

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 in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

EDUCATIONAL RETIREMENT BOARD

The New Mexico Educational Retirement Board reviewed and approved at its 5/30/2024 meeting, after at its 5/30/2024 hearing, to repeal its rule 2.82.5 NMAC, Retirement Benefits filed 6/30/1999 and replace it with 2.82.5 NMAC, Retirement Benefits adopted 5/30/2024 effective 7/1/2024.

The New Mexico Educational Retirement Board reviewed and approved at its 5/30/2024 meeting, after at its 5/30/2024 hearing, to repeal its rule 2.82.9 NMAC, Administrative Unit Reports and Remittances filed 6/30/1999 and replace it with 2.82.9 NMAC, Administrative Unit Reports and Remittances adopted 5/30/2024 effective 7/1/2025.

EDUCATIONAL RETIREMENT BOARD

TITLE 2 PUBLIC
FINANCE
CHAPTER 82 EDUCATIONAL
RETIREMENT
PART 5 RETIREMENT
BENEFITS

2.82.5.1 ISSUING
AGENCY: Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129
 [2.82.5.1 NMAC - Rp, 2.82.5.1 NMAC, 07/01/2024]

2.82.5.2 SCOPE: This rule applies to procedures and eligibility for retirement, and the calculation of and selection of options for benefits.
 [2.82.5.2 NMAC - Rp, 2.82.5.2 NMAC, 07/01/2024]

2.82.5.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.
 [2.82.5.3 NMAC - Rp, 2.82.5.3 NMAC, 07/01/2024]

2.82.5.4 DURATION:
 Permanent
 [2.82.5.4 NMAC - Rp, 2.82.5.4 NMAC, 07/01/2024]

2.82.5.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section or paragraph.
 [2.82.5.5 NMAC - Rp, 2.82.5.5 NMAC, 07/01/2024]

2.82.5.6 OBJECTIVE: To specify procedures for retirement, benefits and options, and provide rules for the restoring process.
 [2.82.5.6 NMAC - Rp, 2.82.5.6 NMAC, 07/01/2024]

2.82.5.7 DEFINITIONS:
[RESERVED]

2.82.5.8 ELIGIBILITY:
A. A member shall not be considered eligible to retire unless the member shall have completed at least five years of contributory employment even though such member might otherwise be eligible by reason of age and service, and tender of payment for contributory employment.

B. A school bus owner-driver shall not be eligible to retire unless the owner-driver terminates the owner-driver contract with the public schools.
 [2.82.5.8 NMAC - Rp, 2.82.5.8 NMAC, 07/01/2024]

2.82.5.9 APPLICATIONS:
A. Retirement application forms furnished by

the director and made available in each local administrative unit, may be initiated by the member or the member's employer. The member may also write to the director to apply for benefits. In either case, the application must be signed by the member.

B. If a member seeking retirement is not employed at the time of application, the director shall deal directly with the member in processing the application, without reference to, or concurrence of the last employer.

C. The application for retirement (being the completed form supplied by the director) must be filed in the office of the director prior to the desired effective date of benefits.

D. A member who has been re-employed following a previous retirement shall make application for benefits in the same manner as one who has not previously been retired.

E. Any member with an effective retirement date on or after July 1, 2015 shall provide authorization to the director for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed in the form prescribed by the director. The director may waive this requirement upon a showing of exceptional circumstances.

F. In order to implement Section 22-11-32 NMSA 1978, the director shall, at the time of the member's application for benefits, obtain the member's written statement that the member or the member's beneficiary does or does not receive any other benefit from any public agency which would be adversely affected by the member or the member's beneficiary's receipt of benefits pursuant to the Educational Retirement Act. If the member or the

member's beneficiary does, or will receive such benefits, the director shall make the benefit adjustment called for in this section.

[2.82.5.9 NMAC - Rp, 2.82.5.9 NMAC, 07/01/2024]

2.82.5.10 COMPUTATION AND COMMENCEMENT OF RETIREMENT BENEFITS:

A. Upon retirement, the following procedures shall apply with regard to commencement of the member's benefit:

(1) If the retiring member's employment terminated at least 90 days prior to the effective date of retirement, the benefit may be commenced at the end of the month following the effective date of retirement.

(2) If the retiring member's employment terminated within 90 days prior to the effective date of retirement, the retiring member's benefit may be estimated by the director and commenced at the end of the month following the effective date of retirement.

(3) After the employer report is received from the administrative unit, reporting the retiring member's final earnings, the director shall determine whether or not the estimated benefit is correct. If the estimated benefit is incorrect, the director shall make the appropriate adjustment to the member's benefit, retroactive to the effective date of the benefit. This adjustment, if required, shall be made at the earliest practical date. The retiring member shall be advised regarding the nature of any such adjustment. An adjustment will be made in this manner if and only if the adjustment based upon the member's actual earnings would result in a monthly benefit which differs more than one dollar from the estimated benefit.

B. Whenever a retiring member completes the academic or fiscal year prior to July 1, the member shall not be entitled to retirement benefits for the months of July or August if the member returns to employment at the beginning

of the next following academic or fiscal year. If a member shall have received benefits for such months, the member shall be required by the director to return the sums received, to the educational retirement fund, in accordance with Section 22-11-40 NMSA 1978.

C. The retiring member shall be furnished with copies of all computations including a listing of the member's service credit, and the member shall have 90 days after receipt of same in which to file notice of correction with the director, after which time the computations and service may not be corrected by the member.

D. A member's average annual salary as defined in Section 22-11-30 NMSA 1978 shall be the average annual earnings of the member in the last 20 calendar quarters in which there were earnings preceding retirement or the average annual earnings of any 20 consecutive calendar quarters in which there were earnings, whichever is greater. Salary earned by a retiree who has returned to employment under 2.82.5.15 NMAC, 2.82.5.16 NMAC or 2.82.5.17 NMAC shall not be used in determining a member's average annual salary.

E. When determining a member's last five-year average annual salary (last 20 calendar quarters), the director shall use the reported earnings on which contributions have been made by the member during the 20 quarters of employment immediately preceding the member's date of termination, except that if a member's last employment terminated at least one month prior to the close of the calendar quarter (or one month prior to the close of the academic year if such ends in May), the member's last five years' earnings shall be the reported earnings upon which contributions have been made by the member during the five years of employment preceding the end of the month in which termination occurs. In such cases, any earnings in a calendar quarter shall be considered

as earnings for the full quarter, except for the first quarter and the last quarter of the last five years of employment.

F. When the member's application for benefits has been approved and the member's effective date of retirement has been reached, the member shall then be retired.

G. Benefits shall not be commenced until the retiring member has elected the retirement benefit as provided in Section 22-11-30 NMSA 1978, or an optional benefit pursuant to Section 22-11-29 NMSA 1978.

H. Re-retirement benefits shall be computed in the following manner:

(1) The re-retirement benefit will be calculated in the same way as the member's last benefit and will be based on the last five-year average or the highest consecutive five-year average, whichever is greater, for which contributions were made, and the member's total service at re-retirement. The retirement benefit formula will be the same as at last retirement unless the member returns to employment for at least four quarters after the effective date of change in the formula. If this occurs, the benefit computation will be based on the benefit formula in effect at the time of re-retirement.

(2) The re-retirement benefit calculated above is reduced under the following conditions:

(a) At re-retirement the member's retirement age shall be the member's chronological age less any period of time(s) during which benefits were received while in retirement. If this age is under 60 and the member's total service is under 25 years, the benefit is reduced by six-tenths percent for each quarter year under 60, down to age 55, plus one and eight-tenths percent for each quarter year this age is under 55.

(b) If the last benefit was payable as a reduced benefit under the terms of an option, the same terms and reduction shall apply to the re-retirement benefit.

(c)
In no case can the member's re-retirement benefit be less than the member was receiving when the member returned to employment. [2.82.5.10 NMAC - Rp, 2.82.5.10 NMAC, 07/01/2024]

2.82.5.11 EFFECTIVE DATE OF BENEFIT:

A. Whenever a retiring member completes the academic year for which the member has been contracted or employed, the member's effective date of retirement shall be July 1, provided that application is made as stipulated in Subsection B of 2.82.5.11 NMAC. Whenever a retiring member terminates at a time other than at the end of the academic year for which the retiring member has been contracted or employed, the effective date may be the first day of the month following termination, provided that application must be as stipulated in Subsection B of 2.82.5.11 NMAC.

B. The effective date of benefits cannot in any case be earlier than the first day of the month following receipt of the completed application forms (as provided by the director) from the member or the member's employer, except as provided in Subsection D of 2.82.5.11 NMAC.

C. Section 22-11-28 NMSA 1978 shall be construed to mean that the effective date of benefits shall be in accordance with Subsection D of 2.82.5.11 NMAC, and further that on concurrence of the local administrative unit for retirement on a date other than July 1 has been given when the local administrative unit certifies the member's termination on the application form.

D. If a member's application for benefits is received after the effective date desired by the member, and such desired effective date would otherwise be in accordance with the law and rules of the board, the director may commence the member's benefit as of such date, only if the delay in filing was due to delay in processing by the local

administrative unit, and not due to any fault or wish of the member. The director shall also consider an application to have been duly filed in this office on the date postmarked if the application is mailed. [2.82.5.11 NMAC - Rp, 2.82.5.11 NMAC, 07/01/2024]

2.82.5.12 APPROVAL OF RETIREMENT APPLICATION:

The director is authorized to approve duly executed applications for age and service retirement on behalf of the board in order to insure timely approval of same; however, all such approvals must be ratified by the educational retirement board at a subsequent meeting of the board. [2.82.5.12 NMAC - Rp, 2.82.5.12 NMAC, 07/01/2024]

2.82.5.13 OPTIONS:

A. Option B provided in accordance with Subsection D of Section 22-11-29 NMSA 1978 shall be operative:

- (1) during periods of non-participation, if contributions are not withdrawn, and
- (2) during periods of time when a member is receiving disability benefits, and
- (3) during the period of time from a member's effective retirement date until the final election of option is received in the ERB office.

B. If a member with option B coverage should terminate employment and withdraw the member's contributions, thereby causing the option B to become inoperative, the member may restore the amount withdrawn, together with required interest, and cause the option to become operative again.

C. An option election on file with the director by a member who has not retired shall become void on July 1, 1984 at which time the member will automatically be afforded the coverage of option B.

D. Upon retirement, a member may elect an optional benefit in accordance with Section 22-11-29 NMSA 1978. If electing coverage under option B, the member may not designate a beneficiary more than

10 years younger than the member unless the beneficiary is the member's spouse. In order that the retiring member may have the opportunity to properly consider this decision and to allow sufficient time for the member and the board to carry out necessary administrative procedures relating to the election of an option, an option election filed with the director subsequent to the effective date of retirement, but prior to commencement of benefit payments, shall be deemed to have been filed in accordance with the provisions of Section 22-11-29 NMSA 1978.

E. Whenever a member with option B coverage dies prior to the member's effective retirement date, it shall be incumbent upon the member's beneficiary to furnish proof of death to the director. The director shall then advise the beneficiary of the amount payable as a lump-sum settlement. Additionally, the director shall advise the beneficiary of the monthly amount of benefit payable as of the first of the month following the death of the member, as well as the approximate monthly amount payable, if the beneficiary defers receipt of the benefit to the date on which the member would have been age 60, had the member lived. The beneficiary shall then advise the director, in writing, whether the member's wishes to receive a lump-sum payment, commence the benefit at the earliest possible date, or defer the benefit to a date not later than the date on which the member would have attained age 60, had the member lived. If the beneficiary chooses a monthly benefit, the member shall not be required to make formal application for such benefit as required of members seeking retirement status. If the beneficiary chooses to defer the benefit to a later date, the member must advise the director at least 30 days in advance of the date on which the member's wishes benefit to start.

F. Upon the death of a member who has the automatic option B coverage, and who has failed to name or who has incorrectly named

a beneficiary under the option, the following shall apply:

(1) If the member has named one person on the ERB beneficiary designation form or form 42, that person shall be declared the beneficiary under option B.

