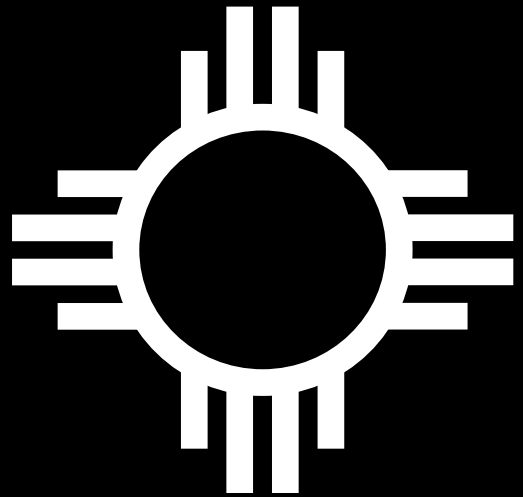


**NEW
MEXICO
REGISTER**

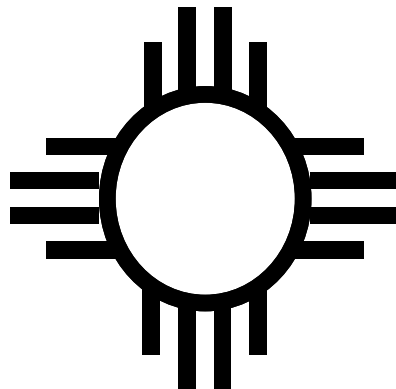


Volume XX
Issue Number 3
February 13, 2009

New Mexico Register

Volume XX, Issue Number 3

February 13, 2009



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
2009

COPYRIGHT © 2009
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XX, Number 3

February 13, 2009

Table of Contents

Notices of Rulemaking and Proposed Rules

Cultural Affairs, Department of Library Division	Notice of Public Hearing	43
Dental Health Care, Board of	Legal Notice	43
Game Commission	Public Meeting and Rulemaking Notice	43
Personnel Board, State	Public Rules Hearing	43

Adopted Rules

Effective Date and Validity of Rule Filings

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." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Game and Fish, Department of			
19.30.5 NMAC	A	Private Land Elk License Allocation	45
Gaming Control Board			
15.1.8 NMAC	A	Accounting Requirements Under the Gaming Control Act	48
15.1.10 NMAC	A	Conduct of Gaming Activity Under the Gaming Control Act	49
Health, Department of			
Public Health Division			
7.32.7 NMAC	A/E	Authorization to Administer Opioid Antagonists	49
Personnel Board, State			
1.7.7 NMAC	A/E	Absence and Leave	49
Public Regulation Commission			
18.3.2 NMAC	A	Operating Authorities	50
Taxation and Revenue Department			
3.11.4 NMAC	A	Sale or Transfer of Vehicles	50
Transportation, Department of			
7.32.20 NMAC	A	Driving While Impaired (DWI) Schools	51
18.20.3 NMAC	A	Driver Education Schools	57

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register*
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail staterules@state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS LIBRARY DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico State Library of the Department of Cultural Affairs, will hold a formal public hearing on March 17, 2009 at 9:00 a.m. in the Commission Room of the Library's Administrative Area, Garrey Carruther's State Library, 1209 Camino Carlos Rey, Santa Fe, New Mexico to receive public comment regarding the repeal and replacement of a rule that governs the distribution of state grants-in-aid funds to public libraries (4.5.2 NMAC.)

The proposed rule may be obtained on the New Mexico State Library web site (<http://www.stlib.state.nm.us/>) or by contacting Susan Oberlander at 505 476-9762. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on March 13, 2009. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Susan Oberlander, New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, NM 87507; faxed to 505 476-9761; or by electronic mail to: susan.oberlander@state.nm.us.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Susan Oberlander at 505 476-9762. The New Mexico State Library requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO BOARD OF DENTAL HEALTH CARE

Legal Notice

Notice is hereby given that the New Mexico Board of Dental Health Care will convene a Rule Hearing on March 13, 2009 to amend, replace and repeal:

Title 16, Chapter 5, 16.5.5 Dentists Fees; 16.5.18 Dental Hygienist Fees; 16.5.32 Dental Assistants Fees

This Hearing will be held at the Toney Anaya Building in the Rio Grande Conference Room located at 2550 Cerrillos

Road, Santa Fe, NM starting at 9:30 a.m.

Following the Rule Hearing, the Dental Hygienists Committee will convene a regular meeting. The New Mexico Board of Dental Health Care will convene a regular meeting following the Dental Hygienists Committee Meeting on March 13, 2009.

Copies of the proposed rules are available on the Dental Board's Website: www.rld.state.nm.us/b&c/dental or by sending a request to the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or by phone (505) 476-4680.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by February 20, 2009 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, March 5, 2009, beginning at 10:00 a.m., at the **Willie Ortiz Building/NM State Personnel Office, Leo Griego Auditorium, 2600 Cerrillos Road, Santa Fe, NM 87505**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Designate Reasonable Notice to the Public for Commission Meetings during 2009; Revocations; Presentation of the FY '09 2nd Quarter Depredation Report; Presentation of the Fiscal Year 2009 Financial Statements and Audit Report; Hunting Restriction and Associated Rules Development for the

2009-2010 Migratory Game Bird Rule 19.31.6 NMAC; Opening the Fisheries Rule (19.31.4 NMAC); San Juan River Public Input Process; Unit 6 Elk Management; Rule Promulgation and Public Comment Process; Closed Executive Session; Legislative Session Update; and General Public Comments (comments limited to 2 minutes).

The following rules will be opened for public comment and consideration for adoption by the Commission:

* Adoption of Amendments to the Hunting and Fishing Manner and Method of Taking Rule, 19.31.10, NMAC; and

* Adoption of Amendments to the Deer Rule 19.31.13 NMAC; Elk Rule 19.31.14 NMAC; Barbary Sheep, Oryx, and Persian Ibex Rule 19.31.12 NMAC; Bear and Cougar Rule 19.31.11 NMAC; Pronghorn Antelope and Javelina Rule 19.31.15 NMAC.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

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 Shirley Baker at (505) 476-8029. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Albuquerque, New Mexico on Friday, April 17, 2009. The hearing will be held during the Board's regular business meeting beginning at 8:00 a.m., located in Albuquerque, with the specific site location to be determined.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to Subsection D of 1.7.6.13 NMAC Complaints; and Subsection D and E of 1.7.7.12 NMAC Family and Medical Leave.

A final agenda for the board meeting will be available at the board office on April 3, 2009.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. March 16, 2009, to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Ken Giles. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.spo.state.nm.us/ beginning February 13, 2009.

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 in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

End of Adopted Rules Section

Adopted Rules

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.5 NMAC, Sections 7 through 14, effective 2-13-2009.

19.30.5.7 DEFINITIONS:

A. "Review" is a period of time during which ~~[an applicant] a landowner, or active ranch, may be [suspended from participation] placed into temporary suspension~~ until the department review concludes that all participation requirements have been met.

B. [~~"Authorized ranch contact"~~] ~~is the person designated by the landowner to be responsible for following procedures including forwarding documents, making changes and updates to the property.~~ **"Landowner"** is the person responsible for initial enrollment, signing and forwarding documents, and providing information and reporting changes to the property.

C. "Inactivation" is the New Mexico department of game and fish (department) procedure that immediately stops all issuance of authorizations and eligibility for participation in the program.

D. "Core occupied elk range" or "COER" shall mean the portion of land within the boundaries of a game management unit (GMU) that is designated by the department as containing the majority of routine and substantial elk use. This shall be the area that elk management goals and subsequent harvest objectives are based on.

E. "Occupied deeded acres" will mean privately owned acres that are within the designated core occupied elk range and occupied by elk.

F. "Private weighted acres" will mean the product of a specific property's occupied deeded acres multiplied by the elk contribution rating assigned to that specific property.

G. "Percent occupied weighted acres" will mean the quotient of a specific property's private weighted acres divided by the total private weighted acres.

H. "Private land authorization certificate" will mean the document generated by the department and issued to a private landowner that authorizes the holder to purchase a specified license to hunt elk.

I. "Percent public land" will mean the percentage of the area within a game management unit designated as core occupied elk range that is public land.

J. "Public land elk opportunity" will mean the portion of the

unit's harvest objective translated to public draw licenses.

K. "Percent private land" will mean the percentage of the area within a game management unit designated as core occupied elk range that is private land.

L. "Private land elk opportunity" will mean the portion of the unit's harvest objective translated to private land authorizations.

M. "Elk harvest success rate" will mean the success rate of elk hunters who hunted pursuant to licenses issued through the conversion of private land authorizations and public draw licenses in each game management unit as determined by hunter harvest surveys.

N. "Public land" will mean those lands held by state or public land use agencies.

O. "Ranch" will mean those deeded lands as enrolled in the program.

P. "Ranch-only authorization certificate" will mean a type of private land authorization that allows a person to purchase a license to hunt those deeded lands within the designated ranch exterior boundaries.

Q. "Unit-wide authorization certificate" will mean a type of private land authorization that allows a person to purchase a license to hunt legally accessible public lands and "unit-wide ranches" within the unit.

R. "Unit-wide ranch" will mean a ranch whose owner has selected the unit-wide hunting option on their hunting agreement with the department.

S. "Ranch only ranch" will mean a ranch whose owner has selected the ranch only hunting option on their agreement with the department or whose ranch is located in a unit designated as ranch only.

T. "Elk contribution rating (ECR)" will mean the rating assigned to each ranch based on the contribution a ranch is making to elk as determined by the level and frequency of elk presence on the ranch. The district officer or area game manager shall assign each ranch an "elk contribution rating" based on the following: "occasional elk presence" - ECR of 1, "frequent elk presence" - ECR of 1.25, "continuous elk presence" - ECR of 1.5.

U. "Small contributing [property] ranch" ("SCR") will mean those ranches that meet the minimum qualifications to participate, but are unable to qualify for authorizations pursuant to the allocation formula based on weighted acreage alone.

