

This rule was filed as: 18 NMAC 1.3.

**TITLE 18           TRANSPORTATION AND HIGHWAYS**  
**CHAPTER 32       REST AREAS**  
**PART 2            NEWSPAPER VENDING PERMIT IN REST AREAS**

18.32.2.1           ISSUING AGENCY: New Mexico State Highway and Transportation Department, Post Office  
Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-5498.  
[Recompiled 11/16/01]

18.32.2.2           SCOPE: This rule covers all persons or entities desiring to vend newspapers in rest areas.  
[Recompiled 11/16/01]

18.32.2.3           STATUTORY AUTHORITY: NMSA 1978 Sections 67-3-11; 67-3-14; and 67-11-2.  
[Recompiled 11/16/01]

18.32.2.4           DURATION: Permanent.  
[Recompiled 11/16/01]

18.32.2.5           EFFECTIVE DATE: October 31, 1998, unless a later date is cited at the end of a section or  
paragraph.  
[Recompiled 11/16/01]

18.32.2.6           OBJECTIVE: The purpose of this rule is to establish regulations to enable the Department to  
enter into written agreements with vendors to supply newspaper vending machines at rest areas. [10-31-98]  
[Recompiled 11/16/01]

18.32.2.7           DEFINITIONS: "Department" means the New Mexico State Highway and Transportation  
Department.  
[Recompiled 11/16/01]

18.32.2.8           GENERAL PROVISIONS:

- A.       Installation, construction, operation, use and maintenance of newspaper vending machines at rest  
areas shall only be permitted in conformance with the requirements of this rule.
- B.       Newspaper vending machines shall only be permitted in designated rest areas having enclosed  
buildings on site. Rest areas with only covered picnic facilities will not qualify for the installation of newspaper  
vending machines.
- C.       The Department will assume no liability for any vandalism or other damage to newspaper vending  
machines placed in rest areas whether such damage results from the positioning, moving, maintaining or operating  
of the newspaper vending machines.
- D.       The loading and unloading of newspapers will be the sole responsibility of the vendor.
- E.       In no case will unsold newspapers be disposed of at the rest area site or within highway right-of-  
way.
- F.       In all cases the vendor will be responsible for the clean up of litter resulting from the operation of  
its newspaper vending machines.
- G.       Vendors are prohibited from requesting or receiving assistance from the Department employees in  
the positioning, moving, maintaining or operating of their newspaper vending machines.
- H.       The name, address and telephone number of the vendor shall be conspicuously posted by the  
vendor on its newspaper vending machine. The vendor shall keep this information current and is responsible for  
keeping the Department apprised of any changes.
- I.       Only one newspaper vending machine is allowed per vendor in each authorized rest area.

[Recompiled 11/16/01]

18.32.2.9           PERMITS:

A. No newspaper vending machines shall be placed in rest areas unless the Department has issued a written permit to the appropriate vendor.

B. A written permit will only be issued upon receipt of a written application in which the vendor has provided the following information:

- (1) the vendor's name;
- (2) the vendor's address;
- (3) the vendor's telephone number;
- (4) the name of a spokesperson or contact employed by the vendor;
- (5) the name of the newspaper or publication;
- (6) the particular rest area desired for the newspaper vending machine;
- (7) a description of the vending machine listing its dimensions, its weight, its material composition,

and its manufacturer.

C. The Department shall have fifteen (15) days from receipt of an application to either issue a written permit or deny the application. The letter of denial shall contain specific reasons for denying the application. The fifteen (15) day period may be extended upon mutual agreement of the parties. The fifteen (15) day response period by the Department shall not begin to run until the application has been received by the appropriate maintenance engineer.

D. The permits shall be for one (1) year and must be renewed by the vendor by a timely application submitted prior to the expiration of the term.

E. The permit shall be effective as to each newspaper vending machine described in said permit until the expiration date of the permit, or the newspaper vending machine is permanently removed by the Department or by the vendor; except that a permit shall terminate if the newspaper vending machine is not installed within sixty (60) days of issuance of the permit.

F. A permit issued under this rule is non-transferable. All vendors must seek and obtain a written permit as described in this rule prior to placing any newspaper vending machines or making use of newspaper vending machines purchased from other vendors.

G. The permit issued by the Department shall designate the area authorized for placement of the approved newspaper vending machine. No other area may be used by the vendor except with the express written permission of the Department.

H. A vendor may appeal any adverse determination of the Department pursuant to the appeal process set forth in Section 12.

I. Applications for permits shall be directed by the vendors to the district engineer, or his designee, of the appropriate highway district having control over the rest area.

J. Except as specifically authorized by this rule, all communications relevant to the administration of this rule, including interpretation of provisions therein, shall occur between the vendor and the maintenance engineer or his designee in the highway district having control over the rest area affected.

K. No permit shall be issued for the dissemination of obscene materials or any other materials not protected by the First Amendment to the United States Constitution.