(2) If more than one person is named on the ERB beneficiary designation form or form 42 of which one is the spouse of the member, the spouse shall be declared the beneficiary for option B purposes.

(3) If the beneficiary named on the ERB beneficiary designation form or form 42 is deceased, a lump-sum payment of contributions plus applicable interest will be paid to the estate of the member.

(4) If the beneficiary named on the ERB beneficiary designation form or form 42 is a minor child, the legal guardian, if other than the parent, will designate the manner in which the alternative payments under option B will be paid to the minor.

(5) If the beneficiary named on the ERB beneficiary designation form or form 42 is a minor child in the care and custody of a parent, the parent shall designate the method of payment to the minor child under the option B.

(6) If more than one person is named on the ERB beneficiary designation form or form 42, none of which is the spouse of the member, a lump-sum payment of contributions plus appropriate interest shall be made to the beneficiaries as per the directions of the member on the ERB beneficiary designation form or form 42. In the absence of contrary directions by the member, equal shares will be made. If one or more of the beneficiaries are minors, the distribution to the minor(s) shall be made to:

(a) a trust fund for the minor(s), if established, or

(b) on behalf of the minor(s), a person who has care and custody of the minor, or

(c) directly to the beneficiary(ies) upon

attainment of age 18.

(d) these methods of distribution of payments shall also apply to Paragraphs (4) and (5) above.

(7) If the beneficiary named on the ERB beneficiary designation form or form 42 is not a human being, the beneficiary shall not be eligible for Option B coverage and shall receive a lump-sum payment of the member's contributions plus applicable interest at the rate set by the board.

[2.82.5.13 NMAC - Rp, 2.82.5.13 NMAC, 07/01/2024]

2.82.5.14 COST-OF-LIVING ADJUSTMENTS:

A. The adjustment factor to be applied annually to eligible benefits shall be determined by using the "*Consumer Price Index for All Urban Consumers U.S. City Average All Items*".

B. If a member who was certified by the board as disabled at the time of regular retirement returns to gainful employment with a local administrative unit in a position commensurate with the member's background, education and experience, the member's benefit shall no longer be subject to adjustments as provided for in Subsection G of Section 22-11-31 NMSA 1978. Any adjustments made prior to the date of reemployment shall remain in effect. All future adjustments shall be made solely as provided for in Subsections B and C of Section 22-11-31 NMSA 1978.

[2.82.5.14 NMAC - Rp, 2.82.5.14 NMAC, 07/01/2024]

2.82.5.15 RETURN TO WORK PROGRAM:

A. A retired member cannot return to employment with any LAU until the member submits and ERB approves a return to work application prescribed by the Board verifying their eligibility for the return to work program.

B. For purposes of return to work, including Sections 15 through 18 of 2.82.5 NMAC, a retired member is deemed "employed" if

a retired member is or should be included in the work report provided by the employing LAU to the ERB pursuant to 2.82.9.8. NMAC as being paid a wage.

C. If a retired member who would otherwise qualify for a return to work program receives a written notice ("Notice of Violation") from ERB notifying the member that the member failed to submit the required return to work application prior to returning to employment, the member shall:

(1) Immediately terminate employment and notify ERB of such termination; or

(2) Submit a completed return to work application for the appropriate return to work program within 30 days of the date of the Notice of Violation.

D. A retired member who receives a Notice of Violation who would qualify for a return to work program but fails to terminate employment or submit a return to work application within 30 days of the date of the Notice of Violation shall have their retirement suspended immediately and before their monthly retirement benefits can resume must:

(1) certify to ERB and provide documentation from their employer(s) verifying that they have terminated all LAU employment, and

(2) reapply for retirement by completing the application process provided in 2.82.5.9 NMAC as if a first-time applicant.

E. A retired member who receives a Notice of Violation who would not qualify for a return to work program because the member has not satisfied the 90-day layout has not had a bona fide termination and is ineligible to receive a retirement benefit and shall have their retirement suspended immediately and shall pay to the educational retirement fund a sum equal to the total retirement benefits the member received while employed and before their monthly retirement benefits can resume must:

(1) certify

to ERB and provide documentation from their employer(s) verifying that they have terminated all LAU employment, and

(2) reapply for retirement by completing the application process provided in 2.82.5.9 NMAC as if a first-time applicant.

F. If the retired member did not render service to any LAU for at least 90 consecutive days after the date of retirement (“layout”) and before they returned to employment, the member is not required to layout for an additional 90 consecutive days and shall be deemed to have satisfied the 90-day non-service requirement under Paragraph (1) of Subsection A of 2.82.5.17 NMAC and Paragraph (1) of Subsection A of 2.82.5.18 NMAC.

G. Periods of employment or wages received by a retired member prior to their approval in a return to work program under this Paragraph C shall count against the limits provided in rules 2.82.5.16, 2.82.5.17, and 2.82.5.18 NMAC.

H. No time that a retired member has been employed by a local administrative unit (“LAU”) under any return to work (“return to work”) program may be used in the calculation of retirement benefits and a retired member cannot acquire or purchase service credit for the period of the retired member’s re-employment with a LAU under any return to work program.

I. A retired member who returns to work under an approved return to work program may, if qualified, change programs once per year by submitting a return to work application for the different program within the month of July. If mailed, an application will be deemed submitted as of the postmark date.

J. Independent Contractors. A retired member who is not employed by an LAU and whose independent contractor application has been approved by ERB may provide services to that LAU as an independent contractor.

(1) A retired member who wants to provide

services as an independent contractor to an LAU or through an arrangement with a third party contracting with an LAU shall submit and obtain approval of an independent contractor application from ERB prior to providing such services.

(2) A retired member who fails to submit and obtain approval as an independent contractor prior to providing services to an LAU may be subject to any appropriate action contained in this rule if ERB determines that the member was employed during the period of providing services to the LAU.

K. Each LAU shall create, maintain and distribute to its employees an internal return to work policy consistent with the applicable statutes and 2.82.5 NMAC.

L. A final written decision of the director which results in a suspension of benefits for a violation of Sections 15 through 18 of 2.82.5 NMAC may be appealed pursuant to 2.82.11 NMAC.

M. All Notices of Violation shall be mailed certified via the United States postal service.

N. All applications, notices and other communications required from members pursuant to Sections 15 through 18 of 2.82.5 NMAC should be mailed certified via the United States postal service; provided that ERB shall accept delivery of any such applications, notices and other communications when received regardless of the delivery method. By accepting delivery of an application, notice or other communications, ERB does not waive any deadline, requirement for completion or other requirement contained in Sections 15 through 18 of 2.82.5 NMAC.

[2.82.5.15 NMAC - Rp, 2.82.5.15 NMAC, 07/01/2024]

2.82.5.16 RETURN TO WORK .25 FTE OR LESS:

A. A retired member may return to employment (includes “substitution”) at a level of .25 FTE or less without affecting the retired member’s retirement benefit provided

the retired member submits a return to work application and is approved by ERB prior to commencing employment.

B. In the event that a retired member enters into an agreement which provides for employment at a level greater than .25 FTE or actually works greater than .25 FTE becomes ineligible to receive retirement benefits. The retired member’s retirement benefit will be suspended for the unauthorized period of the employment, and the retired member will be returned to an active status effective the first day of the month following the month in which the retired member’s employment exceeded .25 FTE. The retired member shall pay the educational retirement fund a sum equal to all retirement benefits the retired member received while ineligible.

C. If suspended, before the member’s monthly retirement benefits can resume, the suspended retired member must certify to ERB and provide documentation from their employer(s) verifying that they have terminated all employment that would disqualify them from retirement under the Educational Retirement Act and must reapply for retirement.

[2.82.5.16 NMAC - Rp, 2.82.5.16 NMAC, 07/01/2024]

2.82.5.17 RETURN TO WORK LESS THAN \$15,000 PER YEAR:

A. A retired member may return to employment (includes “substitution”) pursuant to Subsection H of Section 22-11-25.1 NMSA 1978 without affecting the retired member’s retirement benefit provided that:

(1) the retired member has not rendered service to an LAU for at least 90 consecutive days after the date of retirement;

(2) prior to the date of retirement or within 90 days after the date of retirement, the retired member did not enter into a formal or informal agreement with a LAU or a contractor providing services to a LAU to return to employment;

(3) the retired member earns less than fifteen

thousand (\$15,000) per fiscal year; and

(4) The retired member submits a return to work application and is approved by ERB prior to commencing employment.

B. If a retired member earns fifteen thousand (\$15,000) or more per fiscal year, the retired member becomes ineligible to receive retirement benefits and the retired member's retirement benefit shall be suspended for the duration of the employment and the retired member shall be returned to active status effective the first day of the month following the month in which the retired member has earnings in excess of the above limit. The retired member shall pay the educational retirement fund a sum equal to all retirement benefits the retired member received while ineligible.

C. If suspended, before the member's monthly retirement benefits can resume, the suspended retired member must certify to ERB and provide documentation from their employer(s) verifying that they have terminated all LAU employment and must reapply for retirement. The member's retirement will commence as of the first day of the month following the date ERB has received the necessary documentation.

[2.82.5.17 NMAC - Rp, 2.82.5.17 NMAC, 07/01/2024]

2.82.5.18 RETURN TO WORK 36 MONTHS:

A. A retired member may return to employment pursuant to Subsection I of Section 22-11-25.1 NMSA 1978 without affecting the retired member's retirement benefit provided that:

(1) the retired member has not rendered service to a local administrative unit for at least 90 consecutive days after the date of retirement;

(2) the retired member returns to employment for a period of no more than 36 consecutive or nonconsecutive months; and

(3) the retired member submits a return to work application and is approved by ERB

prior to commencing employment.

B. If a retired member returns to employment for more than 36 consecutive or nonconsecutive months pursuant to Subsection I of Section 22-11-25.1 NMSA 1978, the retired member becomes ineligible to receive retirement benefits and the retired member's retirement benefit shall be suspended for the period of employment which exceeds 36 consecutive or nonconsecutive months and the retired member shall be returned to active status effective the first day of the month following the month in which the retired member's employment exceeded 36 consecutive or nonconsecutive months. The retired member shall pay the educational retirement fund a sum equal to all retirement payments the retired member received while ineligible.

C. If suspended, before the member's monthly retirement benefits can resume, the suspended retired member must certify to ERB and provide documentation from their employer(s) verifying that they have terminated all LAU employment and must reapply for retirement. The member's retirement will commence as of the first day of the month following the date ERB has received the necessary documentation.

[2.82.5.18 NMAC - Rp, 2.82.5.18 NMAC, 07/01/2024]

2.82.5.19 TERMINATION OF PLAN; ACCRUED RIGHTS OF MEMBERS:

The rights of members to benefits accrued, to the extent funded, will become vested to the extent required by and upon the events set forth in Treas. Reg. Section 1.401-6(a)(1). See 26 CFR 1.401-6.

[2.82.5.19 NMAC - Rp, 2.82.5.19 NMAC, 07/01/2024]

2.82.5.20 INTERNAL REVENUE CODE SELECTION:

The Educational Retirement Act of New Mexico is intended to satisfy Section 401(a) of the Internal Revenue Code and to be a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code.

[2.82.5.20 NMAC - Rp, 2.82.5.20 NMAC, 07/01/2024]

2.82.5.21 ROLLOVER DISTRIBUTIONS FOR NON-SPOUSE BENEFICIARIES:

The Educational Retirement Act shall allow direct rollovers to non-spouse beneficiaries for lump sum distributions only, and such distributions must be requested before the end of the year after the year of the member's death. No partial rollovers shall be permitted. A direct rollover by a non-spouse beneficiary must be made into a traditional or Roth IRA established on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account (IRA) pursuant to the provisions of Section 402(c)(11) of the Internal Revenue Code. The distribution must also otherwise satisfy the definition of an "eligible rollover distribution" under Section 401(a)(31) of the Internal Revenue Code. All other current rules applicable to rollover distributions under the Educational Retirement Act, or adopted by the board pursuant to the Educational Retirement Act, must be followed. The non-spouse beneficiary shall be notified that the member is responsible for following the applicable minimum required distribution rules under Section 401(a)(9) of the Internal Revenue Code.