V. "Game management unit or GMU" shall mean those areas as described in the state game commission's rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

W. "Meaningful benefit to elk" shall mean properties that lie within the area designated as a core occupied elk range and contain various elk habitat components that are known to be beneficial to elk during some time of the year. Properties that provide "meaningful benefit" to elk must also exhibit physical evidence that elk are present at least occasionally throughout one or more seasons of the year.

X. "Bull authorization" shall mean any authorization (except either sex bow only) that authorizes the taking of a bull elk as the bag limit.

Y. "Temporary suspension" shall allow the participating ranch to remain in E-PLUS but stops authorizations from being issued to the landowner until the participating ranch is no longer in review. [19.30.5.7 NMAC - Rp, 19.30.5.7 NMAC, 10-17-2005; A, 2-13-2009]

19.30.5.8 PARTICIPATION REQUIREMENTS:

A. Minimum qualifications:

(1) Private lands that lie within core occupied elk range.

(2) Private lands that provide meaningful benefits to elk, at least occasionally, as determined by the appropriate district officer or game manager.

(3) Only landowners or lessees who agree in writing to accept elk on their property will be considered for participation in E-PLUS. Any landowner ~~[that files a deprecation complaint regarding elk] who accepts interventions to reduce or eliminate the presence of elk on their enrolled acreage in accordance with 19.30.2 NMAC in writing by signing a form approved by the department or takes action pursuant to Section 17-2-7.2 NMSA 1978 shall have automatically elected to become ineligible for continued participation in this program. The participating ranch will immediately be inactivated from E-PLUS and all unconverted authorizations will be voided. If the deprecation only applies to a portion of the property and the remaining acreage continues to provide meaningful benefit to elk, only the acreage where deprecation response actions are to occur will be inactivated.~~ Exceptions to this may be allowed when short-term or unusual circumstances that are typically not associated with the normal presence of elk using land and forage on the property exist. In these instances, if the landowner desires to continue con-

tributing to elk, the department may allow the landowner to continue participating in this system while seeking resolution to the short-term or unusual damage pursuant to the depredation program. Evidence of depredation may be used as documentation of elk presence to ensure the appropriate ECR has been assigned.

(4) Landowner must agree that participation is voluntary, is based on annual variation in habitat and elk populations, and there is no guarantee of a specific number of authorizations issued each year.

(5) All participating properties annually will be subject to the requirements found in this section.

(6) Private lands that lie within villages, towns or recorded subdivisions with covenants or ordinances that prohibit hunting ~~and/or~~ or the discharge of firearms will be ineligible to participate unless part of a department-approved combined property choice under Paragraph (8) of Subsection E of 19.30.5.9 NMAC.

(7) Private lands that if hunted, would result in safety concerns as determined by the district officer will be ineligible to participate unless allowed pursuant to a specific agreement containing provisions for minimizing safety concerns.

(8) Landowners requesting to split their separately-deeded contiguous properties currently under one signup into smaller separate signups are required to submit their request on an approved form and provide required documentation and justification to support the request. Such requests will be reviewed by the director who will determine if reasonable justification exists to grant approval.

B. Enrollment process:

(1) Initial application:

(a) Landowners who choose to enroll in the system must submit a completed application form approved by the department. Application must include all required documentation ~~[requested on application form]~~. Only the property owner listed on the recorded deed may submit an initial E-PLUS application. If there are multiple owners listed on the property deed, all co-owners must sign an affidavit authorizing one of the owners to be responsible for the initial enrollment and all paperwork associated with the enrolled property.

(b) Application must be submitted to the department, hand delivered or post marked, no later than February 1 of each year. Applications received without all required documentation or hand delivered or post marked after February 1 shall be rejected. Rejected applications may be corrected and resubmitted through March 1 to be included that year if the original application was submitted by the February 1 deadline but the applicant mistakenly omitted necessary documentation or a documented

family emergency, sickness or death resulted in the application deadline being missed.

(c) Accepted applications will be forwarded by the department to the appropriate area game manager and district officer so that a determination can be made as to the application satisfying the requirements set forth in Subsection A, 19.30.5.8 NMAC.

(d) Properties meeting the requirements set forth in Subsection A, 19.30.5.8 NMAC will be assigned an elk contribution rating and be eligible for authorization certificates pursuant to the processes set forth in Sections 9 and 12 of 19.30.5 NMAC.

(e) Landowners with properties that do not meet the requirements set forth in Subsection A, 19.30.5.8 NMAC will be advised and provided options and alternatives including the right to appeal the department's decision with regard to meeting the minimum requirements for participation.

(f) Area game managers and district officers may place newly enrolling properties on review for a period of time not to exceed 12 months to allow sufficient time to determine if the minimum requirements have been met and assign the proper elk contribution rating.

(2) Participating ranches:

(a) All authorized ranch contacts for participating ranches will receive an agreement and affidavit of ownership form annually.

(b) The agreement and affidavit of ownership form will list the name, address, and phone number of the authorized ranch contact, the number of deeded acres considered, and the elk contribution rating assigned. It will provide the opportunity to appeal the listed acreage and the assigned elk contribution rating and allow for the authorized ranch contact to notify the department of appropriate changes. If changes include the addition or reduction of deeded acreage, a new property boundary map and deed for the added acreage must be submitted with the ~~[form]~~ agreement. The agreement portion of the form will set out the terms for participation and provide the ability to elect the "ranch only" option.

(c) The agreement and affidavit of ownership form must be signed and initialed where designated and returned to the department via hand delivery or post marked no later than February 1 each year. Failure to meet these requirements will result in the ranch being placed on review until the following year when the process begins again. If circumstances beyond the control of the authorized ranch contact or a documented family emergency, sickness or death, resulted in this deadline being missed, the department may accept completed agreement and affidavit of ownership

forms through March 1.

~~(d) [Any property in which the landowner or the landowner's designated contact person represents or permits the false representation of the property's deeded acreage or breaches or violates the conditions of any elk private land use system (E-Plus) agreement entered into with the department of game and fish, shall be suspended from further participation in E-Plus for a period of up to 3 years. Upon the department's determination that a violation or breach has occurred, the landowner or landowner's designated contact person shall be notified of the suspension via certified mail. The landowner or landowner's designated contact person may request a hearing that shall be held in accordance with the processes set forth in 19.31.2.13 NMAC (without reference to points) through Subsection A of 19.31.2.22 NMAC. Any property in which the landowner or the landowner's designated contact person does not hold rightful ownership, or legal representation of a property shall be suspended from further participation in E-Plus until such time as rightful ownership or legal representation is determined to the reasonable satisfaction of the department. Authorizations that have been issued to the property shall not be revoked or voided] If a landowner represents or permits the false representation of the property's enrolled private acreage, or breaches or violates the conditions of any E-PLUS hunting agreement entered into with the department, the landowner will be inactivated from further participation in E-PLUS and any other department-sponsored private land program for a period of up to 3 years. Upon the department's determination that a violation or breach has occurred, the landowner shall be notified via certified mail. The landowner may request a hearing that shall be held in accordance with the processes set forth in 19.31.2.13 NMAC (without reference to points) through Subsection A of 19.31.2.22 NMAC.~~

(e) Any property in which the landowner does not hold rightful ownership or legal representation of a property contrary to representation in an E-PLUS application or E-PLUS active agreement shall be placed in review until such time as rightful claimed ownership or legal representation contrary to representation in an E-PLUS application is determined and verified to the reasonable satisfaction of the department.

~~(f)~~ (f) After 2 years of non-receipt of affidavits, the department will inactivate the respective ranch until a new initial application has been submitted by the following February 1 deadline.

~~(g)~~ (g) Requests to add occupied deeded acreage for the upcoming season must include a map showing the new property boundary and be included with the

agreement and affidavit of ownership form submitted by the February 1 deadline.

~~(g)~~ **(h)** Properties that are sold or transferred to new ownership must re-apply as required for initial enrollment by the February 1 deadline. The previous owner must report any reduction in acreage resulting from sale or transfer, on their annual affidavit of ownership and provide an updated map documenting the acreage reduction. Properties, or portions of properties, that have been reported by the previous owner as sold or transferred will be considered un-enrolled until the new owners apply as an initial signup.

~~(h)~~ **(i)** The department may make reasonable accommodations in circumstances where transfer of ownership occurs after the February 1 deadline.

~~(i)~~ **(j)** All participating ranches that the department determines do not meet minimum requirements for participation shall be sent written notice of inactivation in the system for the following license year.

~~(j)~~ **(k)** District officers and game managers may adjust the elk contribution rating for any participating ranch annually. In the case an adjustment is warranted, the landowner will be contacted and notified of the rating change.

(l) Participating landowners in GMU 51 may receive modified agreements for the 2009 license year that provide 2 options for participation. Landowner selection of option I shall result in the property participating as identified in 19.30.5.9 NMAC. Landowner selection of option II shall require that landowner submit a director approved "Ranch Only - Non-Transferrable" request form identifying the number of either sex only authorizations and season dates requested. Only requests deemed to be reasonable and appropriate shall be approved by the director. Allowable season dates shall be as identified on the request form and shall not include any dates from May 15 through July 15 annually. Licenses that result from the conversion of these authorizations shall be valid only on the deeded private property of the ranch for which they were issued. All participating landowners in GMU 51 will be required to participate pursuant to the option they select for both the 2009-2010 and the 2010-2011 license years. Small contributing ranches that elect option II in the 2009-2010 license year, and select option I in the 2011-2012 license year, will be ineligible to participate in drawings for bull authorization certificates in that GMU until such time as all small contributing ranches in that GMU have successfully drawn a bull authorization certificate. The department shall present an evaluation of this trial program to the state game commission by June 2010 with recommendation to continue, modify, or

eliminate.

