiscal year funding. Matching funds will not be waived for more than one project per entity,  
except for counties which would be eligible for one cooperative project and one county arterial project.

D.       A waiver must be requested and determination made before a Cooperative Project Agreement has  
been signed with the Department. The Secretary may waive this provision when it is in the best interest of the State  
to do so.

E. If an entity wants to establish a financial hardship, it should submit a resolution or certification indicating that it cannot match all or a portion of its share. The resolution or certification shall be signed by the appropriate official(s).

F. After receiving a resolution or certification declaring financial hardship, the District Engineer shall consider all known facts such as severe winter weather, flooding, emergency work, past history, whether the entity has exhausted taxing authority, and other information that would tend to prove financial hardship.

G. The District Engineer shall request from the Local Government Division of the DFA, or State Board of Education, a financial analysis and recommendation on an entity's financial hardship for the fiscal year in which the waiver is requested.

H. If financial hardship is evident the District Engineer shall submit the entity's request and resolution or certification along with recommendation that the waiver of matching funds be granted. If financial hardship is not evident, the District Engineer shall so notify the entity in writing.

I. If financial hardship has been determined and the entity is not providing matching funds, the maximum amount the entity can receive from the LGRF in any fiscal year is \$75,000, except for County Arterial Projects where the maximum shall be the county's share mandated by legislative formula, plus the standard 25% match. This maximum amount may be waived depending on the demand on the funds which are available.

J. The Secretary shall review the District Engineer's recommendation and recommend action to the Commission. The Commission shall take action on the Secretary's recommendation at a regularly scheduled Commission meeting.

K. The District Engineer shall be notified of the Commission's action by the Secretary and in turn shall notify the entity.

L. If the Commission approves the recommended action, a Cooperative Agreement shall be accordingly entered into.

M. The State Maintenance Bureau shall be responsible for accounting and totaling the funds being expended out of the funds provided for financial hardships.

N. For Municipal Arterial Projects, the State Maintenance Engineer shall be substituted and take the place of the District Engineer in these guidelines.

O. Any agreement involving waiver of an entity's fiscal year matching funds shall be processed prior to December 31, of that fiscal year, or as otherwise determined by the Secretary.

P. If a public entity is not using maximum tax levy authority, the entity shall provide a written explanation of why the maximum tax levy is not being imposed prior to the Department considering the waiver request.

[11/30/98; 18.27.3.8 NMAC – Rn, 18 NMAC 27.3.8, Recompiled 11/16/01]

#### HISTORY OF 18.27.3 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records and Archives under: SHTD Rule No. 93-3, Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship - 82nd FY, filed June 7, 1993; SHTD Rule No. 93-3, Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship - 82nd FY filed October 4, 1993; SHTD Rule No. 93-3, Amendment 1, Amendment to the Local Government Road fund Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship filed September 23, 1994; SHTD Rule No. 93-3, Local Government Road fund Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship filed February 2, 1995; and SHTD Rule No. 93-3, Amendment 1, Amendment to the Local Government Road fund Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship filed November 3, 1995.

History of repealed Material: [RESERVED]