[2.82.5.21 NMAC - Rp, 2.82.5.21 NMAC, 07/01/2024]

2.82.5.22 DEATH BENEFITS WHILE PERFORMING MILITARY SERVICE:

In the case of a death or disability occurring on or after January 1, 2007, if a member dies while performing qualified military service (as defined in section 414(u)), the survivors of the member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service not otherwise credited under the terms of the Educational Retirement Act) provided under the plan as if the member had resumed and terminated employment on account of death.

[2.82.5.22 NMAC - Rp, 2.82.5.22 NMAC, 07/01/2024]

HISTORY OF 2.82.5 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: ERB 67-3, Rules and Procedures, filed 6/30/1967. ERB 78-1, Rules and Procedures, filed 8/7/1978. ERB Rule V, Retirement Benefits, filed 7/2/1982.

History of Repealed Material: 2.82.5 NMAC – Retirement Benefits, filed 6/30/1999, was repealed and replaced by 2.82.5 NMAC – Retirement Benefits, effective 07/01/2024.

**EDUCATIONAL
 RETIREMENT BOARD**

**TITLE 2 PUBLIC
 FINANCE
 CHAPTER 82 EDUCATIONAL
 RETIREMENT
 PART 9 ADMINISTRATIVE
 UNIT REPORTS AND
 REMITTANCES**

2.82.9.1 ISSUING
AGENCY: Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129./
 [2.82.9.1 NMAC - Rp, 2.82.9.1 NMAC, 07/01/2025]

2.82.9.2 SCOPE: This rule applies to local administrative units and state agencies required to file reports on contributions to the Educational Retirement Act (ERA) fund.
 [2.82.9.2 NMAC - Rp, 2.82.9.2 NMAC, 07/01/2025]

2.82.9.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.
 [2.82.9.3 NMAC - Rp, 2.82.9.3 NMAC, 07/01/2025]

2.82.9.4 DURATION:
 Permanent.
 [2.82.9.4 NMAC - Rp, 2.82.9.4 NMAC, 07/01/2025]

2.82.9.5 EFFECTIVE DATE: July 1, 2025, unless a later date is cited at the end of a section or paragraph.
 [2.82.9.5 NMAC - Rp, 2.82.9.5 NMAC, 07/01/2025]

2.82.9.6 OBJECTIVE:
 Instructions for preparing and filing timely reports and specifies penalties for late filing of reports or late deposit of contributions.
 [2.82.9.6 NMAC - Rp, 2.82.9.6 NMAC, 07/01/2025]

2.82.9.7 DEFINITIONS:
A. “Fiscal year”
 means the New Mexico state government fiscal year – July 1 through June 30.
B. “LAU” means local administrative unit.
C. “Terminate” means to leave employment with an LAU for any reason.
 [2.82.9.7 NMAC - Rp, 2.82.9.7 NMAC, 07/01/2025]

2.82.9.8 EMPLOYER REPORTS:
A. Instructions for the preparation and handling of employer reports and monthly remittances by the local administrative units shall be outlined in detail once each year and electronically transmitted to each local administrative unit by the director.
B. Employer reports shall encompass all local administrative unit employees including those employees whom the local administrative unit has identified as excluded from coverage except that an employer may omit student employees and resident physicians.
C. Monthly contributions from employees and local administrative units shall be electronically transmitted no later than the 15th day of the month following the month for which contributions are withheld.

(1) Employer reports and contributions shall be electronically transmitted or postmarked no later than the 15th of the following month. The director may enter into an agreement with a local administrative unit for an extension of this deadline for the employer report. No such extension is available for submission of the contributions.

(2) When the 15th of the month falls on a weekend or holiday, the report and contributions are due on the next workday.

(3) Local administrative units shall be assessed late charges for not submitting reports or contributions in accordance with the above schedule. A charge of fifty dollars (\$50) per day shall be assessed for untimely reports. Upon a written showing of good cause, the director may waive charges to the local administrative unit for untimely reports. No such waiver of charges is available for late contributions. The charges for late contributions will be calculated at a rate equal to the state treasurer’s overnight investment program rate plus one percent. The rate will be applied daily and cumulatively for the period of time from the 15th to the date of postmark. The late charge shall be the greater amount calculated by applying the foregoing rate or ten dollars (\$10). The director shall report any and all such assessments and waivers to the board.

(4) A local administrative unit shall be assessed a penalty for each report filed that fails to correctly include or identify an individual as employed or to mis-categorize an employee when submitting a work report reflecting payment of wages as required pursuant to this rule. The penalty shall be payable to ERB and shall be assessed for each report filed incorrectly as follows: 1st failure – five hundred dollars (\$500), 2nd failure – one thousand dollars (\$1,000), 3rd and each subsequent failure – one thousand five hundred dollars (\$1,500). Upon a written showing of

good cause, the director may waive the penalty for a first failure. Upon a written showing of good cause, the Board may waive the penalty for a second and any subsequent failure.

D. The director shall prepare forms for all regular reports or make available other means for such regular reports from the local administrative units as may be required in the administration of the Educational Retirement Act. [2.82.9.8 NMAC - Rp, 2.82.9.8 NMAC, 07/01/2025]

HISTORY OF 2.82.9 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: ERB 67-3, Rules and Procedures, filed 6/30/1967.

ERB 78-1, Rules and Procedures, filed 8/7/1978.

ERB Rule IX, Administrative Unit Reports and Remittances, filed 7/2/1982.

History of Repealed Material:

2.82.5 NMAC – Retirement Benefits, filed 6/30/1999, was repealed and replaced by 2.82.9 NMAC – Retirement Benefits, effective 07/01/2025.

HIGHER EDUCATION DEPARTMENT

The New Mexico Higher Education Department repealed and replaced 5.7.20 NMAC - LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM with 5.7.20 NMAC - LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM, adopted 6/13/2024 and effective 6/25/2024.

The New Mexico Higher Education Department repealed and replaced 5.7.37 NMAC - NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM with 5.7.37 NMAC - NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM, adopted 6/13/2024 and effective 6/25/2024.

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 7 TUITION AND FINANCIAL AID PART 20 LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM

5.7.20.1 ISSUING AGENCY: State of New Mexico Higher Education Department. [5.7.20.1 NMAC - Rp, 5.7.20.1 NMAC, 6/25/2024]

5.7.20.2 SCOPE: Provisions of 5.7.20 NMAC apply to all state public post-secondary institutions and tribal colleges in the state of New Mexico. [5.7.20.2 NMAC - Rp, 5.7.20.2 NMAC, 6/25/2024]

5.7.20.3 STATUTORY AUTHORITY: Sections 6-24-1 et seq. NMSA 1978 and Sections 21-21N-1 et seq. NMSA 1978. [5.7.20.3 NMAC - Rp, 5.7.20.3 NMAC, 6/25/2024]

5.7.20.4 DURATION: Permanent. [5.7.20.4 NMAC - Rp, 5.7.20.4 NMAC, 6/25/2024]

5.7.20.5 EFFECTIVE DATE: June 25, 2024, unless a later date is cited at the end of a section. [5.7.20.5 NMAC - Rp, 5.7.20.5 NMAC, 6/25/2024]

5.7.20.6 OBJECTIVE:

A. The objective of 5.7.20 NMAC is to provide a level of financial support to qualified New Mexico students who are enrolled full-time at an eligible New Mexico public post-secondary educational institution or tribal college. This level of financial support is intended to help defray the cost of tuition at the public post-secondary educational institution or tribal college where the student is enrolled.

B. A further purpose of 5.7.20 NMAC is to encourage New

Mexico high school students who pursue a post-secondary education in New Mexico to complete a first four-year degree within a maximum of eight semesters or two-year degree within a maximum of four semesters (the number of semesters is so determined as the initial award is not made until the second semester of college enrollment and shall not include summer semesters; provided that in no case shall the award fund more than three summer semesters).

C. As it applies to students with disabilities who may require special accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution that serves students with disabilities, shall review both the definition of “full-time” and the maximum number of consecutive semesters of eligibility and adjust either or both as deemed reasonable and appropriate, based on the student’s disability needs. In no case shall “full-time” mean fewer than six credit hours per semester during the fall and spring semesters or three credit hours per summer semester, if attending, and in no case shall eligibility extend beyond 14 consecutive program semesters at a four-year institution and seven consecutive program semesters at a two-year institution. If a New Mexico resident had to leave the state to receive an education pursuant to the federal Individuals with Disabilities Education Act the student shall be eligible for the scholarship if they graduated from an accredited high school in another state and otherwise met the qualifications for a legislative lottery scholarship pursuant to the definition of a qualified student in Subsection N of 5.7.20.7 NMAC. [5.7.20.6 NMAC - Rp, 5.7.20.6 NMAC, 6/25/2024]

5.7.20.7 DEFINITIONS

A. “Academic year” means a consecutive period of three semesters to include fall, spring and summer.

B. “Accelerated program” means one in which a summer semester is a program requirement and not a student choice;

a cohort that requires sequence of courses taken in summer semester.

C. “Community college” means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978, respectively.

D. “Comprehensive institution” means eastern New Mexico university, New Mexico highlands university, northern New Mexico college or western New Mexico university.

E. “Consortium” means a written agreement between a home institution and one or more host institutions for consideration of combined enrollment for eligibility:

(1) home institution is the institution where the student is enrolled in a degree or certificate seeking program and is receiving lottery scholarship funds;

(2) host institution is the secondary institution where the student is taking part of their program requirements.

F. “Department” means the New Mexico higher education department (NMHED).

G. “Full-time” means 30 credit hours successfully completed each regular academic year at a research institution, comprehensive institution or tribal institution or 24 successfully credit hours completed per academic year at a community college. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student’s home institution.

H. “GPA” means grade point average.

I. “Legislative lottery scholarship” means a scholarship that provides tuition assistance per semester for qualified students awarded from the proceeds of the New Mexico lottery tuition fund to defray all or part of the cost of tuition.

J. “Non-enrollment” means a student is not enrolled in a public post-secondary educational institution.

K. “Probation” means a period of time that a student fails to meet continuing eligibility for exceptional mitigating circumstances as determined by the lead financial aid officer at the institution; as described in Subsection D of 5.7.20.8 NMAC.

L. “Program semesters” means those semesters for which a qualified student may receive a legislative lottery scholarship, which includes the summer semester and excludes the first semester of full-time attendance at a public post-secondary educational institution or tribal college; provided that the first semester cannot be the summer semester.

M. “Public post-secondary educational institution” means a four-year state educational institution or a community college.

N. “Qualified student” means a full-time student who graduated from a public or accredited private New Mexico high school or completed the requirements of a home-based or nonpublic secondary educational program in New Mexico or received a high school equivalency credential recognized by the state of New Mexico while maintaining residency in New Mexico and who either:

(1) within 16 months of graduation or completion of a secondary educational program specified in this subsection, was accepted for entrance to and subsequently enrolled full-time at a public post-secondary educational institution or tribal college without having previously enrolled at a non-qualifying public post-secondary institution or tribal college; or

(2) within four months of graduation or completion of a secondary educational program specified in this subsection, began service in the United States armed forces and within 16 months of completion of honorable service or medical discharge from the service, subsequently enrolled full-time at a public post-secondary educational institution or tribal college without having previously enrolled at a non-qualifying public post-secondary institution or tribal college; and

(3) successfully completed the qualifying semester at a public post-secondary educational institution or tribal college with a GPA of 2.5 or higher on a 4.0 scale during the first semester of and completes twelve or more credit hours.

O. “Research institution” means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

P. “State educational institution” means an institution of higher education enumerated in Article 12, Section 11 of the Constitution of New Mexico.