[19.30.5.8 NMAC - N, 10-17-2005; A, 12-14-2006; A, 2-13-2009]

19.30.5.9 DETERMINATION AND DISTRIBUTION OF PRIVATE LAND AUTHORIZATIONS AND PUBLIC LAND LICENSES:

A. The department will determine the area considered core occupied elk range within each GMU and will determine the number and kind of hunting opportunities by bag limit and weapon type available in each GMU based on harvest objectives and harvest success rates for that GMU.

B. Public land elk licenses will be set for each unit as follows:

(1) The elk harvest objective for the core occupied elk range of the GMU is divided by the average harvest success rate to derive the total number of elk hunting opportunities.

(2) The total number of elk hunting opportunities multiplied by the proportion of the core occupied elk range that is public land equals the number of public draw elk hunting licenses.

C. Private land elk authorization certificates will be set for each unit as follows: The total number of elk hunting opportunities multiplied by the proportion of the core occupied elk range that is private land equals the number of private land elk authorization certificates.

D. The base number and type of elk authorization certificates per ranch will be set as follows:

(1) A ranch's occupied deeded acres multiplied by that ranch's elk contribution rating equals ranch weighted acres.

(2) A ranch's weighted acres divided by total private land weighted acres in the unit's core occupied elk range equals percent occupied ranch weighted acres.

(3) Percent occupied ranch weighted acres multiplied by the number of available private land authorization certificates of each type for the unit equal the number of authorization certificates per ranch.

E. In each GMU, a pool of authorization certificates will be identified as follows:

(1) The number and type of authorization certificates allocated to private lands not enrolled in the system.

(2) The number and type of private land authorization certificates allocated to enrolled properties in the base allocation but not converted to licenses (based on the previous 2 years average if permit levels were similar).

(3) The number and type of authorization certificates that result from the consolidation of the weighted acres of

all small contributing properties.

(4) A portion of this pool of authorization certificates may be distributed to small contributing properties pursuant to voluntary participation in a drawing or other equitable distribution process each year.

(5) A portion of this pool of authorization certificates may be distributed to qualifying properties in the form of "bonus" authorization certificates issued pursuant to the allocation formula.

(6) A portion of this pool of authorization certificates may be distributed to specific properties in the form of "incentive" authorization certificates issued in recognition of significant habitat enhancement for elk.

(7) Small contributing ranches that are unable to compete for authorization certificates pursuant to the allocation formula in 19.30.5.9 NMAC ~~[may choose to allow their ranch to]~~ will be enrolled in a drawing for "unit wide" authorization certificates available pursuant to that unit's pool of authorization certificates as described above, ~~[enroll]~~ enrolled in a drawing for "unit wide" authorization certificates from other specified GMUs when such are available, or cooperate with other properties per Paragraph (8) of Subsection E below ~~[of this section]~~. Once a small contributing ~~[property]~~ ranch has been successful in drawing a ~~[unit wide mature bull/antler point restriction]~~ bull authorization certificate for the GMU in which the property participates, it will be ineligible ~~[to participate in subsequent drawings for unit wide mature bull/antler point restriction elk]~~ for bull authorization certificates in that GMU until such time as all small contributing ~~[properties]~~ ranches in that GMU have successfully drawn a ~~[unit wide mature bull/antler point restriction elk]~~ bull authorization certificate. This shall also apply to ~~antlerless and either sex archery bag limits and any other bag limit that is established in the 19.31.14 NMAC.~~

(8) Throughout this allocation process, the department will encourage landowners to cooperate and combine acreage to the extent possible on a willing basis to help them qualify for the most beneficial or useful issuance of authorization certificates.

F. All authorization certificates issued to private lands pursuant to this section will be considered "unit wide" unless otherwise requested by the landowner.

[19.30.5.9 NMAC - N, 10-17-2005; A, 2-13-2009]

19.30.5.10 PRIVATE LAND ONLY UNITS:

A. In GMUs 41, 42, 43, 46, 47, 54, 55A, 55B, 56A, 57, ~~and~~ 58,

and 59, the department will use input from landowners to develop appropriate numbers and bag limits for ranch-only authorization certificates needed to achieve the desired and proper harvest within the exterior boundaries of participating ranches.

B. In GMUs 4 and 5A, the department will allocate authorizations pursuant to 19.30.5.9 NMAC.

C. All authorizations issued to private lands in GMUs 4, 5A, ~~and~~ 46, 54, 55A, 56, 57, and 58 will be transferable with written permission. Licenses resulting from converting these authorizations will be valid only on the deeded property for which the authorization was issued or other private land in the unit if the license holder has written permission from the landowner, or person in control of the land to hunt the private property except "ranch only" authorizations issued pursuant to Sections 11 and 12 of 19.30.5 NMAC below.

[19.30.5.10 NMAC - N, 10-17-2005; A, 2-13-2009]

19.30.5.11 LANDS OUTSIDE THE CORE OCCUPIED ELK RANGE:

A. For private lands that are not within core occupied elk range or private lands that lay within GMUs with no designated core occupied elk range, the department may work with interested landowners to develop appropriate bag limits, weapon types, season dates and authorization numbers for private land hunting needed to achieve the desired and proper harvest within the exterior boundaries of participating ranches. Private lands that are not within the COER may enroll any time with no application deadlines.

B. For public lands in GMUs with no designated core occupied elk range, the department may determine public hunting opportunities through the processes set forth in 19.31.8 NMAC.

[19.30.5.11 NMAC - N, 10-17-2005; A, 6-15-2006; A, 2-13-2009]

19.30.5.12 SPECIAL MANAGEMENT PROPERTIES:

In all GMUs, the department may treat specifically identified or unique properties of any practical size as special management ~~areas~~ properties and ~~allocate~~ consider alternative season dates, bag limits and additional authorization certificates ~~[to these properties]~~ based on a required elk conservation ranch management plan developed in conjunction with the landowner and approved by the department. Authorization certificates issued pursuant to these management plans shall be ranch only authorization certificates, will be calculated based on habitat benefits and associated elk opportunity accrued, and will be in addition to those allocated for public and private hunters in

the GMU. ~~[Deadline for management plans to be completed and approved will be April 15th each year.]~~ Properties that enter into a special management property agreement are required to update and submit the required elk conservation ranch management plan on an annual basis for review and approval by the department to receive consideration for continued participation as a special management property. Properties that elect to participate pursuant to this section shall be ineligible for any appeal process.

[19.30.5.12 NMAC - N, 10-17-2005; A, 2-13-2009]

19.30.5.13 LANDOWNER RIGHT TO APPEAL:

A. Landowners shall have the right to appeal only the following:

(1) The number of deeded acres of elk occupied range.

(2) The elk contribution rating assigned to the property.

(3) A decision by the department that a property does not meet the minimum requirements to participate.

B. Appeals based on deeded acres or the elk contribution rating shall be submitted with the annual affidavit.

C. Written appeals for newly enrolling properties that are based on failure to meet the minimum requirements to participate ~~[shall]~~ may be submitted to the department ~~[in writing and post marked no later than April 1]~~ at any time.

D. The department may take the necessary amount of time needed to properly consider any appeals, but no more than 12 months.

E. In all cases of appeal, the landowner shall be responsible for providing the appropriate documentation, photographic or physical proof required substantiating the claim.

F. All participating ranches that the department determines do not meet minimum requirements for participation shall be sent written notice of inactivation in the system for the following license year. These ranches shall be afforded the opportunity to appeal this decision by submission of documentation, photographic or physical evidence proving the minimum requirements have been met. The department must receive these appeals post marked or hand delivered no later than August 1 each year. Properties that appeal a decision by the department that their property does not meet the minimum requirements will be afforded the necessary amount of time needed to provide the department with photographic or physical confirmation of their property's contribution to elk, but no more than 12 months.

G. All appeals will be made to the respective area chief. If an appeal is not resolved at the area chief level,

the landowner may request a hearing conducted by a panel consisting of the director and 3 game commissioners, appointed by the chairman of the state game commission. The commission representatives on the panel should reflect commissioner districts and geographic areas of elk range. Recommendations of this panel shall be provided to the director, whose decision shall be based on the panel's recommendation. The decision of the director shall be final pursuant to 17-3-14.1 NMSA 1978. All requests for hearings must be made no later than April 1 of each year.

[19.30.5.13 NMAC - N, 10-17-2005; A, 2-13-2009]

19.30.5.14 DEPARTMENT RIGHT TO REQUEST UPDATED DOCUMENTATION AND CONDUCT AUDITS:

The department reserves the right to request the submission of complete ownership documentation, including but not limited to deeds and tax valuation and legal description, at any time during the year. Each request shall consist of a telephone notification and a written request. Each notification shall include a reasonable deadline for compliance and any failure to comply shall result in the property being placed on review until such time as the department receives the requested documentation and the property can be issued authorizations without affecting allocations to other participating properties. If the landowner fails to comply with the update requirement within six months from the original request date, the property will then be inactivated and removed from participation in E-PLUS. If the landowner wishes to participate again, they will be required to reapply as a new participating ranch pursuant to the enrollment process outlined under 19.30.5.8 NMAC and provide the required update documents with the initial application.

[19.30.5.14 NMAC - N, 10-17-2005; A, 2-13-2009]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.8 NMAC, Section 21, effective February 13, 2009.

15.1.8.21 SLOT ACCOUNTING SYSTEM; RACETRACKS: A slot accounting system shall be required for all ~~[racetracks licensed]~~ racetrack gaming premises constructed after September 1, 2003. A racetrack ~~[in operation as of]~~ gaming premises constructed prior to September 1, 2003, is not required to obtain a slot accounting system. If a racetrack ~~[in operation]~~ constructed prior to September 1, 2003, has implemented a slot accounting system, the racetrack shall maintain ~~[a]~~ that

slot accounting system or another system acceptable to the board.

[15.1.8.21 NMAC - N, 5/14/04; A, 2/13/09]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.10 NMAC, Section 23, effective February 13, 2009.