[Recompiled 11/16/01]

#### 18.32.2.10 NEWSPAPER VENDING MACHINE SPECIFICATIONS AND PLACEMENT:

A. All newspaper vending machines placed in the Department rest areas must conform to industry standards.

B. If a permit is issued by the Department for placement of the newspaper vending machine inside a rest area building:

- (1) The machine may only be placed where designated by the permit and in no case may it be placed in restrooms or any area not designated as a common area.
- (2) The machine shall be placed so as not to interfere with rest area maintenance activities.
- (3) The machine shall be placed so as not to interfere with access to restrooms, common areas, or any other rest area facility.

C. If a permit is issued by the Department for the placement of the newspaper vending machine in an area outside a building at a rest area: The machine shall be placed so as not to interfere with, or block access to, sidewalks, designated walkways, wheelchair ramps, parking spaces or any other rest area facilities.

[Recompiled 11/16/01]

#### 18.32.2.11 REMOVAL OF NEWSPAPER VENDING MACHINES:

A. Each machine shall be maintained in a clean, neat and attractive condition and in good repair at all times. Machines that are damaged, in a state of disrepair due to wear and tear no longer are in a clean, neat and attractive condition or in good condition shall be replaced or repaired by the owner as soon as practicable after discovery or notification by the Department to do so.

B. Should the Department determine that a newspaper vending machine has been placed or is being maintained in violation of the provisions of these regulations, the following procedures shall be followed:

(1) A written notice (Notice of Violation) shall be given to the person or organization identified in the permit application. The Notice of Violation shall be posted to such person or organization to the address provided in the application or to such address as has otherwise been provided to the Department. The Notice of Violation shall describe the violation and shall advise that the newspaper vending machine may be required to be removed unless the violation is corrected within ten (10) days from the date of the Notice of Violation, and shall state the procedure for obtaining a hearing concerning the violation as provided herein.

(2) If within ten (10) days of the date of the Notice of Violation, the violation has not been corrected or otherwise resolved to the satisfaction of the Department or a hearing has not been requested per Section 12 [Section 12 of 18.32.2 NMAC], the Department may issue a "Request To Remove" the machine. The Request To Remove the machine shall notify the owner that if the machine is not removed within seven (7) days from the date of the removal notice, the Department may cause the machine to be removed and impounded and the site returned to its original condition. A Notice of Removal and Impoundment shall be mailed to such person or organization within five (5) days after removal. The Notice of Removal and Impoundment shall state the date of removal, the reasons therefor, and the location and procedures for claiming the newspaper vending machine.

(3) The cost of removal and storage and the expense of restoring the site to its original condition shall be borne by the owner of the confiscated machine. Failure to claim the confiscated machine within a thirty-day (30) period will result, at the option of the Department, in either the destruction or sale of the machine. Proceeds from any sale, less the total moneys owed the Department for its costs and expenses will be returned to the owner. If a deficiency results, the Department shall have an action to recover its deficiency, attorneys fees and litigation expenses.

(4) If a hearing is requested within ten (10) days of the Notice of Violation per Section 12 or if otherwise specifically allowed by the Department, the machine in violation of the provisions of this section may remain until a hearing is held and a final administration decision is made as regards the violation.

C. Notwithstanding any other provision in this rule, the Department may summarily remove, without prior hearing, any newspaper vending machine which poses a threat to the health, safety or welfare of the public, or has been placed without having first filed a written application with the Department, or which contains obscene or scandalous material.

[Recompiled 11/16/01]

18.32.2.12 APPELLATE RIGHTS: If the person or organization identified in the application wants to appeal the denial of a permit or the issuance of a Notice of Violation the following procedure shall apply:

A. Within ten (10) days after the date of denial of a permit or the issuance of a Notice of Violation, the person or organization notified may make a written request to the Secretary of the Department for a hearing.

B. An informal hearing shall be conducted not later than fifteen (15) days after receipt by the Secretary of the Department of the written request. The time, location and date of the hearing, as determined by the Secretary or his designee, may be given by telephone to the person or organization requesting the hearing. Written notification shall also be given.

C. Evidence may be written and oral. Either party may call and examine witnesses and introduce exhibits. If a reporter is requested by either party, the party making the request shall make the arrangement and payment therefor.

D. The findings and decision of the hearing officer or panel are administratively final. The decision shall be posted to the appellant not later than five (5) days after the hearing. If a permit is revoked or a vending machine must be removed, a Notice to Remove shall be included with the decision.

[Recompiled 11/16/01]

18.32.2.13 PREFERENCE FOR BLIND PERSONS: NMSA 1978, Sections 22-14-24 through 22-14-29 grant a preference to blind persons with respect to vending permitted by this Rule. Such laws, together with the rules adopted by the Commission for the Blind pursuant to Section 12-14-28 shall apply. Unless inconsistent with such laws and rules, the provisions of this Rule shall also apply.

[Recompiled 11/16/01]

HISTORY OF 18.32.2 NMAC:

Pre-NMAC Regulatory Filing History:

The material in this Part was derived from that previously filed with the State Records and Archives under: SHC 89-2(L), New Mexico State Highway and Transportation Department Rule Permitting Newspaper Vending in Rest Areas, filed October 6, 1989.

History of Repealed Material: [RESERVED]