Q. “Summer semester” means a semester equal to fall or spring semester in duration or intensity.

R. “Tribal college” means a tribally, federally or congressionally chartered post-secondary educational institution with a physical campus in New Mexico that is accredited by the higher learning commission. [5.7.20.7 NMAC - Rp, 5.7.20.7 NMAC, 6/25/2024]

5.7.20.8 INITIAL ELIGIBILITY:

A. A scholarship may be awarded to a student in their second semester who has met first semester eligibility requirements as follows:

(1) has established and maintained New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC. All residency requirements must be met upon completion of high school, graduation, or receipt of a high school equivalency credential recognized by the State of New Mexico;

(2) has been determined to be a qualified student pursuant to Subsection N of 5.7.20.7 NMAC;

(3) has enrolled in no fewer than twelve credit hours in the fall and spring semesters and between three and nine

credit hours for summer semesters; provided that the student is not required to attend summer semesters to maintain eligibility unless required as part of an accelerated program; and further provided that during a summer semester the student may enroll in more than nine credit hours but the legislative lottery scholarship shall be capped at the tuition charged for nine credit hours; and

(4) has met requirements in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC or students with exceptional mitigating circumstances as determined by the institution's lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the legislative lottery scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution's lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution's lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC; and

(b) if, in the professional judgment of the institution's lead financial aid officer, the student's exceptional mitigating circumstance is recognized as a valid reason for the student's inability to meet the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC the student's initial eligibility for the legislative lottery scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements

of Paragraph (4) of Subsection A of 5.7.20.8 NMAC.

B. Other provisions regarding initial eligibility.

(1) Students with disabilities or their legal guardian shall obtain a referral from the student services division of the post-secondary educational institution where the student is enrolled that oversees students with special needs requests to change the credit hours to be considered full-time for scholarship eligibility; referrals and any sufficient documentation shall be received no later than 30 days after the student's enrollment start date for their first semester.

(2) Students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for lottery scholarship eligibility.

(3) During the 16 months after graduation from a public or accredited private New Mexico high school or completion of the requirements of a home-based or nonpublic secondary educational program in New Mexico or receipt a high school equivalency credential recognized by the state of New Mexico a student may attend a public post-secondary educational institution or tribal college prior to their qualifying semester less than full-time without affecting future program eligibility. Once a student is enrolled and attends a public post-secondary educational institution or tribal college full-time during the 16 months after graduation from a public or accredited private New Mexico high school or completion of the requirements of a home-based or nonpublic secondary educational program in New Mexico or receipt a high school equivalency credential recognized by the state of New Mexico the student shall be considered to have commenced the qualifying semester and must meet the qualifying semester eligibility requirements within Subsection N of 5.7.20.7 NMAC.

[5.7.20.8 NMAC -Rp, 5.7.20.8 NMAC, 6/25/2024]

5.7.20.9 CONTINUING

ELIGIBILITY: Upon satisfaction of the qualifying semester eligibility requirements, the scholarship will be awarded to the student beginning with their second semester of enrollment. A student's continuing eligibility shall be determined on a semester basis. A legislative lottery scholarship award may be re-awarded to a student who:

A. maintains a minimum of a 2.5 cumulative GPA on a 4.0 scale; provided that a student may request use of the student's cumulative GPA earned at all New Mexico public post-secondary educational institutions and tribal colleges;

B. successfully completes thirty credit hours within the academic year if attending a four-year public post-secondary educational institution or a tribal college. The credit hours may be apportioned among fall, spring and summer semesters, with no fewer than twelve credit hours in the fall and spring semesters and between three and nine credit hours for summer semesters; provided that a student is not required to attend summer semesters to maintain eligibility unless required as part of an accelerated program; and further provided that the student satisfies the credit hour requirement for the academic year; and further provided that credit-hour limits do not apply to the last semester before graduation; or

C. successfully completes twenty-four credit hours within the academic year if attending a two-year public post-secondary educational institution. The credit hours may be apportioned among fall, spring and summer semesters, with no fewer than nine credit hours in the fall and spring semesters and between three and nine credit hours for summer semesters; provided that:

(1) a student is not required to attend summer semesters to maintain eligibility unless required as part of an accelerated program; provided that the student satisfies the credit hour requirement for the academic year; and further provided that credit-hour

limits do not apply to the last semester before graduation; and

(2) upon transferring from a two-year public post-secondary educational institution to a four-year public post-secondary educational institution or a tribal college at the start of a fall or spring semester the student has started a new academic year. The following conditions apply for students transferring the scholarship:

(a) a transfer transcript is required for continuation.

(b) student transfers shall defer to the receiving institution to determine continued eligibility; and

(c) an eligible student that transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation; and

D. continues to meet the requirements for students with disabilities if requesting a reduction in the credit hours to be considered full-time by obtaining a referral from the student services division of the student's post-secondary educational institution where the student is enrolled; provided that referrals and sufficient documentation shall be received no later than 30 days after the student's enrollment start date for the semester.

[5.7.20.9 NMAC – N, 6/25/2024]

5.7.20.10 PROBATION: Students who have been determined eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

A. the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

B. the lead financial aid officer shall exercise professional judgment to determine whether the

exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraph (4) of Subsection A of 5.7.20.8 NMAC; and

C. a student may receive scholarship funding while on probationary status, however under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.11 NMAC.

[5.7.20.10 NMAC – Rp, 5.7.20.11 NMAC, 6/25/2024]

5.7.20.11 DURATION OF SCHOLARSHIP:

A. Upon qualification, the student's initial scholarship shall begin with the second semester of enrollment at a public post-secondary educational institution or tribal college. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a semester basis until the award recipient has received the legislative lottery scholarship for a maximum of seven fall and spring program semesters and a maximum of three summer semesters, or no more than three and one-half years for a bachelor's degree.

B. An award recipient may use the award at an eligible two-year public post-secondary educational institution until the student receives a maximum of three fall and spring program semesters of scholarship awards or an associate's degree and can continue to use the award at an eligible New Mexico four-year public post-secondary educational institution or tribal college if the student transfers to a four-year public post-secondary educational institution or tribal college without a break in attendance or the semester following receipt of the associate's degree. In no case shall a student receive more than seven program semesters of the award with the exception of students with disabilities.

C. A student may transfer from a four-year public post-

secondary educational institution or tribal college to a two-year public post-secondary educational institution, but in no case shall a student receive more than three program semesters of awards at the two-year institution (including those awarded at the prior public post-secondary educational institution or tribal college) or until the student graduates with an associate degree, whichever is sooner.

D. For students with disabilities in no case shall eligibility extend beyond 14 consecutive program semesters at a four-year institution and seven consecutive program semesters at a two-year institution. The maximum number of program semesters shall include no more than three summer semester awards.

E. A student who has been previously eligible may request a leave of absence for cooperative education, military obligations, participation in a study abroad program through the home institution or other exceptional mitigating circumstances.

F. The student's institutional lead financial aid officer may approve a leave of absence for a period of up to one year if in the lead financial aid officer's professional judgment the student has provided sufficient documentation to justify the leave of absence. Subsequent requests for an additional leave of absence by a student may be considered by the institution's lead financial aid officer in increments not to exceed one year.

G. The lead financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.11 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.

H. If a student becomes ineligible for a different state scholarship that is designated for one hundred percent tuition, but satisfies the first semester eligibility requirements and thereafter is eligible

for the legislative lottery scholarship, the student may begin receiving the legislative lottery scholarship for the remaining number of semesters of enrollment, not to exceed those prescribed in Subsections A and B of 5.7.20.11 NMAC.

[5.7.20.11 NMAC – Rp, 5.7.20.9 NMAC, 6/25/2024]

5.7.20.12 AMOUNT OF SCHOLARSHIP:

A. To the extent that funds are made available from the fund, the board of regents or governing bodies of public post-secondary educational institutions and tribal colleges shall award legislative lottery scholarships in department-approved amounts to qualified students.

B. In no case shall a student receive a legislative lottery scholarship award exceeding the total amount of tuition charged to the student by the institution for a maximum of 18 credit hours per fall or spring semester or nine credit hours for a summer semester.

C. Qualified students in their graduating semester shall receive a legislative lottery scholarship proportional to the number of credit hours required to graduate.

D. If the fund does not cover full legislative lottery scholarships, the method the department will use for calculating the legislative lottery scholarship is as follows:

(1) estimate the total amount available in the lottery tuition fund, based on past lottery fund transfers, current year balances and additional funds made available through legislation;

(2) estimate the number of lottery scholarship recipients for each institution, based on department endorsed institutional projections;

(3) calculate the legislative lottery scholarship for each sector (research, comprehensive and community college) and tribal college in accordance with Section 21-21N-4 NMSA 1978;

(4) calculate the total amount needed to pay full tuition to all estimated recipients;

(5) compute an award for each scholarship recipient; and

(6) notify institutions.

[5.7.20.12 NMAC – Rp, 5.7.20.10 NMAC, 6/25/2024]

5.7.20.13 ADMINISTRATION OF THE LEGISLATIVE LOTTERY SCHOLARSHIP:

A. Eligible public post-secondary educational institutions and tribal colleges shall:

(1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the legislative lottery scholarship at previous institutions;

(2) designate their institution's lead financial aid officer to be responsible for determining initial and continuing student eligibility for the legislative lottery scholarship under the terms of these rules and regulations;

(3) maintain a listing of each participating student to include, but not be limited to:

(a) social security number as appropriate;

(b) cumulative GPA and completed enrollment hours in prior semesters;

(c) proof of initial and continuing enrollment;

(d) award semester; and

(e) other data fields deemed important by the department;

(4) draw-down files should be submitted to the department for eligible students as defined in 5.7.20.10 NMAC per semester; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;

(5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility

consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative GPA requirement or successfully maintain full-time enrollment as defined in Subsection G of 5.7.20.7 NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their appropriate institution as follows: comprehensive, research institution in their second through eighth program semester including qualified students in their fifth through eighth program semesters who transferred from a community college; projected enrollment at each community college at each community college in their second through fourth program semesters;

(7) publish the probation policy as defined in 5.7.20.10 NMAC;

(8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program;

(9) each semester, ensure during the qualifying semester all available merit-based aid packages, three percent scholarships, institutional award packages, and state aid are awarded first before granting the New Mexico opportunity scholarship for tuition. If the student does not qualify for any merit-based aid packages, three percent scholarships, institutional award packages or state aid the student may qualify to receive the New Mexico opportunity scholarship for tuition and fees during the qualifying semester at the discretion of the lead financial aid officer.

B. The department shall:

(1) determine the scholarship award pursuant to the provisions of 5.7.20.10 NMAC; all eligible institutions will be notified prior to June 1 annually;

(2) conduct audits to ascertain compliance with rules and regulations, if, during the audit process, evidence indicates that a student should not have received a legislative lottery scholarship, the department will provide guidance to the institutions for appropriate action;

(3) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) legislative lottery scholarship program participation data aggregated for each public postsecondary education institution and tribal college to show:

(i) the number of qualified students who received legislative lottery scholarships and in the prior 12 month period;

(ii) the total number of qualified students enrolled in the prior 12-month period;

(iii) the amount of legislative lottery scholarships funded by semester and the amount of tuition costs that were not offset by the legislative lottery scholarship by semester; and

(iv) the number of qualified students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.

[5.7.20.13 NMAC – Rp, 5.7.20.11 NMAC, 6/25/2024]

5.7.20.14 TERMINATION OF SCHOLARSHIPS: A

scholarship is terminated upon noncompliance by the award recipient with the legislative lottery scholarship rules, regulations or procedures as promulgated by the department. [5.7.20.14 NMAC – Rp, 5.7.20.12 NMAC, 6/25/2024]

HISTORY OF 5.7.20 NMAC: 5.7.20 NMAC, Legislative Lottery Scholarship Program, filed 8/14/2014 was repealed and replaced by 5.7.20 NMAC, Legislative Lottery Scholarship Program, effective 6/25/2024]

History of Repealed Material: 5.7.20 NMAC, Legislative Lottery Scholarship Program, filed 8/1/2000, Repealed 6/25/2024.