15.1.10.23 SURVEILLANCE SYSTEMS:

A. Each gaming operator licensee shall install, maintain and continuously operate a surveillance system at its licensed gaming establishment. The purpose of the surveillance system is to assist the gaming operator licensee and the state in safeguarding the licensee's assets, in deterring, detecting and prosecuting criminal acts, and in maintaining public confidence and trust that licensed gaming activity is conducted honestly and free of criminal elements and activity.

B. The board, in its sole discretion, may exempt a gaming operator licensee from the requirements of this section.

C. Within 60 days after filing its application, each applicant for a gaming operator's license shall submit a written surveillance system plan to the board. The plan shall be in a form approved or required by the board and shall include descriptions of all equipment utilized by the surveillance system, a blueprint or diagram that shows all of the areas to be monitored and the placement of surveillance equipment in relation to the activities being observed, a description of the procedures used in the operation of the surveillance system, and any other information required by the board. The plan shall be approved before a gaming operator license is issued.

D. A licensee shall not make any changes to its approved surveillance plan without prior written approval by the board or its designee. Before implementing any changes to a surveillance system plan, the licensee shall submit the proposed changes on forms approved by the board to the board or its designee for approval. If, after reviewing the gaming operator licensee's proposed changes, the board or its designee determines that the proposed plan is not adequate, ~~[the board]~~ it shall notify the gaming operator licensee in writing. The gaming operator licensee shall revise the proposed plan and submit it to the board for approval or request a hearing within 30 days after receipt of the board's written notice.

E. A licensee shall notify the board immediately of any failure of the surveillance system to continuously monitor the gaming premises or to otherwise

operate properly. The board may require temporary suspension of gaming activities until the surveillance system is restored.

F. A racetrack ~~[licensed]~~ gaming premise constructed after September 1, 2003, shall provide at least one entrance to the surveillance room that is not located on the game room floor. Any racetrack gaming operator licensee who substantially remodels the gaming premises shall provide at least one entrance to the surveillance room that is not on the gaming room floor.

G. A gaming premise initially licensed or constructed after September 1, 2005 shall be required to use digital video recording equipment for its surveillance system.

H. The board may require a licensee to update its surveillance plan if the board, in its discretion, determines that the surveillance plan is not adequate.

[12/31/98; 15.1.10.23 NMAC - Rn, 15 NMAC 1.10.23, 3/31/00; A, 12/28/01; A, 5/14/04; A, 6/30/08; A, 2/13/09]

NEW MEXICO DEPARTMENT OF HEALTH PUBLIC HEALTH DIVISION

This is an amendment to 7.32.7 NMAC Section 7, effective 01/29/2009.

7.32.7.7 DEFINITIONS:

A. "Administration of opioid antagonist" means the administration of an opioid antagonist by a person authorized pursuant to this regulation.

B. "Department" means the New Mexico department of health.

C. "Emergency medical service (EMS)" means the services rendered by licensed emergency medical technicians, certified emergency medical services first responders or emergency medical dispatchers in response to a person's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

D. "Medical direction" means guidance or supervision for trained targeted responders provided by a physician for the administration of opioid antagonists. This includes overseeing training, emergency medical services coordination, protocol approval, quality assurance and reporting.

E. "Opioid" means containing or derived from opium, including but not limited to morphine and heroin.

F. "Opioid antagonist" means a drug that nullifies in whole or in part the administration of an opioid. The opioid antagonist is limited to naloxone or other medications approved by the department, unless otherwise stated in this regula-

~~tion [and is limited to doses less than or equal to 1.0mg by subcutaneous injection or intramuscular injection, not to exceed a total overall dose of 2.0mg].~~

G. "Opioid antagonist administration program" means an organized program to administer an opioid antagonist in accordance with these regulations.

H. "Opioid antagonist training program" means a training program which prepares a person to administer an opioid antagonist as shown by best practices or recommended by the department for an opioid antagonist administration program.

I. "Person" means any individual other than a licensed health care professional permitted by law to administer an opioid antagonist, including, but not limited to, private individuals, law enforcement personnel, and first responders who are not certified by the department.

J. "Physician" means a doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico.

K. "Physician medical director" means a physician who is responsible for oversight of an opioid antagonist administration program, including providing for or ensuring the medical control of trained targeted responders; the development, implementation, and evaluation of medical protocols; oversight of quality assurance activities, and compliance with the New Mexico board of pharmacy requirements.

L. "Protocols" means predetermined, written medical care plans and includes standing orders.

M. "Provider" means a person or entity delivering emergency medical services in New Mexico.

N. "Trained targeted responder" means a person who has completed an authorized opioid antagonist training program and who administers opioid antagonists.

[7.32.7.7 NMAC - Rp, 7.32.7.7 NMAC, 9/13/2001; A/E, 01/29/2009]

NEW MEXICO STATE PERSONNEL BOARD

This is an emergency amendment to 1.7.7 NMAC Section 12, effective 1-27-09, adopted by the State Personnel Board at their meeting on 1-23-09.

1.7.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in *1.7.7 NMAC* eligible employees are entitled to leave in accor-

dance with the *Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.]*. Employees who have been in the classified service for at least 12 months (which need not be consecutive) and who have worked, as defined by *Section 7 of the Fair Labor Standards Act [29 U.S.C. Section 201 et seq.]*, at least 1250 hours during the 12 month period immediately preceding the start of FMLA leave are eligible employees. In addition, employment in the exempt service, legislative or judicial branch, shall count as classified employment for purposes of this rule.

B. Eligible employees are entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period, at the time of a birth or placement of a child or at the time of a serious health condition for the employee, or family members, or any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation as defined in the FMLA. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for the servicemember. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12 month period is calculated forward from the date an employee's first FMLA leave begins.

D. An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for any part of unpaid FMLA leave.

E. ~~[Compensatory time and paid holidays shall not count towards the 12 weeks entitled by FMLA.] If a paid holiday occurs within a week of FMLA leave, the holiday is counted towards the FMLA entitlement. However, if an employee is using FMLA in increments less than one week, the holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.~~

F. Employees shall not accrue annual and sick leave while on unpaid FMLA leave.

G. Agencies shall post the required FMLA notices, maintain the

required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with *1.7.1.12 NMAC*.

H. Disputes over the administration of this rule shall be forwarded to the director for resolution.

[1.7.7.12 NMAC - Rp, 1 NMAC 7.7.12, 07/07/01; A, 11/14/02; A, 6-30-06; A, 10-15-08; A/E, 1/27/09]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.2 NMAC, Section 29, effective February 13, 2009.

18.3.2.29 TEMPORARY AUTHORITY

A. Grant discretionary. Pursuant to NMSA 1978 Section 65-2A-11, the commission may, in its discretion, but is not required to, grant temporary authority to a person applying for a certificate or permit, amendment of a certificate or permit or for lease or transfer of all or part of a certificate if it finds that the applicant meets the requirements of NMSA 1978 Section 65-2A-11. 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 or permit, or for amendment of a certificate or permit, the commission shall not grant temporary authority unless:

(1) the director has certified that the application for permanent operating authority contains all of the information and documents required by 18.3.2.15 NMAC; and

(2) (a) 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; and either:

(i) stating that no other motor carrier is providing the transportation service in the territory the applicant seeks to serve; or

(ii) stating that another motor carrier is providing such transportation service, but that such transportation service is inadequate in rates, routes, or service; ~~and~~ or

(b) if the application is for non-emergency medical transportation, the applicant may provide a valid New Mexico human services department ("NMHSD") contract, or letter of commitment, that

meets all federal and state legal guidelines, in lieu of an affidavit; if the applicant is a subcontractor of a party in privity with NMHSD, then the applicant must submit both a copy of the actual contract of the party in privity with NMHSD, and either applicant's contract, or letter of intent with the subcontracting party, in lieu of an affidavit; and

(3) (2) the applicant submits the fee required by NMSA 1978 Section 65-2A-36.

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 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 18.3.8.11 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 NMSA 1978 Section 65-2A-36.

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 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 18.3.8.10 NMAC; and

(2) the applicant submits the fee required by NMSA 1978 Section 65-2A-36.

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 and fee have been filed, and shall make a recommendation to the commission as to whether or not it should grant the temporary authority.

[18.3.2.29 NMAC - Rp, 18.3.2.27 NMAC, 1-1-05; A, 2-13-09]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.11.4 NMAC, Sections 7, effective 2/13/09.

3.11.4.7 DEFINITIONS:

A. "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. "NATO force" means any NATO signatory's military unit or force

or civilian component thereof present in New Mexico in accordance with the north Atlantic treaty.

C. "NATO signatory" means a nation, other than the United States of America, that is a contracting party to the north Atlantic treaty.

D. "Price paid" is the dollar amount to which the motor vehicle excise tax is applied and (except as provided in Section 7-14-4 NMSA 1978 if the price paid does not represent the value of the vehicle) is the total net purchase price paid by the buyer for the vehicle itself, including any deposit or down payment, at the time of sale. "Price paid" includes any charges to the buyer for accessories, transportation, delivery and dealer preparation. "Price paid" is reduced by the value of any vehicle trade-in and by any discounts or rebates that are applied to the buyer's balance due at time of sale. "Price paid" is also reduced by the value of any manufacturer's or other rebate that is contractually guaranteed to the buyer at time of sale, even though the rebate is received by the buyer at a later date.

[3/15/96; 3.11.4.7 NMAC - Rn, 3 NMAC 11.4.7, 12/14/00; A, 2/13/09]

NEW MEXICO DEPARTMENT OF TRANSPORTATION

This is an amendment to 7.32.20 NMAC, Sections 1, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, effective February 13, 2009.