HIGHER EDUCATION DEPARTMENT

**TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 36 COMMUNITY GOVERNANCE ATTORNEY PROGRAM**

5.7.36.1 ISSUING AGENCY: State of New Mexico Higher Education Department. [5.7.36.1 NMAC - N, 6/25/2024]

5.7.36.2 SCOPE: Provisions of 5.7.36 NMAC apply to all participants of the tuition and legal services loan program described in this rule. [5.7.36.1 NMAC - N, 6/25/2024]

5.7.36.3 STATUTORY AUTHORITY: Section 21-21Q-1 et seq. NMSA 1978. [5.7.36.3 NMAC - N, 6/25/2024]

5.7.36.4 DURATION: Permanent. [5.7.36.4 NMAC - N, 6/25/2024]

5.7.36.5 EFFECTIVE DATE: June 25, 2024, unless a later date is cited at the end of a section. [5.7.36.5 NMAC - N, 6/25/2024]

5.7.36.6 OBJECTIVE: The objective and purpose of 5.7.36 NMAC is to increase the number of community governance attorneys through the use of loans. The loans are available to law students commencing their final year of law

school who commit to employment as a community governance attorney with a qualifying employer for two years. Upon completion of those two years of employment, the loan shall be forgiven. In the event the participant does not complete two years of employment as a community governance attorney repayment shall be required. [5.7.36.6 NMAC - N, 6/25/2024]

5.7.36.7 DEFINITIONS:

A. "Commission" means the community governance attorney commission.

B. "Community governance attorney" means an attorney with a legal practice that is focused on the requirements and challenges faced by small political subdivisions and unincorporated communities, including the promulgation of land and water use ordinances, contracting and the collection or payment of taxes and fees.

C. "Community Governance Attorney Act" means Sections 21-21Q-1 through 21-21Q-5, NMSA 1978.

D. "Course of study" means a law student's legal education, including clinical and internship programs and preparation courses for the state bar examination.

E. "Department" means the New Mexico higher education department.

F. "Extenuating circumstances" means circumstances not within the control of the recipient.

G. "Loan" means a grant of funds to cover law school tuition and fees and a reasonable living stipend prior to employment as a community governance attorney and up to half the salary of a full-time community governance attorney for two years that is under a contract between the department and a student, requiring repayment with services or repayment of principal and interest and any fees.

H. "Participant" means an individual who has applied to participate in, has been accepted into and has a signed a contract

agreeing to the terms of the program.

I. “Program” means the loan for service program to provide legal services for land grants-mercedes, acequias and colonias.

J. “Qualifying employer” means:

(1) the university of New Mexico;

(2) a nonprofit organization whose mission is to provide a range of free legal services to low-income New Mexicans; or

(3) a service provider approved by the commission and the department.

[5.7.36.7 NMAC - N, 6/25/2024]

5.7.36.8 COMMUNITY GOVERNANCE ATTORNEY

COMMISSION: The commission is created to advise the department on matters relating to the administration of the Community Governance Attorney Act.

A. The commission shall be appointed and shall be composed of:

(1) The secretary of the department or secretary’s designee;

(2) The dean of the university of New Mexico or the dean’s designee;

(3) Three members appointed by the governor:

(a) one member shall be a member of an acequia;

(b) one member shall be a current or past member of the land grant council; and

(c) one member shall be a current or past member of the colonias infrastructure board and a resident of a colonia.

B. The responsibilities of the commission shall include:

(1) making recommendations to the department on applicants for the program;

(2) advising the department on the adoption of rules to implement the provisions of the Community Governance Attorney Act.

(3) soliciting proposals and entering into contracts

for the expenditure of the community governance attorney and loan program; and

(4) adopting such rules as are necessary to carry out the provisions of Section 21-21Q-4, NMSA, 1978.
[5.7.36.8 NMAC - N, 6/25/2024]

5.7.36.9 APPLICANT ELIGIBILITY: To be eligible for this program, an applicant shall:

A. have completed the first two years of law school and be in good academic standing at the university of New Mexico school of law as determined by the school;

B. be a resident of New Mexico; and

C. declare an intent to serve as a community governance attorney in New Mexico.

[5.7.36.9 NMAC - N, 6/25/2024]

5.7.36.10 SELECTION OF LOAN RECIPIENTS: The department shall award loan recipients recommended by the commission based on the following considerations and preferences:

A. the ability, character and qualifications of each applicant through the review of the applicant’s letters of recommendation and references;

B. the demonstrated interest of the applicant in serving as a community governance attorney; and

C. any other criteria as determined by the commission.

[5.7.36.10 NMAC - N, 6/25/2024]

5.7.36.11 RESPONSIBILITIES OF THE DEPARTMENT: The department shall:

A. adopt rules as are necessary to carry out the provisions of the program; and

B. administer the program, including:

(1) consultation with the university of New Mexico school of law and the commission, to publicize the program to law students and prospective law students;

(2) coordination of a standard application

process including preparation of application forms and facilitation of the application review by the commission;

(3) disbursement of funds;

(4) record keeping on participants including:

(a) participant’s academic standing status;

(b) progress toward completion of final year of law school;

(c) loan contracts including contracts between the participant and the department and contracts between the commission and qualifying employers; and

(d) location and time employed as a community governance attorney;

(e) verification of qualification for forgiveness for service; and

(5) preparing annually a report that includes the following information:

(a) number of the participants employed as a community governance attorneys;

(b) number of participants who have not completed their course of study;

(c) names and addresses of participants; and

(d) names and locations of practice of participants employed as community governance attorneys.

[5.7.36.11 NMAC - N, 6/25/2024]

5.7.36.12 LOAN AWARDS: The department may award a loan to one or two applicants each year who will be entering their final year of law school under the following conditions and limitations.

A. The department shall set the amount of the portion of the loan that will pay for an applicant’s law school tuition, fees and a reasonable living stipend after consulting with the university of New Mexico school of law regarding tuition and average living stipend and considering the availability of funds.

B. Upon selection of an applicant to receive a loan, a contract shall be drawn between the applicant and the department. The signed contract indicates the applicant's acceptance into the program.

C. In its annual determination of the number of loan awards, the department shall consider funding availability for loans for current participants.
[5.7.36.12 NMAC - N, 6/25/2024]

5.7.36.13 LOAN REPAYMENT AND FORGIVENESS:

All loans shall be forgiven or repaid to the state together with interest according to the following provisions:

A. The department shall forgive one hundred percent of the principal plus accrued interest for participants who after completion of their course of study, are employed for two consecutive years as a community governance attorney by a qualified employer.

B. The department shall forgive fifty percent of the principal plus accrued interest for participants who, after completion of their course of study, are employed for one year as a community governance attorney by a qualified employer.

C. Participants shall complete a full year of employment to receive credit for that year.

D. A participant who fails to carry out their employment obligations, in whole or in part, is subject to the following provisions:

(1) If a participant completes the participant's law school education and does not serve as a community governance attorney for a period of at least one year, the department shall assess a penalty of the principal due, plus eighteen percent interest, unless the department finds acceptable extenuating circumstances that prevent the participant's compliance with the employment obligations as provided in 5.7.36 NMAC.

(2) The full penalty shall apply unless the

circumstances reflect that the penalty should be reduced on a prorated basis reasonably reached based upon the degree of control which the recipient has over the failure to carry out their employment obligation. The recipient shall have the burden of proof.

(3) If the department does not find acceptable extenuating circumstances for the participant's failure to carry out their employment obligations, the department shall require immediate repayment of the unpaid principal amount of the waiver plus accrued interest owed the state plus the amount of any penalty assessed pursuant to 5.7.36 NMAC.

(4) In all other cases, loans shall bear interest at seven percent per year.

E. The maximum period of repayment shall be ten years, commencing six months from the date the participant completes or discontinues the course of study. Subject to applicable statutory limitations, the department may extend or modify the repayment period for good cause.

F. In the event it becomes necessary, the department may postpone loan repayments if the participant is willing, but financially unable to make payments under the repayment schedule, deferral of repayment obligation may be considered for the following reasons:

(1) the participant is serving up to a maximum of three years as an active-duty member of the armed forces of the United States;

(2) the participant is temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;

(3) the participant is seeking but unable to find full-time employment for a single period not to exceed twelve months;

(4) the participant is unable to secure employment for a period not to exceed 12 months;

(5) the participant is working in a judicial clerkship or fellowship;

(6) other extenuating circumstances as provided for under the federal Family and Medical Leave Act of 1993; or
(7) at the determination of the department.

G. Authorized charges and fees:

(1) Late charges: Participant may be charged five percent of the installment payment or five dollars, whichever is less, on any payment made later than 10 days after it is due.

(2) Attorney fees, other charges and costs: Participant shall agree to pay all reasonable attorney fees, and other costs and charges necessary for the collection of any waiver amount not paid when due.

H. Participants shall notify the department in advance of any change of address and of any action which necessitates reconsideration of a promissory note. A participant's failure to notify the department and to execute a promissory note on request shall cause the full amount of principal and accumulated interest to become due immediately.

[5.7.36.13 NMAC - N, 6/25/2024]

5.7.36.14 CONTRACTS:

A contract shall be drawn between each participant and the department on behalf of the state of New Mexico. The contract shall:

A. provide for the payment by the department of a specified sum as determined in 5.7.36.13 NMAC;

B. state that immediately upon completion or termination of the student's law school education, all interest then accrued shall be capitalized;

C. state the conditions of repayment or forgiveness as detailed in 5.7.36.13 NMAC;

D. state that the loan shall bear interest at the designated rate per annum from the date of disbursement until paid, make provision for conversion to a payout note as shown in 5.7.36 NMAC and state that interest will be charged on the unpaid balance of the principal;

E. state the legal responsibilities of the participant and that delinquent loans shall be referred to the department for appropriate action, which may include referral to the office of the attorney general;

F. state that the participant's obligations of the contract with the department shall be binding on participant's estate.

G. state that the department may cancel any contract after providing 30 days written notice to the participant for any reasonable and sufficient cause;

H. state that in the event a participant fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the department, become immediately due and payable; and

I. state that jurisdiction and venue shall be proper in Bernalillo County or Santa Fe County, New Mexico for purposes of any suit to enforce the contract. [5.7.36.14 NMAC - N, 6/25/2024]

5.7.36.15 FUND FOR LEGAL SERVICES

A. The commission shall solicit proposals from qualifying employers.

B. The commission shall enter into contracts with qualifying employers to provide community governance attorney services to acequias, land grants-mercedes and low-income residents of colonias on issues regarding the governance of colonias.

C. Each selected contractor shall demonstrate sufficient matching with non-state funding to provide a full-time community governance attorney position.

D. The contract shall provide no more than one-half of the funding for a full-time community governance attorney position. The maximum salary for such a position shall not exceed the salary provided in Section 21-21Q-3 NMSA 1978. [5.7.36.15 NMAC - N, 6/25/2024]

5.7.36.16 REPORTS:

The department shall submit a report

to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics, and analysis of the progress of the Community Governance Attorney Act. [5.7.36.16 NMAC - N, 6/25/2024]

History of 5.7.36 NMAC: [RESERVED]

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST- SECONDARY EDUCATION CHAPTER 7 TUITION AND FINANCIAL AID PART 37 NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM

**5.7.37.1 ISSUING
AGENCY:** State of New Mexico
Higher Education Department.
[5.7.37.1 NMAC - Rp., 5.7.37.1
NMAC, 6/25/2024]

5.7.37.2 SCOPE: Provisions
of 5.7.37 NMAC apply to all public
post-secondary institutions and tribal
colleges in the state of New Mexico.
[5.7.37.2 NMAC - Rp., 5.7.37.2
NMAC, 6/25/2024]

**5.7.37.3 STATUTORY
AUTHORITY:** Section 9-25-1 et seq.
NMSA 1978 and Section 21-21R-1 et
seq. NMSA 1978
[5.7.37.3 NMAC - Rp., 5.7.37.3
NMAC, 6/25/2024]

5.7.37.4 DURATION:
Permanent.
[5.7.37.4 NMAC - Rp., 5.7.37.4
NMAC, 6/25/2024]

**5.7.37.5 EFFECTIVE
DATE:** June, 25, 2024, unless a later
date is cited at the end of a section.
[5.7.37.5 NMAC - Rp., 5.7.37.5
NMAC, 6/25/2024]

5.7.37.6 OBJECTIVE:
The objective of 5.7.37 NMAC is to
provide a level of financial support to

qualified students who are enrolled in a workforce certificate program, or an associate or bachelor's degree program at an eligible New Mexico public post-secondary educational institution or tribal college. This level of financial support is intended to help defray the cost of tuition and fees at the public post-secondary educational institution or tribal college where the student is enrolled pursuant to 5.7.37.12 NMAC. Provided sufficient funding exists in the Opportunity Scholarship Fund, the award may be used to supplement, but not supplant, the New Mexico legislative lottery tuition scholarship in an amount not to exceed the cost of tuition and fees for the qualifying semester and summer semesters, and fees for other semesters.