7.32.20.1 ISSUING AGENCY: New Mexico [~~State Highway and Transportation~~] Department of Transportation.
[7.32.20.1 NMAC - Rp, 7 NMAC 32.20.1, 1-1-03; A, 2-13-09]

7.32.20.3 STATUTORY AUTHORITY: [~~NMSA 1978,~~] Sections 9-1-5, 66-7-512, and 66-8-102 NMSA 1978. [7.32.20.3 NMAC - Rp, 7 NMAC 32.20.3, 1-1-03; A, 2-13-09]

7.32.20.7 DEFINITIONS: For use in this part, the following definitions apply:

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 of transportation;

C. **certificate** means a document issued by the bureau authorizing a person to serve as a DWI facilitator;

D. **certificate of completion** means an official document obtained from the bureau and issued to the student upon successful completion of a DWI course;

~~[D-] E.~~ **clean driving record** means a person has no more than six (6) points on [~~his/her~~] that person's driver's license, and that person has not within the last ten (10) years had [~~his/her~~] a 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, or has received three (3) or more failure to appear summonses or citations in the past year;

~~[E-] E.~~ **convicted or conviction** has the meaning given in [~~NMSA 1978,~~] Section 66-8-102 NMSA 1978;

~~[F-] G.~~ **credit hour** means fifty (50) minutes of instruction and 10 minutes of break time;

H. **crime involving moral turpitude** means a crime that is contrary to honesty, justice or good morals, such as a crime involving dishonesty, fraud, perjury, forgery, murder or serious sexual offenses;

I. **curriculum** means a course of instruction approved by the bureau pursuant to Section 66-8-102 NMSA 1978;

~~[G-] J.~~ **designee** means a person authorized to perform certain specified duties on behalf of the bureau;

K. **diploma** means a document evidencing that a person has completed a DWI facilitator training course or recertification DWI facilitator training course conducted by the bureau;

~~[H-] L.~~ **DWI [~~program or program~~] course or course** means a driver rehabilitation [~~program approved by the Bureau pursuant to NMSA 1978, Section 66-8-102~~] curriculum taught by a certified DWI facilitator;

~~[I-] M.~~ **DWI school or school or licensee** means a person licensed by the bureau to [~~offer DWI programs~~] operate a school offering DWI courses;

~~[J-] N.~~ **DWI facilitator or facilitator** means a person certified by the bureau as qualified and trained to conduct DWI [~~programs~~] courses pursuant to Section 66-8-102 NMSA 1978;

~~[K-] O.~~ **enrolled** means a student has registered for a DWI program, attended the first day of the course, and the sentencing court has acknowledged the student as enrolled;

~~[L-] P.~~ **extension site** means a location other than the main school site where a licensed DWI school offers DWI programs;

~~[M-] Q.~~ **Implied Consent Act** means [~~NMSA 1978~~] Sections 66-8-105

through 66-8-112, NMSA 1978;

~~[N-] R.~~ **limited driving history [~~driving record~~]** means a driving record from the New Mexico motor vehicle division of the taxation and revenue department or its equivalent that includes actions and citations, and drivers' license revocations pursuant to the Implied Consent Act;

~~[O-] S.~~ **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;

T. **MVD** means the New Mexico motor vehicle division of the taxation and revenue department;

~~[Q-] U.~~ **person** means an individual, firm, partnership, association, corporation, or other legal entity;

~~[R-] V.~~ **revocation or revoked** means the involuntary permanent termination of a license or certificate by the bureau for cause;

~~[S-] W.~~ **student** means a person who has enrolled in a DWI program; and

~~[T-] X.~~ [~~suspended or~~] **suspension or suspended** 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; A, 2-13-09]

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~~] October 31 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 for students.

[7.32.20.8 NMAC - Rp, 7 NMAC 32.20.8, 1-1-03; A, 2-13-09]

7.32.20.9 REQUEST FOR DWI SCHOOL APPLICATIONS:

A. 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.

B. The bureau shall select the successful applicant and notify all applicants of its decision.

[7.32.20.9 NMAC - Rp, 7 NMAC 32.20.9, 1-1-03; A, 2-13-09]

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~~ shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

C. Contents of application. An application for a DWI school license shall contain:

(1) the applicant's name, mailing address, telephone number, physical address of the main school site, 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~~ courses;

(4) a list of all facilitators who will conduct DWI ~~programs~~ courses;

(5) a schedule of fees applicable to students who enroll in a DWI ~~program~~ course, including primary and incidental costs charged for the course, school policies for passing and failing, refund and reschedule policies and attendance requirements;

(6) the proposed curriculum, handouts~~;~~ and videos~~;~~ and final examination questions for the DWI ~~program~~ 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 ~~cur-~~

~~riculum vitae~~ related work history;

(9) a copy of the applicant's limited driving history from the motor vehicle division, driver services bureau or its equivalent from any state in which the applicant has held a driver's license in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau; and

(10) a state police background check from any state in which the applicant has resided in the past ten (10) years 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 or its equivalent at least sixty (60) days before the date the application is filed with the bureau.

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 within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(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; A, 2-13-09]

7.32.20.11 ISSUANCE OF INITIAL DWI SCHOOL LICENSE:

A. ~~Review by the bureau~~ Standards for issuance. 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 applicant has not been convicted of a crime involving moral turpitude;

(6) the applicant has a clean driving record;

(7) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act; and

~~(5)~~ **(8)** 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 of this section, the bureau shall issue a license upon:

(1) payment of the \$50.00 license fee (or \$25.00 for applications filed on or after May 1 of the current license year);

(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, shall name the New Mexico department of transportation, traffic safety bureau as obligee, 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~~ October 31 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~~ shall 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; A, 2-13-09]

7.32.20.12 TERM OF DWI SCHOOL LICENSE:

A. Term. ~~[A]~~ An initial license shall be valid until ~~June 30~~ October 31 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~~ October 31. Renewal licenses shall be valid from ~~July 1~~ November 1 of the year of renewal to ~~June 30~~ October 31 of the following year.

B. License renewal.

(1) A licensee ~~must~~ shall file an application for renewal of its license with the bureau on or before ~~June 1st~~ October 1 of each year to ensure license renewal by ~~July 1~~ November 1. A licensee who files an application for renewal after ~~June 1st~~ October 1 shall pay a late fee of \$25.00. ~~[The bureau will review applications for renewal in the order in which they are received.]~~

(2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the

bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

(3) The application for renewal shall be accompanied by the documents specified in Subsection C of 7.32.20.10 NMAC, except for the documents specified in Paragraphs (7) and (8) of Subsection C of 7.32.20.10 NMAC.

(4) The bureau shall review applications for renewal in the order in which they are received.

C. Approval/disapproval of application for license renewal.

(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;

(c) the licensee has submitted a continuation certificate or proof of payment for the surety bond required by Paragraph 3 of Subsection B of 7.32.20.11 NMAC; and

(d) 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~~ October 1.

(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. Notice of rule violation. The bureau may send any licensee a notice of rule violation if it finds that the DWI school is not in compliance with one or more requirements of this rule. The notice of rule violation shall specify the provisions of this rule with which the licensee is not in compliance. Failure to correct the rule violation in the time requested by the bureau may result in suspension or revocation of the license.

~~D.]~~ **E. 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.

(3) If a DWI school ceases operation for any reason, the school shall comply with the requirements of Subsection L of

7.32.20.14 NMAC.

~~E.]~~ **E. Restriction on sale of license.** A DWI school license ~~[may] shall~~ not be sold or transferred.

[7.32.20.12 NMAC - Rp, 7 NMAC 32.20.9 and 32.20.23, 1-1-03; A, 2-13-09]

7.32.20.13 C L A S S R O O M COURSE REQUIREMENTS FOR DWI SCHOOLS: 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 pursuant to this rule;

B. enroll no fewer than four (4) students and no more than ~~[twenty-five (25)]~~ thirty (30) students per facilitator 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]~~ \$175.00, 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]~~ tables or seats with attached tables 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[,] and 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.]~~ if a licensee becomes aware that a student is disabled, inquire as to the need for accommodations, and provide reasonable accommodations for the student, including but not limited to auxiliary aids or services such as assisted listening devices or a sign language interpreter, unless the accommodation presents an undue burden on the licensee; the bureau shall pay for sign language interpretation if the student is under the age of eighteen (18), provided that the licensee shall contact the bureau at least fourteen (14) days before the scheduled date of the driver education course to arrange for interpretation;

~~[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.]~~ **J.** 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.]~~ **K.** 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;

L. if certificates of completion are issued, use certificates obtained from the bureau, issued sequentially by the licensee;

M. not permit a student to attend any DWI classes until the student has received written information stating all fees, including primary and 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; A, 2-13-09]

7.32.20.14 OPERATING REQUIREMENTS FOR DWI 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 DWI school intends to cease operations;

C. shall make all DWI school records available for inspection and copying by the bureau or its designee at any time; a licensee shall maintain all hard

copies and electronic versions of 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]~~ course;

D. shall ~~[within thirty (30) days of the end of each DWI program]~~:

(1) ~~at the time of enrollment and on a quarterly basis thereafter~~, provide the bureau with a ~~[copy of the class roster]~~ student report, on a form prepared or approved by the bureau; if no course is held during the quarter, the licensee shall submit a student report indicating the same [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]~~ \$50.00 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, upon request, provide each student with a form prepared by the bureau that allows the student or the student's parent to notify the bureau regarding a comment or concern about the school or a facilitator;

~~[F.]~~ **G.** 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.]~~ **H.** shall conduct all school operations in a professional and courteous manner;

~~[H.]~~ **I.** shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations;

~~[I.]~~ **J.** 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.]~~ **K.** 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;

L. upon ceasing operations for any reason, shall make all DWI school records available for inspection or copying by the bureau or its designee at any

time, and shall return all unused completion certificates to the bureau within ten (10) days of the school ceasing operation; for any certificates not returned within ten (10) days of the school ceasing operation, the bureau shall notify the appropriate authority that the certificates are no longer valid.