[5.7.37.6 NMAC - Rp., 5.7.37.6
NMAC, 6/25/2024]

5.7.37.7 DEFINITIONS:

A. "Community college" means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978.

B. "Comprehensive institution" means eastern New Mexico university, New Mexico highlands university, northern New Mexico college or western New Mexico university.

C. "Cumulative grade point average" includes grades received during fall, spring and summer semesters.

D. "Department" means the higher education department.

E. "Eligible institution" means a public post-secondary educational institution or a tribal college that has a current and valid memorandum of understanding as described in Subsection B of 5.7.37.13 NMAC.

F. "Fee" or "Fees"
means:

(1) mandatory non-tuition charges levied to all students as a condition of enrollment;

(2) course-specific fees levied in an amount not to exceed fifty dollars (\$50) per credit hour or as otherwise approved by the department on a course-by-course basis; and

(3) shall not include charges levied for funding of capital projects or charges pledged for repayment of institutional bonds, loans or institutional debt of any type.

G. “Independent student” means a student with established financial need and no means of familial support as evidenced by their filing status on the free application for federal student aid or other means of income verification as determined by the institution.

H. “Opportunity scholarship” means an award to recent graduate learners and returning student learners.

I. “Public post-secondary educational institution” means a state educational institution or a community college.

J. “Qualified student” means a recent graduate learner or a returning student learner.

K. “Recent graduate learner” means a student who does not have a bachelor’s, master’s or doctoral degree and who graduated from a public or accredited private New Mexico high school or who before reaching 21 years of age received a high school equivalency credential while maintaining residency in New Mexico and who either:

(1) within 16 months of graduation or receipt of a high school equivalency credential enrolls in an eligible institution or

(2) within four months of graduation or receipt of a high school equivalency credential, began service in the United States armed forces and, within 16 months of completion of honorable service or medical discharge from the service, attended an eligible institution; and

(3) successfully completed the first semester at an eligible institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester

of full-time enrollment and maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale at an eligible institution.

L. “Research institution” means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

M. “Returning student learner” means a student 18 years of age or older who does not otherwise meet the definition of a recent graduate learner, has a high school diploma or who has received a high school equivalency credential and who does not have a bachelor’s, master’s or doctoral degree, who has been a resident of New Mexico for the preceding 12 consecutive months and who maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale at an eligible institution.

N. “Summer semester” means a semester equal to fall and spring semester in duration or intensity.

O. “Tribal college” means a tribally, federally or congressionally chartered eligible institution located in New Mexico that is accredited by the higher learning commission.

P. “Tuition” means mandatory instructional costs paid by or for a qualified student to an eligible institution for coursework.

Q. “Workforce certificate” means a department-approved, credit-bearing certificate program of two years’ duration or less where data indicates the certificate is in high demand as determined in consultation with the New Mexico department of workforce solutions. [5.7.37.7 NMAC - Rp., 5.7.37.7 NMAC, 6/25/2024]

5.7.37.8 STUDENT ELIGIBILITY:

A. A scholarship may be awarded to a qualified student who:

(1) has not earned a bachelor’s, master’s degree or doctoral degree at the time the scholarship is awarded;

(2) is enrolled

in at least six credit hours per spring or fall semester and no more than eighteen credit hours per fall or spring semester; except that the credit-hour minimums do not apply to a student in the last semester before graduation and if a qualified student enrolls in more than eighteen credit hours any tuition charges which exceed tuition charged for the maximum of eighteen credit hours shall not be funded by the scholarship;

(3) is enrolled in at least three and no more than nine credit hours per summer semester; provided that a student is not required to attend a summer semester to maintain eligibility; and

(4) maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale;

(5) has established and maintained New Mexico residency as defined in 5.7.18.9 NMAC, is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC or is an active member of the New Mexico National Guard. All residency requirements for recent graduate learners must be met upon completion of high school, graduation or receipt of a high school equivalency credential recognized by the state of New Mexico;

(6) has been determined to be a qualified student; and

(7) has met requirements in Paragraphs (1) through (6) of Subsection A of 5.7.37.8 NMAC or students with exceptional mitigating circumstances as determined by the institution’s lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (6) of Subsection A of 5.7.37.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the opportunity scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution’s lead financial

aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution's lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraphs (1) through (6) of Subsection A of 5.7.37.8 NMAC;

(b)

if, in the professional judgment of the institution's lead financial aid officer, the student's exceptional mitigating circumstance is recognized as a valid reason for the student's inability to meet the requirements specified in Paragraphs (1) through (6) of Subsection A of 5.7.37.8 NMAC the student's initial or continuing eligibility for the opportunity scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraphs (1) through (6) Subsection A of 5.7.37.8 NMAC.

B. Other provisions regarding eligibility.

(1)

Students with disabilities or their legal guardian who are requesting a reduction of the credit hour requirement shall obtain a referral from the student services division of the public post-secondary educational institution or tribal college where the student is enrolled that oversees students with special needs. Referrals and any sufficient documentation shall be received no later than 30 days after the student's enrollment begin date for their first semester or the semester for which they are seeking a change in credit hours. The documentation may be reused for the subsequent semesters unless the student is requesting to decrease their approved credit hours. In this case updated documentation shall be required prior to the start of the semester for which the student is enrolling.

(2) Students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for scholarship eligibility.

(3) If a recent graduate learner enrolls in no more than 12 credit hours during the 16 months following high school graduation or receipt of a high school equivalency credential the student may qualify for opportunity scholarship funding for tuition and fees. If a recent graduate learner enrolls in 12 or more credit hours beyond 16 months after graduation or receipt of a high school equivalency credential the student shall not receive the opportunity scholarship for tuition for a period of two years following the end of the semester when eligibility was lost. A recent graduate learner who loses eligibility for the opportunity scholarship or legislative lottery scholarship pursuant to 5.7.37.14 NMAC or 5.7.20.14 NMAC and has not been approved for a probationary semester may petition for reinstatement pursuant to 5.7.37.10 NMAC.

C. Upon satisfaction of the eligibility requirements, the scholarship shall be awarded to a returning student learner during the second continuous semester of enrollment. A student's continuing eligibility shall be determined on a semester basis. Recent graduate learners may receive awards within 16 months of graduation as provided in Paragraph 3 of Subsection B of 5.7.37.8 NMAC.

D. An opportunity scholarship award may be re-awarded to a student who:

(1) maintains a minimum of a 2.5 cumulative grade point average or higher on a 4.0 scale; a student has the right to request use of the student's cumulative grade point average earned at all New Mexico public post-secondary educational institutions and tribal colleges; and

(2) maintains continuous enrollment and meets the credit hour criteria as provided in Paragraphs (2) through (3) of Subsection A of 5.7.37.8 NMAC.

E. The following conditions apply for students transferring the scholarship:

(1) a transfer transcript is required;

(2) student transfers shall defer to the receiving institution to determine eligibility; and

(3) a qualified student who transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation.

F. Previously completed dual credit courses shall not count toward the credit hour cap.

G. In no case shall eligibility to receive the scholarship extend beyond 90 attempted credit hours for completion of an associate degree or 160 attempted credit hours for completion of a bachelor's degree. [5.7.37.8 NMAC - Rp., 5.7.37.8 NMAC, 6/25/2024]

5.7.37.9 PROBATION:

Students who have been determined to be eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

A. the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

B. the lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Subsection A and Subsection C of 5.7.37.8 NMAC; and

C. a student may receive scholarship funding while on probationary status, however under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A through F of 5.7.37.11 NMAC. [5.7.37.9 NMAC – N, 6/25/2024]

5.7.37.10 PETITION

FOR REINSTATEMENT: A recent graduate learner who loses eligibility

for the opportunity scholarship or legislative lottery scholarship pursuant to 5.7.37.14 NMAC or 5.7.20.14 NMAC and has not been approved for a probationary semester may petition for reinstatement of eligibility for the opportunity scholarship as a returning student learner no sooner than two years following the end of the semester when eligibility was lost. A returning student learner who loses eligibility for the opportunity scholarship pursuant to 5.7.20.14 NMAC and has not been approved for a probationary semester may petition for reinstatement of eligibility for the opportunity scholarship as a returning student learner no sooner than two years following the end of the semester when eligibility was lost. [5.7.37.10 NMAC – N, 6/25/2024]

5.7.37.11 DURATION OF SCHOLARSHIP:

A. Upon qualification, the student’s initial scholarship shall begin with enrollment at a public post-secondary educational institution or tribal college. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a per semester basis.

B. Scholarships may be provided to a qualified student seeking one or more credit-bearing workforce certificates. A scholarship for a credit-bearing workforce certificate may only be awarded where data indicates that the certificate is in high demand by New Mexico employers as determined by the department in consultation with the New Mexico workforce solutions department.

C. A scholarship may be awarded for one or more workforce certificates, only one associate degree and only one bachelor’s degree per student.

D. Scholarships may continue for a qualified student for up to 90 attempted credit hours for the completion of one associate degree.

E. Scholarships may continue for a qualified student for up to 160 attempted credit hours for the completion of one bachelor’s degree.

F. In no case shall the scholarship fund more than 160 attempted credit hours; provided that dual credit courses that a qualified student previously completed shall not count toward the credit-hour cap.

G. The student’s institutional lead financial aid officer may approve a leave of absence for a period of up to one year if in the lead financial aid officer’s professional judgment the student has provided sufficient documentation to justify the leave of absence. Subsequent requests for an additional leave of absence by a student may be considered by the institution’s lead financial aid officer in increments not to exceed one year.

H. The lead financial aid officer shall, in turn, ensure that the student does not receive scholarship awards in excess of those prescribed in Subsections A through F of 5.7.37.11 NMAC and shall exclude the semesters of “non-enrollment” from the determination of eligible award semesters.

[5.7.37.11 NMAC - Rp., 5.7.37.9 NMAC, 6/25/2024]

5.7.37.12 AMOUNT OF SCHOLARSHIP:

A. To the extent that funds are made available from the fund, the board of regents or governing bodies of public post-secondary educational institutions and tribal colleges shall award tuition scholarships in department approved amounts as follows:

(1) for returning student learners an amount not to exceed the cost of tuition and fees for enrollment in at least six credit hours, but not more than 18 credit hours in the fall or spring semester and optional enrollment in no less than three credit hours, but not more than nine credit hours during a summer semester.

(2) A scholarship may be awarded to a qualified student for the summer semester enrolled in at least three and no more than nine credit hours; provided that the summer semester is not required to maintain eligibility; and further provided that during a

summer semester the student may enroll in more than nine credit hours but the scholarship shall be capped at the tuition charged for nine credit hours; and

(3) for recent graduate learners an amount not to exceed the cost of tuition and fees during a qualifying semester after any available state and institutional aid has been awarded. Provided sufficient funding exists in the Opportunity Scholarship Fund the award may be used to supplement, but not supplant the New Mexico legislative lottery tuition scholarship in an amount not to exceed the cost of tuition and fees for the qualifying semester and summer semesters, and fees for other semesters.

B. If the fund does not cover full tuition scholarships the method the department will use for calculating the tuition scholarship is as follows:

(1) estimate the total amount available in the opportunity scholarship fund, based on transfers, current year balances and additional funds made available through legislation;

(2) estimate the number of scholarship recipients for each institution, based on department-endorsed institutional projections;

(3) calculate the tuition scholarship for each sector (research, comprehensive and community college) and tribal college in accordance with Section 21-21N-4 NMSA 1978;

(4) calculate the total amount needed to pay full tuition and fees to all estimated scholarship recipients;

(5) compute an award for each scholarship recipient; and

(6) notify institutions of the maximum award by June 1st annually.

C. In no case shall a student receive scholarship awards exceeding the total amount of tuition and fees charged after all other state aid has been applied.

D. Qualified students in their graduating semester shall

receive a tuition scholarship proportional to the number of credit hours required to graduate. Students in their graduating semester may enroll in fewer than six credit hours and maintain eligibility.

E. For qualified students in their first semester, preference shall be given to independent students before other students to the extent funds are available.

F. Opportunity scholarships may supplement but shall not supplant institutional aid such as three percent or bridge scholarships in the first semester.

G. Opportunity scholarships may be awarded to qualified students after institutional aid such as three percent or bridge scholarships in the second semester and beyond.

[5.7.37.12 NMAC - Rp., 5.7.37.10 NMAC, 6/25/2024]

5.7.37.13 ADMINISTRATION OF THE OPPORTUNITY SCHOLARSHIP:

A. Eligible public post-secondary educational institutions and tribal colleges shall:

(1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the opportunity scholarship at previous institutions;

(2) designate their institution’s lead financial aid officer to be responsible for determining initial and continuing student eligibility for the opportunity scholarship under the terms of these rules and regulations;

(3) maintain a listing of each participating student to include, but not be limited to:

(a) social security number as appropriate;

(b) cumulative grade point average and completed enrollment hours in prior semesters;

(c) proof of initial and continuing enrollment;

(d) award semester; and

(e) other data fields deemed important by the department;

(4) draw-down files should be submitted to the department for qualified students as each semester; all fiscal year draw-downs shall be for qualified students enrolled during the same fiscal year;

(5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student’s file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative grade point average requirement or successfully maintaining enrollment as defined in Paragraphs (2) through (3) of Subsection A of 5.7.37.8 NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their institution;

(7) publish the probation policy as defined in 5.7.37.9 NMAC;

(8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student’s participation in this program; and

(9) each semester, ensure that all available merit-based aid packages, three percent scholarships, institutional award packages, and state aid other than the New Mexico opportunity scholarship and New Mexico legislative lottery scholarships are awarded first before granting the New Mexico opportunity scholarship for tuition and fee costs.

B. The department shall:

(1) Enter into a memorandum of understanding on or before June 1st with each eligible institution describing:

(a) the maximum amount of tuition and fees per student that may be paid by the opportunity scholarship fund each fiscal year;

(b) the total amount available to the eligible institution for opportunity scholarships each fiscal year;

(c) the reimbursement of any reimbursable costs that exceed tuition and fees; and

(d) eligible workforce certificate programs.

(2) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) scholarship program participation data aggregated for each public post-secondary education institution and tribal college to show:

(i) the number of qualified students who received opportunity scholarships and in the prior 12-month period;

(ii) the total number of qualified students enrolled in the prior 12-month period;

(iii) the amount of tuition scholarships funded by semester and the amount of tuition costs that were not offset by the tuition scholarship by semester; and

(iv) the number of qualified students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.

[5.7.37.13 NMAC - Rp., 5.7.37.11 NMAC, 6/25/2024]

5.7.37.14 TERMINATION OF SCHOLARSHIPS: A

scholarship is terminated upon noncompliance by the award recipient

with the opportunity scholarship rules, regulations or procedures as promulgated by the department. [5.7.37.14 NMAC - Rp., 5.7.37.12 NMAC, 6/25/2024]

History of 5.7.37 NMAC:
5.7.37 NMAC, New Mexico Opportunity Scholarship Program, filed 7/12/2022, was repeal and replaced by 5.7.37 NMAC, New Mexico Opportunity Scholarship Program, effective 6/25/2024.

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.31 NMAC Section 9 effective 6/25/2024.

5.7.31.9 LOAN REPAYMENT PROGRAM ELIGIBILITY AND AWARD CRITERIA:

A. An applicant shall be licensed to practice in New Mexico as an attorney and shall declare intent to practice as an attorney in public service employment.

B. Prior to submitting an application to the public service law loan repayment program, an applicant shall apply to all available legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies.

C. An applicant who intends to practice as an attorney in a public service employment position ~~[that earns more than seventy-five thousand dollars (\$75,000) per year] in which the annual salary exceeds an amount to be determined by the department~~ is not eligible for participation ~~[in the public service law loan repayment program].~~

D. Prior to receiving a loan repayment award, the applicant shall file with the department:

- (1) a declaration of intent to practice as an attorney in public service employment;
- (2) proof of prior application to all legal education

loan repayment programs offered by the applicant's law school for which the applicant qualifies; and

(3) documentation that includes the applicant's total legal education debt, salary, any amounts received by the applicant from other law loan repayment programs and other sources of income deemed by the department as appropriate for consideration; provided that the applicant shall not be required to disclose amounts of income from military service.

E. Award criteria shall provide that:

(1) preference in making awards shall be to applicants who:

~~[(a) — have graduated from the university of New Mexico law school;~~

~~[(b) (a) have the greatest financial need based on legal education indebtedness and salary;~~

~~[(c) (b) work in public service employment that has the lowest salaries; and~~

~~[(d) (c) work in public service employment in underserved areas of New Mexico that are in greatest need of attorneys practicing in public service employment; and~~

~~[(e) (d) have graduated from the university of New Mexico school of law.~~

(2) an applicant's employment as an attorney in public service employment prior to participation in the public service law loan repayment program shall not count as time spent toward the minimum three-year period of service requirement pursuant to the contract between the participating attorney and the department acting on behalf of the state;

(3) award amounts are dependent upon the applicant's total legal education debt, salary and other sources of income, other than income from military service, deemed by the department as appropriate for consideration;

(4) award amounts may be modified based upon available funding or other special circumstances;

(5) an award shall not exceed the total legal education debt of any participant; and

(6) award amounts shall be reduced by the sum of the total award amounts received by the participant from other legal education loan repayments programs.

F. The following legal education debts are not eligible for repayment pursuant to the public service law loan repayment program:

(1) amounts incurred as a result of participation in state or law school loan-for-service programs or other state or law school programs whose purposes state that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from relatives or friends; and

(4) loans that exceed individual standard school expense levels;

(5) an award determination may be appealed to the secretary of higher education.

[5.7.31.9 NMAC - N, 12/31/2007; A, 5/30/2008; A, 10/31/2013; A, 7/24/2018; A, 6/25/2024]



This Page Intentionally Left Blank



PUBLIC EDUCATION DEPARTMENT

At a public hearing on June 11, 2024, the Public Education Department agreed to repeal 6.19.7 NMAC, Demonstration of Competency, filed 4/25/24, effective June 25, 2024.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 29 STANDARDS FOR EXCELLENCE
PART 18 BRAILLE STANDARDS**

6.29.18.1 ISSUING AGENCY: Public Education Department, hereinafter the department. [6.29.18.1 NMAC - N, 6/25/2024]

6.29.18.2 SCOPE: This rule applies to all public schools, state educational institutions, and educational programs conducted in state institutions other than the New Mexico military institute with students who are blind or visually impaired. These standards shall be used with students who are blind or visually impaired unless a student's individualized education program (IEP) team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including the child's future needs for instruction in braille or the use of braille, that instruction in braille or the use of braille is not appropriate for the child. [6.29.18.2 NMAC - N, 6/25/2024]

6.29.18.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Sections 9-24-8, 22-2-1, 22-2-2, and 22-15-26 to 22-15-31 NMSA 1978.

[6.29.18.3 NMAC - N, 6/25/2024]

6.29.18.4 DURATION: Permanent. [6.29.18.4 NMAC - N, 6/25/2024]

6.29.18.5 EFFECTIVE DATE: June 25, 2024, unless a later date is cited in the history at the end of a section. [6.29.18.5 NMAC - N, 6/25/2024]

6.29.18.6 OBJECTIVE: In accordance with part B of the Individuals with Disabilities Education Act (IDEA), the New Mexico content standards with benchmarks and performance standards for braille literacy were developed to provide students in grades K-12 who are blind or visually impaired equal access to literacy instruction and materials. Braille standards outline the sequence of skills to be developed to a level of proficiency at each grade level, prerequisite to instruction in the next grade level. This rule also establishes requirements for teachers of students who are blind or visually impaired for whom braille instruction and the use of braille in learning are required. This includes both specialists teaching braille and other teachers in the primary education setting. [6.29.18.6 NMAC - N, 6/25/2024]

6.29.18.7 DEFINITIONS:
A. "Accessible formats" means alternative methods of communication that provide the same information in another form to address the barriers text-based materials can present for some learners. Examples of accessible formats include audio, braille, large print, tactile graphics, and digital text conforming with accessibility standards.

B. "Accessible tools" means tools that have been adapted to modify visual content or that have auditory or tactile markers or that include manipulatives, tactile graphics, and concrete models.

C. "Braille" means the tactile system of reading and writing used by persons who are blind and

visually impaired, as defined by the braille authority of North America.

D. “Content standards” means standards of learning in all subject areas pursuant to 6.29.2 through 6.29.17 NMAC, “standards of excellence”, including “Spanish language arts common core standards” and “world readiness standards for learning languages”.

E. “Hand-under-hand” means a method of instruction in which the teacher’s hand is under a child’s hand to guide it toward an object to center the locus of control with the child.

F. “Nemeth code” means a system for reading and writing mathematical symbols based on the six-cell braille cell and developed by Dr. Abraham Nemeth.

G. “Part-to-whole processing” means learning and understanding by first noticing specific details and then putting these details together to understand what they comprise.

H. “Tactile” means materials, experiences, or environments designed to communicate through the sense of touch.

I. “Tactile graphics” means a way of conveying non-textual information using raised lines and surfaces and may include tactile representations of pictures, maps, graphs, diagrams, and other images.

J. “Tactual” means learning or a learner relying primarily on the sense of touch for mental representation in thought and learning, that is, acquiring, processing, and recalling information. Unlike visual processing, which affords either whole-to-part or part-to-whole approaches, tactual learners employ part-to-whole processing approaches.

K. “Teacher of students with visual impairments” or “TSVI” means an educator with the appropriate teaching license pursuant to 6.61.10 NMAC that authorizes the educator to teach students who are blind or visually impaired, birth through grade 12 as defined under the federal guidelines.

[6.29.18.7 NMAC - N, 6/25/2024]

6.29.18.8 STANDARDS OF EFFECTIVE BRAILLE INSTRUCTION:

A. Collaboration between instructors. Braille instructors shall be TSVIs and shall collaborate with the student’s educational team as well as with other teachers of the blind or visually impaired to provide effective, relevant instruction in both the primary educational setting and individually.

B. A TSVI shall:
(1) provide general training and support to primary educational setting staff about learners who are blind or visually impaired using braille in the primary education setting;

(2) ensure that assessments related to reading fluency and comprehension required in the primary education setting are in a format accessible to the student who is blind or visually impaired;

(3) assess the student’s progress in developing braille proficiency;

(4) provide braille instruction using appropriate instructional approaches for the individual student to develop proficiency in braille;

(5) pre-teach the objectives and materials provided by the teacher in the primary education setting to the student who is blind or visually impaired;

(6) teach methods of annotation and organization of textual materials and information that are appropriate for braille readers;

(7) select assistive technology appropriate for the student who is blind or visually impaired;

(8) provide training and support or consult with others to provide training and support to the staff of the primary education setting regarding the use appropriate assistive technology in the classroom; and

(9) teach keyboarding skills and skills needed

to use accessible format electronic technology.