[7.32.20.14 NMAC - Rp, 7 NMAC 32.20.10, 1-1-03; A, 2-13-09]

7.32.20.15 EVALUATION OF DWI SCHOOLS:

A. Responsibility. The bureau or its designee;

(1) 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;

(2) may conduct on-site quality assurance visits; 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 customer service.

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) the results from 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; A, 2-13-09]

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]~~ shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the

bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

C. Contents of application. The application ~~[must]~~ shall be accompanied by:

(1) a copy of the applicant's limited history driving record from the motor vehicle division, driver services bureau or its equivalent from any state in which the applicant has held a driver's license in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau;

(2) a state police background check from any state in which the applicant has resided in the past ten (10) years 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 or its equivalent 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]~~ related work history; [and]

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

(7) the name of the school at which the facilitator will be providing DWI facilitation.

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 within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(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 at least 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; and

(8) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act.

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~~ shall, within six (6) months of approval to proceed with training:

(a) satisfactorily complete the New Mexico DWI facilitator training course, as verified by the bureau;

(b) attend ~~a~~ one (1) DWI trial or three (3) DWI hearings in a court in the community, as verified by the clerk of the court;

(c) observe a minimum of one (1) 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~~ requirements in Subsection F of this section and is otherwise fit, the bureau ~~will~~ shall 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~~ October 31 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~~ October 31. Renewal certificates shall be valid from ~~July 1~~ November 1 of the year of renewal to ~~June 30~~ October 31 of the following year. If the DWI school at which the facilitator is teaching changes during the term of the certificate, the facilitator shall notify the bureau within ten (10) days of such change. [7.32.20.16 NMAC - Rp, 7 NMAC 32.20.12, 32.20.13, 32.20.14, and 32-20.23, 1-1-03; A, 2-13-09]

7.32.20.17 RECERTIFICATION OF DWI FACILITATORS:

A. Certificate renewal.

(1) A DWI facilitator ~~must~~ shall file an application for renewal of his or her certificate with the bureau on or before ~~June 1~~ October 1 each year to ensure certificate renewal by ~~July 1~~ November 1. A DWI facilitator who files an application for renewal after ~~June 1st~~ October 1 shall pay a late fee of \$25.00.

(2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

(3) The application for renewal shall be accompanied by the documents specified in Subsection C of ~~this section~~ 7.32.20.16 NMAC, except for the documents specified in Paragraphs (4), (5) and (6) of Subsection C of 7.32.20.16 NMAC.

(4) The bureau ~~will~~ shall review applications for renewal in the order in which they are received.

B. Continuing education requirements.

(1) DWI facilitators ~~must~~ shall complete a minimum of ~~twelve (12)~~ eight (8) credit hours of continuing education each license year to qualify for annual recertification.

(2) A DWI facilitator ~~can~~ may 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 (1) 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 (1) 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~~ shall renew the certificate of a DWI facilitator for a period of one (1) 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 license year; and

(d) has completed ~~twelve (12)~~ eight (8) credit hours of continuing education in the license 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)~~ eight (8) hours of continuing education in the license 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; A, 2-13-09]

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~~ the licensee's or DWI facilitator's 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~~ the licensee or DWI facilitator has 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 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]~~ whose name appears on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, [NMSA 1978,] Sections 40-5A-1 et seq. NMSA 1978, or any rule implementing that act; or

(13) who fails to forward the ~~[\$25.00]~~ \$50.00 per-student fee to the bureau within thirty (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. NMSA 1978, 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. Upon completion of any proceedings held pursuant to the Uniform Licensing Act:

(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]~~ shall 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]~~ shall 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; A, 2-13-09]

~~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.]

~~7.32.20.20~~ 7.32.20.19 EXEMPTION OR VARIANCE:

A. Any school may petition in writing 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~~ or 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.

E. Each exemption or variance shall be valid for no longer than the end of the current license year. [7.32.20.19 NMAC - Rp, 7 NMAC 32.20.26, 32.20.27, and 32.20.28, 1-1-03; Repealed, 2-13-09; 7.32.20.19 NMAC - Rn, 7.32.20.20 NMAC & A, 2-13-09]

NEW MEXICO DEPARTMENT OF TRANSPORTATION

This is an amendment to 18.20.3 NMAC, Sections 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, repeal of 21 and renumber and amendment of 22 to 21, effective February 13, 2009.

18.20.3.1 ISSUING AGENCY: New Mexico ~~[State Highway and Transportation]~~ Department of Transportation. [18.20.3.1 NMAC - Rp, 18 NMAC 20.3.1, 1-1-03; A, 2-13-09]

18.20.3.7 DEFINITIONS: For use in this part, the following definitions apply:

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 of transportation;

C. **behind-the-wheel** means instruction in which the student, under the direct guidance of a certified driver education instructor, is in control of a motor vehicle, and includes on-street training, on-range training or use of a driving simulator, only as provided by these rules;

~~[C.]~~ **D.** **certificate** means a document issued by the bureau authorizing a person to serve as a driver education

school instructor;

E. **certificate of attendance** means a document evidencing that a person has completed a driver education instructor training course or recertification driver education instructor training course conducted by the bureau;

E. **certificate of completion** means an official document purchased from the bureau and issued to the student upon successful completion of a driver education course;

~~[D.]~~ **G.** **clean driving record** means a person has no more than six (6) points on ~~[his/her]~~ that person's driver's license, and that person has not within the last ten (10) years had ~~[his/her]~~ a 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, or has received three (3) or more failure to appear summonses or citations in the past year;

~~[E.]~~ **H.** **convicted or conviction** has the meaning given in ~~[NMSA 1978,]~~ Section 66-8-102 NMSA 1978.

[E.] L. **correspondence course** means a driver education course approved by the bureau in which a student, overseen by a parent, legal guardian or supervising adult, independently studies written materials and submits written assignments for review by a driver education instructor, and shall not include on-line courses;

[G.] J. ~~[course or]~~ **credit hour** means fifty (50) minutes of instruction and ten (10) minutes of break time;

K. **crime involving moral turpitude** means a crime that is contrary to honesty, justice or good morals, such as a crime involving dishonesty, fraud, perjury, forgery, murder or serious sexual offenses;

L. **curriculum** means a course of instruction approved by the bureau pursuant to Section 66-10-1 et seq. NMSA 1978;

[H.] M. **designee** means a person authorized to perform certain specified duties on behalf of the bureau;

~~[E.]~~ **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.];

N. **disabled** means a person who is disabled under the provisions of the ADA, and whose disability substantially limits the person's ability to learn and implement the driver education curriculum;

~~[E.]~~ **O.** **driver education course or course** means a ~~[course of instruction approved by the bureau pursuant~~

~~to NMSA 1978, Section 66-10-11]~~ driver education curriculum taught by a driver education instructor and includes correspondence courses, classroom instruction and behind-the-wheel training;

~~[K.]~~ **P.** **driver education school or school or licensee** means a person licensed by the bureau to ~~[offer driver education courses]~~ operate a school offering driver education courses;

~~[E.]~~ **Q.** **driver education instructor or instructor** means a person certified by the bureau as qualified and trained to conduct driver education courses, who gives instruction for hire in the driving of motor vehicles or prepares applicants for examination for a Class D, E or M driver's license;

~~[M.]~~ **R.** **driving simulator** means a computer-based simulator unit and program, approved by the bureau, 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;

S. **educational institution** means any public, private or parochial school that provides basic education at the mid school, junior high school or high school level;

~~[N.]~~ **T.** **enrolled** means that a student has registered for a driver education course, attended the first day of a scheduled course and will continue until the course is completed;

~~[O.]~~ **U.** **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.]~~ **V.** **Implied Consent Act** means ~~[NMSA 1978]~~ Sections 66-8-105 through 66-8-112 NMSA 1978;

~~[R.]~~ **W.** **limited driving history [driving record]** means a driving record from the New Mexico motor vehicle division of the taxation and revenue department or its equivalent that includes actions and citations, and driver's license revocations pursuant to the Implied Consent Act;

[S.] X. **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.];

Y. **MVD** means the New Mexico motor vehicle division of the taxation and revenue department;

~~[E.]~~ **Z.** **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.]~~ **AA. 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.]~~ **BB. person** means an individual, firm, partnership, association, corporation, or other legal entity;

CC. private driver education school means a person to whom the Driving School Licensing Act, Section 66-10-8 NMSA 1978, applies;

~~[X.]~~ **DD. proctored exam** means an exam monitored by a driver education instructor;

~~[Y.]~~ **EE. revocation or revoked** means the involuntary permanent termination of a license or certificate by the bureau for cause;

~~[Z.]~~ **FF. student** means a person who has enrolled in a driver education course; and

~~[AA.]~~ **GG. [suspended or] suspension or suspended** 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; A, 2-13-09]

18.20.3.8 STUDENT ELIGIBILITY:

A. Driver education schools. 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. Correspondence courses. A correspondence course shall not enroll a person as a student unless:

(1) 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; in order to obtain prior written approval from the bureau, the person shall:

(a) submit an application for permission to enroll in a driver education correspondence school, completed and signed by the person's parents or legal guardian; a person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at

<http://www.nmshtd.state.nm.us>;

(b) document in the completed application that the person meets at least one (1) of the following criteria, subject to the bureau's approval:

(i) availability: the parent or legal guardian shall provide documentation that there is not a driver education program at the person's mid school, junior high school or high school, or that there are no private driver education programs available within a reasonable distance;

(ii) distance: the parent or legal guardian shall provide documentation that there is not a private driver education school within twenty-five (25) miles of the person's home and that the person's mid school, junior high school or high school does not provide a driver education course;

(iii) schedule: the parent or legal guardian shall provide documentation that the person's scholastic activity or work schedule prevents the person from attending either a mid school, junior high school or high school driver education school or a local private driver education school;

(iv) home schooling: the parent or legal guardian shall provide verification of notification to the New Mexico public education department of the intent to home school the person in all subjects; or

(v) extenuating circumstances: the parent or legal guardian shall provide documentation of any other extenuating circumstance that prevents the person from attending either a mid school, junior high school or high school driver education school or a local private driver education school.

[18.20.3.8 NMAC - N, 1-1-03; A, 2-13-09]

18.20.3.9 APPLICATION FOR [FOR-PROFIT] PRIVATE 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] private driver education school [must] shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

C. Contents of application. An application for a [for-profit] private driver education school license shall contain:

(1) the applicant's name, mailing address, telephone number, physical address of the main school site, 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, including primary and incidental costs charged for the course, school policies for passing and failing, refund and reschedule policies, attendance requirements and MVD permit fees;

(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; related work history;

(9) a copy of the applicant's limited driving history from the motor vehicle division, driver services bureau or its equivalent from any jurisdiction in which the applicant has held a driver's license in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau; and

(10) a state police background check from any state in which the applicant has resided in the past ten (10) years 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 or its equivalent at least sixty (60) days before the date the application is filed with the bureau.

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 within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(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; A, 2-13-09]

18.20.3.10 ISSUANCE OF INITIAL ~~[FOR-PROFIT] PRIVATE DRIVER EDUCATION SCHOOL LICENSE:~~

A. ~~[Review by the bureau]~~ Standards for issuance. 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 applicant has not been convicted of a crime involving moral turpitude;

(5) the applicant has a clean driving record;

(6) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act; and

~~(4)~~ (7) 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 of this section, the bureau shall issue a license upon:

(1) payment of the \$400.00 license fee ~~(or \$200.00 for applications filed on or after January 1 of the current license year);~~

(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]~~ D 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, shall name the New Mexico department of transportation, traffic safety bureau as obligee, 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~~ shall 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; A, 2-13-09]

18.20.3.11 TERM OF ~~[FOR-PROFIT] PRIVATE 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.

(1) A licensee ~~must~~ shall 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.]~~

(2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

(3) The application for renewal shall be accompanied by the documents specified in Subsection C of 18.20.3.9 NMAC, except for the documents specified in Paragraphs (7) and (8) of Subsection C of 18.20.3.9 NMAC.

(4) The bureau shall review applications for renewal in the order in which they are received.

C. Approval/disapproval of application for license renewal.

(1) The bureau ~~will~~ shall 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]~~ D of 18.20.3.13 NMAC for each vehicle used for driver training; ~~and~~

(d) the licensee has submitted a continuation certificate or proof of payment for the surety bond required by Paragraph (4) of Subsection B of 18.20.3.10 NMAC; and

~~(4)~~ (e) 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. Notice of rule violation. The bureau may send any licensee a notice of rule violation if it finds that the driver education school is not in compliance with one or more requirements of this rule. The notice of rule violation shall specify the provisions of this rule with which the licensee is not in compliance. Failure to correct the rule violation in the time requested by the bureau may result in suspension or revocation of the license.

~~[D.] E. 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.

(3) If a driver education school ceases operation for any reason, the school shall comply with the requirements of Subsection M of 18.20.3.15 NMAC.

~~[E.] E. Restriction on sale of license.~~ A driver education school license ~~may~~ shall not be sold or transferred.

[18.20.3.11 NMAC - Rp, 18 NMAC 20.3.10 and 20.3.16, 1-1-03; A, 2-13-09]

18.20.3.12 CLASSROOM COURSE REQUIREMENTS FOR ~~[FOR-PROFIT] PRIVATE 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 pursuant to these rules.

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] \$800.00~~, including tax, for enrolling in a driver education course, except that a school may charge a student up to \$100.00 for each credit hour of behind-the-wheel instruction that is not part of the seven (7) hour behind-the-wheel por-

tion of a curriculum:

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] tables or seats with attached tables 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, 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;] if a licensee becomes aware that a student is disabled, inquire as to the need for accommodations, and provide reasonable accommodations for the student, including but not limited to auxiliary aids or services such as assisted listening devices or a sign language interpreter, unless the accommodation presents an undue burden on the licensee; the bureau shall pay for sign language interpretation if the student is under the age of eighteen (18), provided that the licensee shall contact the bureau at least fourteen (14) days before the scheduled date of the driver education course to arrange for interpretation;~~

~~[J. accommodate the special needs of non-English speaking students; whenever a driver education school becomes aware that an enrollee does not~~

~~speaking 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.]~~ **J.** provide [at least] a minimum of thirty (30) [course] credit hours of classroom instruction for each driver education course if the [school] course also [provides] includes a minimum of seven (7) hours of behind-the-wheel training, or fifty-six (56) credit hours of classroom instruction for each driver education course if the [school] course does not [provide] include the minimum hours of behind-the-wheel training; [At least] in addition to the foregoing, either course must include a minimum of six (6) hours of classroom instruction [shall be] devoted to DWI prevention and education and other impairments and distractions and shall include information on organ donation and the Jonathan Spradling Revised Uniform Anatomical Gifts Act, [NMSA 1978] Sections [24-6A-4] 24-6B-1 et seq. NMSA 1978;

(1) when [school] an educational institution 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 educational institution classes are held, and no more than four (4) hours of classroom instruction on days when educational institution classes are not held;

(2) during ~~[summer vacation, Christmas vacation, and spring break]~~ any educational institution vacation or break period of two (2) weeks or more, 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.]~~ **K.** 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.]~~ **L.** use completion certificates purchased from the bureau at a cost of \$1.00 per certificate, issued sequentially by the licensee;

~~[N.]~~ **M.** not permit a student to attend any driver education classes until the student has received written information stating all fees, including primary and 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; A, 2-13-09]

18.20.3.13 BEHIND - THE - WHEEL TRAINING:**A. Hours requirement.**

(1) A ~~[for-profit]~~ private driver education school which provides behind-the-wheel training as part of the course shall provide ~~[at least] a minimum of seven (7) hours of behind-the-wheel training to each student, with no more than thirty (30) days between the end of the classroom course and the beginning of the behind-the-wheel training. At least four (4) of the seven (7) hours shall be on-street training.~~

(2) A ~~[for-profit]~~ private 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 educational institution 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 educational institution 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] driving~~ lesson.

B. Pre-driving classroom instruction. Before a licensee schedules students for on-street training, the licensee shall provide a minimum of nine (9) hours of 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. Hourly behind-the-wheel course. A school may offer hourly behind-the-wheel training to any student requesting such training up to the maximum rate provided in Subsection C of 18.20.3.12 NMAC, provided that the requirements of Subsections C, D, E, F and G of this section shall apply.

~~[E.]~~ **D. Vehicle insurance required.** A licensee shall provide to the bureau a certificate of insurance 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 bodily injury and public liability insurance on all vehicles used for behind-the-wheel driving instruction, pursuant to Section 66-10-3 NMSA 1978, including hired vehicles and non-owned vehicles. The certificate shall list the make, model, and year of each vehicle and shall include a statement from the insurance company that it will notify the bureau thirty (30) days before canceling the insurance. The licensee shall provide a copy of the policy to the bureau upon the bureau's request. The insurance 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:] E.~~ **Other requirements.**

(1) The number of ~~[students]~~ occupants 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, bureau monitor and driver education student may occupy the front seat. Only a student, parent or guardian of a student, instructor, translator, licensee, bureau monitor or person training to become a driver education instructor may occupy a rear seat.

(2) A ~~[for-profit] private~~ driver education school shall maintain a driving log for each student. The driving log shall be maintained in the vehicle during the training and shall be completed at the end of each training. 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, and the student's initials indicating that the student has reviewed the information in the log.

(3) No instructor or student shall use a cell phone ~~[while a student is driving]~~ during behind-the-wheel training except in an emergency, unless otherwise restricted by law or local ordinance.

(4) The instructor shall ensure that each student participating in behind-the-wheel training has in his or her immedi-

ate possession an instructional permit or provisional license issued by the New Mexico motor vehicle division or driver's license from any state before the student may participate in behind-the-wheel training.

~~[E:] E.~~ **Disabled and ~~[special education]~~ other students in need of specialized instruction or equipment.**

(1) When providing behind-the-wheel driving instruction to disabled students and other students in need of specialized instruction or equipment, a private driver education school shall provide individualized instruction for each student based on the nature and severity of the student's disability or special needs.

~~[(*)]~~ (2) When providing behind-the-wheel driving instruction to disabled students and other students in need of specialized instruction or equipment, a ~~[for-profit] private~~ driver education school shall ~~[use]:~~

(a) determine whether the driver education school can provide a reasonable accommodation for the disabled student or the specialized instruction or equipment required by a non-disabled student; and

~~[(*)]~~ (b) ~~[only those instructors] if the driver education school cannot provide a reasonable accommodation or specialized instruction or equipment, refer the student to an instructor certified by the bureau who also ~~[hold]~~ holds the certified driver rehabilitation specialist (CDRS) credential from the association of driver ~~[educators for the disabled] rehabilitation specialists, or an equivalent credential from an organization recognized by the bureau, unless the driver education school currently has a CDRS instructor in its employ [-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:] G.~~ **Car and equipment specifications.** A ~~[for-profit] private~~ 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 (on-street training only) ;

(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, but shall not be placed on any window of the vehicle.

~~[G:] H.~~ **Reports of moving violations and crashes.** A ~~[for-profit] private~~ driver education school shall report to the bureau:

(1) within twenty-four (24) hours of the occurrence, 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; and

(3) the date, time, location, names of all persons involved, name of law enforcement agency and officer handling the investigation for each crash or moving violation.

[18.20.3.13 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03; A, 2-13-09]

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 and ensure that distributors of the school's correspondence course adhere to the same enrollment requirements;

B. use only the curriculum, handouts, videos, and final exam questions approved by the bureau; such materials must include a notification that any student using the materials must be home-schooled or have bureau approval pursuant to Subsection B of 18.20.3.8 NMAC before starting the course, and that such course cannot be taken on-line;

C. provide a minimum of fifty-six (56) ~~[or more]~~ hours of coursework, based on an average person completion time, including a minimum of six (6) hours of coursework devoted to DWI prevention and education and information on organ donation and the Jonathan Spradling Revised Uniform Anatomical Gifts Act, Sections 24-6B-1 et seq. NMSA 1978;

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, issued sequentially by the licensee;

F. specify at least one (1) ~~certified instructor~~ representative to act as liaison with the bureau;

G. specify at least one (1) certified driver education instructor to review each student's work and progress;

H. engage as driver education instructors only those persons who have been certified by the bureau; a licensee shall not serve as an instructor unless the licensee has been certified by the bureau as an instructor pursuant to these rules;

I. inform each student in writing that the student shall have one (1) year from the date of enrollment to complete the course and ensure that this requirement is met;

J. not charge a student more than \$400, including tax, for enrolling in a correspondence course.

[18.20.3.14 NMAC - N, 1-1-03; A, 2-13-09]

18.20.3.15 OPERATING REQUIREMENTS FOR ~~FOR-PROFIT~~ PRIVATE 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 and copying by the bureau or its designee at any time; a licensee shall maintain all hard copies and electronic versions of 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;~~ course;

D. shall, at the time of enrollment and on a quarterly basis thereafter, provide the bureau with a ~~copy of the class roster~~ student report 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;~~ and completed during the quarter on a form prepared or approved by the bureau;

E. shall have a written refund policy and a written reschedule policy which must be issued to each student upon enrollment;

F. shall, upon request, provide each student with a form prepared by the bureau that allows the student or the student's parent to notify the bureau regarding a comment or concern about the school or an instructor;

G. shall provide each stu-

dent upon enrollment with a copy of the graduated driver's license act, Sections 66-5-5 and 66-5-8 NMSA 1978 regarding the practice driving component requirement;

[F.] H. 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.] I. shall conduct all school operations in a professional and courteous manner;

[H.] J. shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations;

[I.] K. shall not publish, advertise, or insinuate in any way that a student is assured of obtaining a driver's license if ~~they take~~ the student takes the course offered by the licensee;

[J.] L. 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;

M. upon ceasing operations for any reason, shall make all driver education school records available for inspection or copying by the bureau or its designee at any time, and shall return all unused completion certificates to the bureau within ten (10) days of the school ceasing operation; the school shall be entitled to a refund of \$1.00 for each unused certificate if requested in writing by the school when it returns the unused certificates; for any certificates not returned within ten (10) days of the school ceasing operation, the bureau shall notify MVD that the certificates are no longer valid.

[18.20.3.15 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03; A, 2-13-09]

18.20.3.16 EVALUATION OF ~~FOR-PROFIT~~ PRIVATE DRIVER EDUCATION SCHOOLS:

A. Responsibility. The bureau or its designee;

(1) 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;

(2) may conduct on-site quality assurance visits; on-site visits may address the adequacy of classroom facilities, instructor's traffic safety knowledge and teaching techniques, learning environment, quality of the curriculum, class materials, examination questions and customer service.

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) the results from 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; A, 2-13-09]

18.20.3.17 CERTIFICATION OF MID SCHOOL, JUNIOR HIGH SCHOOL AND HIGH SCHOOL DRIVER EDUCATION INSTRUCTORS:

A. [Diploma] Certification required. No teacher may serve as a driver education instructor in ~~a school~~ an educational institution without first having obtained a ~~diploma~~ certificate from the bureau. The bureau may in its discretion temporarily waive this requirement upon request of the ~~school~~ educational institution principal or superintendent, contingent on the teacher attending a driver education instructor training course offered by the bureau within twelve (12) months of the date of the waiver. A teacher certified pursuant to this section shall not be certified to teach driver education in a ~~for-profit~~ private driver education school unless ~~he or she~~ the teacher obtains instructor certification pursuant to 18.20.3.18 NMAC.

B. Application requirements. A mid school, junior high school or high school teacher wishing to obtain approval from the bureau to teach driver education at ~~school~~ an educational institution ~~shall send a letter on school letterhead, signed by the school principal or superintendent, containing the following information;~~ shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

C. Contents of application. The application shall be accompanied by:

- (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 or if a private educational institution, a statement from the institution's principal stating that the teacher is qualified to teach;
- (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; and
- (5) the name of the school at which the teacher will be providing driver education instruction.

D. Completeness. When the bureau receives an application for certification as a driver education instructor, the bureau will check the application for completeness.

(1) If the application is incomplete, the bureau shall contact the applicant for additional information within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

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

[C]E. Standards for [certification] issuance of driver education instructor certificate. Prior to approving the teacher to attend training, the bureau shall consider whether [the teacher]:

- (1) the information provided is accurate and valid;
- ~~(1)~~ (2) the teacher is at least twenty-one (21) years of age;
- ~~(2)~~ (3) the teacher holds a valid driver's license; and
- ~~(3)~~ (4) the teacher has a clean driving record which is free of any DWI conviction for the past five (5) years.

[D]E. Approval for training. If the bureau determines that the teacher meets the standards in Subsection [C] E of this section, the bureau shall grant approval for the teacher to attend the bureau's forty (40) hour [classroom portion of the bureau's] driver education instructor training course.

[E]G. Term of certification. A [diploma] certificate of attendance from the classroom portion of the bureau's driver education instructor training course shall certify the teacher to teach in a mid school, junior high school or high school for [five

~~(5)]~~ three (3) years from the date of completion of training. If the mid school, junior high school or high school at which the teacher is teaching changes during the term of the certificate, the teacher shall notify the bureau within ten (10) days of such change.

[F]H. Renewal of certification. A teacher may renew [his/her] the teacher's certification to teach driver education in a school by taking the refresher driver education instructor training course before [his/her] the teacher's diploma expires. A [diploma] certificate of attendance from the bureau's refresher driver education instructor training course shall certify the teacher to teach in a mid school, junior high or high school for [five ~~(5)]~~ three (3) 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] three (3) year period, the teacher's certification will lapse. A teacher teaching in a public educational institution shall provide the bureau with a copy of the teacher's current New Mexico public education department teaching license prior to the end of the three (3) year period.

[18.20.3.17 NMAC - N, 1-1-03; A, 2-13-09]

18.20.3.18 CERTIFICATION OF [FOR-PROFIT] PRIVATE 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 certificate as a driver education instructor [must] shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

C. Contents of application. The application [must] shall be accompanied by:

(1) a copy of the applicant's limited history driving record from the motor vehicle division, driver services bureau or its equivalent from any state in which the applicant has resided in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau;

(2) a state police background check from any state in which the applicant has held a driver's license in the past ten (10) years 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 or its equivalent 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] New Mexico public education department, 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 (3) years of full-time 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.] related work history; and

(7) the name of the school at which the instructor will be providing driver education instruction.

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 within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(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]~~ New Mexico public education department, or has a minimum of three (3) years of full-time 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; and

(8) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act.

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]~~ Each applicant shall complete [the] a forty (40) hour [classroom portion of the bureau's] bureau-sponsored 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) (b) If the applicant is not a licensed teacher, does not hold an advanced degree in education, or does not have proof of having taken an equivalent training course in the past three (3) years, 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) (c) The bureau shall issue a [diploma] certificate of attendance upon satisfactory completion of the [classroom and/or behind the wheel portions of the] driver education instructor training 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]~~ shall 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 with either a minimum of a bachelor's degree or three (3) years of related experience, 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. If the driver education school at which the instructor is teaching changes during the term of the certificate, the instructor shall notify the bureau within ten (10) days of such change.

[18.20.3.18 NMAC - Rp, 18 NMAC 20.3.13, 20.3.14, 20.3.15 and 20.3.16, 1-1-03; A, 2-13-09]

18.20.3.19 RECERTIFICATION OF ~~[FOR PROFIT] PRIVATE DRIVER EDUCATION INSTRUCTORS:~~

A. Certificate renewal.

(1) A driver education instructor ~~[must]~~ shall 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 at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

(3) The application for renewal shall be accompanied by the documents specified in Subsection C of 18.20.3.18 NMAC, except for the documents specified in Paragraphs (5) and (6) of Subsection C of 18.20.3.18 NMAC.

(4) The bureau ~~[will]~~ shall review applications for renewal in the order in which they are received.

B. Continuing education requirements.

(1) Driver education instructors ~~[must]~~ shall complete a minimum of ~~[sixteen (16)]~~ eight (8) credit hours of continuing education each year to qualify for recertification.

(2) A driver education instructor ~~[can]~~ may 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 (1) 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]~~ shall satisfactorily complete the bureau's eight (8) hour driver education refresher course, which ~~[will]~~ shall 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]~~ shall renew the certificate of a driver education instructor for a period of one (1) 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 license year; and

(d) has completed ~~[sixteen (16)]~~ eight (8) hours of continuing education in the license 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)]~~ eight (8) hours of continuing education in the license 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; A, 2-13-09]

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 (10) days that ~~[his/her]~~ the licensee or instructor's 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]~~ the licensee or instructor has 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]~~ whose name appears on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, ~~[NMSA 1978,]~~ Sections 40-5A-1 et seq. NMSA 1978 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. NMSA 1978, 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]~~ the instructor's certificate is suspended or revoked.

D. Notice of suspension or revocation. Upon completion of any proceedings held pursuant to the Uniform Licensing Act:

- (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]~~ shall 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]~~ shall 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.

~~[18.20.3.21 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.]~~

~~[18.20.3.22]~~**18.20.3.21** **E X E M P - T I O N O R V A R I A N C E :**

A. Any school may petition in writing 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]~~ or 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.

E. Each exemption or variance shall be valid for no longer than the end of the current license year.

[18.20.3.21 NMAC - Rp, 18 NMAC 20.3.19 and 20.3.20, 1-1-03; Repealed, 2-13-09; 18.20.3.21 NMAC - Rn, 18.20.3.22 NMAC & A, 2-13-09]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2009

Volume XX	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 2	March 16
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 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 3	August 14
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 2	November 13
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.