C. A teacher of the student in the primary education setting shall, with training and support from the TSVI:

(1) organize the classroom learning environment to accommodate the tactual learning of students who are blind or visually impaired;

(2) understand differences between tactual and visual processing and accommodate part-to-whole processing approaches of a tactual learner;

(3) provide aural descriptions of all visual learning materials for the students who are blind or visually impaired;

(4) provide time and opportunity for a blind or visually impaired student to safely explore the tactile characteristics of materials and environments;

(5) understand how to use hand-under-hand support techniques to guide tactual explorations by students who are blind or visually impaired;

(6) provide pre-teaching materials to the TSVI for individualized instruction in the content area;

(7) allow extra time needed for blind and visually impaired students to find their places in a braille text or scan paragraphs to locate the main idea;

(8) examine their own attitudes about blindness;

(9) demonstrate flexibility in thinking about education of students who are blind or visually impaired;

(10) understand how a braillewriter works and reinforce braille skills learned outside of the primary education setting; and

(11) request materials that need to be transcribed into braille in a timely manner to ensure that the blind or visually impaired student has access to the material.

D. So that blind and visually impaired students shall have the same instructional material

content as sighted peers, a TSVI or a braille transcriptionist shall:

- (1) order content-area instructional materials in braille;
 - (2) transcribe content-area instructional materials, including teacher-created materials, in braille; or
 - (3) provide tactile versions of visual instructional materials, including teacher-created materials.
- [6.29.18.7 NMAC - N, 6/25/2024]

6.29.18.9 BRAILLE LEARNING STANDARDS:

Standards for learning braille incorporate all New Mexico content standards with the following changes for students who are learning braille or who use braille for learning:

- A. Where “text” is included in the content standards, braille learning standards shall substitute “braille”.
- B. Where “digital tools” are included in the content standards, braille learning standards shall substitute “accessible format digital tools”.
- C. Where “sources” are included in the content standards, braille learning standards shall substitute “tactile materials and experiences” or “accessible format sources”.
- D. Where “graphic instructions” or “written instructions” are included in the content standards, braille learning standards shall substitute “tactile instructions” or “braille instructions”.
- E. Where “letter formation” is included in the content standards, braille learning standards shall substitute “braille letter or contraction formation”.
- F. Where “reading” is included in the content standards, braille learning standards shall substitute “reading in braille”.
- G. Where “represent and solve mathematical equations” is included in the content standards, braille learning standards shall add “using Nemeth code”.
- H. Where “tools” is

included in the content standards, braille learning standards shall substitute “accessible tools”.

I. Where “writing”, or “written” are included in the content standards, braille learning standards shall substitute “braille-writing” or “braille-written”.

J. Where “maps”, “globes”, “mapping tools”, “diagrams”, “charts”, or “measurement tools” are included in the content standards, braille learning standards shall substitute “tactile graphics or accessible tools”.

K. Where production of visual formats is required of students in the content standards, braille standards shall add “using accessible tools”.

[6.29.18.7 NMAC - N, 6/25/2024]

HISTORY OF 6.29.18 NMAC: [RESERVED]

TRANSPORTATION, DEPARTMENT OF

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule General Provisions, 18.3.1 NMAC, filed 1/28/2015, and replaced it with a new rule entitled General Provisions, 18.3.1 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Operating Authorities, 18.3.2 NMAC, filed 1/28/2015, and replaced it with a new rule entitled Operating Authorities, 18.3.2 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Financial Responsibility, 18.3.3 NMAC, filed 1/28/2015, and replaced

it with a new rule entitled Financial Responsibility, 18.3.3 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Safety Requirements, 18.3.4 NMAC, filed 1/28/2015, and replaced it with a new rule entitled Safety Requirements, 18.3.4 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Operating Requirements, 18.3.5 NMAC, filed 12/16/2004, and replaced it with a new rule entitled Fees and Penalties, 18.3.5 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Tariffs, 18.3.6 NMAC, filed 1/28/2015, and replaced it with a new rule entitled Tariffs, 18.3.6 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Reports, Records, and Accounts, 18.3.7 NMAC, filed 1/28/2015, and replaced it with a new rule entitled Reports, Records, and Accounts, 18.3.7 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Changes in Certificates and Permits, 18.3.8 NMAC, filed 1/28/2015, and replaced it with a new rule entitled Changes in

Certificates, 18.3.8 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Leasing of Equipment, 18.3.9 NMAC, filed 1/28/2015, and replaced it with a new rule entitled Leasing of Equipment, 18.3.9 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Parental Responsibility, 18.3.10 NMAC, filed 12/10/2002, and replaced it with a new rule entitled Parental Responsibility, 18.3.10 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Household Goods Carriers, 18.3.11 NMAC, filed 1/28/2015, and replaced it with a new rule entitled Household Goods Carriers, 18.3.11 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Towing Services, 18.3.12 NMAC, filed 3/2/2017, and replaced it with a new rule entitled Towing Services, 18.3.12 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Registration of Interstate Carriers, 18.3.13 NMAC, filed 12/10/2022, and replaced it with a new rule entitled Registration of

Interstate Carriers, 18.3.13 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Ambulance Services, 18.3.14 NMAC, filed 1/28/2015, and replaced it with a new rule entitled Ambulance Services, 18.3.14 NMAC, adopted 5/30/2024 and effective 7/1/2024

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Fuel Surcharge for Wrecker Services Performing Non-consensual Tows, 18.3.15 NMAC, filed 3/2/2017, and replaced it with a new rule entitled Fuel Surcharge for Non-consensual Tows, 18.3.15 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed its rule General Provisions, 18.7.1 NMAC, filed 8/1/2016, and replaced it with a new rule entitled General Provisions, 18.7.1 NMAC, adopted 5/30/2024 and effective 7/1/2024.

At its meeting on May 30, 2024, the New Mexico State Transportation Commission, by the request of the New Mexico Department of Transportation, repealed rule Railroad Safety, 18.14.2 NMAC, filed 9/16/2011, and replaced it with a new rule entitled Railroad Safety, 18.14.2 NMAC, adopted 5/30/2024 and effective 7/1/2024.

**TRANSPORTATION,
DEPARTMENT OF**

**TITLE 18
TRANSPORTATION AND
HIGHWAYS**

**CHAPTER 3 MOTOR
CARRIER GENERAL
PROVISIONS
PART 1 GENERAL
PROVISIONS**

18.3.1.1 ISSUING
AGENCY: New Mexico Department of Transportation.
[18.3.1.1 NMAC - Rp, 18.3.1.1 NMAC, 7/1/2024]

18.3.1.2 SCOPE: This rule applies to all motor carriers subject to the jurisdiction of the department of transportation.
[18.3.1.2 NMAC - Rp, 18.3.1.2 NMAC, 7/1/2024]

18.3.1.3 STATUTORY
AUTHORITY: Sections 65-2A-4, 65-2A-29 and 65-2A-32 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81.
[18.3.1.3 NMAC - Rp, 18.3.1.3 NMAC, 7/1/2024]

18.3.1.4 DURATION:
Permanent.
[18.3.1.4 NMAC - Rp, 18.3.1.4 NMAC, 7/1/2024]

18.3.1.5 EFFECTIVE
DATE: July 1, 2024, unless a later date is cited at the end of a section.
[18.3.1.5 NMAC - Rp, 18.3.1.5 NMAC, 7/1/2024]

18.3.1.6 OBJECTIVE:
The purpose of this rule is to set forth general provisions governing motor carriers in New Mexico.
[18.3.1.6 NMAC - Rp, 18.3.1.6 NMAC, 7/1/2024]

18.3.1.7 DEFINITIONS:
As used in these rules, unless the context clearly indicates otherwise, the following definitions apply:

A. department means the New Mexico department of transportation;

B. facilities includes lands, buildings, and improvements to real property owned, leased, or used in the operations of a motor carrier;

C. FMCSA means the federal motor carrier safety

administration;

D. inspection or investigation means the examination by the department or other lawful entity of a motor carrier’s operations, including the facilities and equipment used in connection with its operations, and all pertinent records;

E. limousine service means a specialized passenger service providing the transportation of passengers for hire at a fixed, unmetered rate in a chauffeur-driven luxury motor vehicle at the exclusive use of one individual or group for a period of time that is not less than 30 minutes and scheduled by prearrangement and not by soliciting on the streets;

F. non-emergency medical transport service means a specialized passenger service providing the scheduled transportation of passengers not requiring medical monitoring or treatment in a motor vehicle to or from a required medical or therapeutic appointment;

G. principal place of business means the mailing and street address of the motor carrier’s primary business office in New Mexico;

H. red tag or cease and desist order means a written demand issued by the department to the motor carrier to immediately discontinue, rectify or prevent a specified act or omission that is a violation of a prior department order or applicable law that threatens or endangers public safety;

I. stationing point means a fixed physical location as identified on each operating authority from which a motor carrier responds to a call for service or stores the vehicles it currently uses to provide service and does not include the point where a vehicle responding to a service call is temporarily located;

J. these rules means the rules codified in Title 18, Chapter 3 of the New Mexico Administrative Code;

K. tour and sightseeing service means specialized passenger service providing scheduled or unscheduled guided transportation of passengers for hire in a motor

vehicle to scenic points or other points of interest at rates that apply to each individual passenger;

L. volunteer driver means a person who drives for an ambulance or commuter service without remuneration; the provision of or reimbursement for training, equipment, uniforms, and supplies necessary to the performance of driving duties are incidental and do not constitute remuneration for purposes of these rules.

[18.3.1.7 NMAC - Rp, 18.3.1.7 NMAC, 7/1/2024]

18.3.1.8 COMPLIANCE WITH THE LAW:

A. A motor carrier shall comply with all applicable state and federal laws and regulations.

B. In an emergency, a motor carrier may vary from a specific requirement of these rules when authorized or directed by a law enforcement officer or public safety official.

[18.3.1.8 NMAC - Rp, 18.3.1.8 NMAC, 7/1/2024]

18.3.1.9 COMPLIANCE WITH TERMS OF OPERATING AUTHORITY AND TARIFFS:

A. A motor carrier shall comply with the terms and conditions of its operating authority.

B. A motor carrier of persons or household goods, and towing services performing nonconsensual tows, shall comply with the terms and conditions of its approved tariff.

C. If there is a conflict between the terms and conditions of an operating authority and the terms and conditions of an approved tariff, the operating authority will govern the specific conflict.

D. If there is a conflict between these rules and the terms and conditions of a tariff or operating authority, these rules will govern the specific conflict.

[18.3.1.9 NMAC - Rp, 18.3.1.9 NMAC, 7/1/2024]

18.3.1.10 STATIONING POINTS FOR CERTIFICATED

PASSENGER SERVICES:

A. The approved stationing points shall be identified on the certificate of each passenger service.

B. No stationing point may be adopted, abandoned or moved prior to the issuance of a new certificate reflecting the requested change.

[18.3.1.10 NMAC - Rp, 18.3.1.10 NMAC, 7/1/2024]

18.3.1.11 SUBMISSION AND RECEIPT OF PAYMENTS AND DOCUMENTS:

A. The department accepts documents submitted by mail, electronic mail or hand-delivery.

B. Any required fees must be received by the department by electronic transfer, mail or hand-delivery prior to the consideration of any document submitted.

C. A document or fee is received on the date of delivery, unless that date is a holiday or weekend in which event the document is deemed received on the next business day.

[18.3.1.11 NMAC - Rp, 18.3.1.11 NMAC, 7/1/2024]

18.3.1.12 PRESCRIBED FORMS:

The department has prescribed forms to carry out certain requirements of these rules that may be obtained in person or on the department’s website. The most current version of a form must be used when a form exists for that purpose.

[18.3.1.12 NMAC - Rp, 18.3.1.12 NMAC, 7/1/2024]

18.3.1.13 INSPECTIONS AND INVESTIGATIONS:

A. Inspections:
The department may inspect a motor carrier’s operations for legal compliance at any time and without prior notice, regardless of the status of the motor carrier’s operating authority.

B. Investigations: A full or partial investigation may be initiated if an inspection reveals, or the department otherwise is alerted

to, a possible violation by the motor carrier of an applicable law or prior department order.

C. Findings and Remedies:

(1) Within 30 days following an inspection, the department shall provide a written report to a motor carrier outlining any required corrective measures and timelines. Failure to timely address the identified deficiencies may result in further proceedings and penalties, as provided by law;

(2) The department may issue a red tag or cease and desist order at the time of inspection or investigation if immediate action is required by the motor carrier to avert the identified dangers or risks to public safety. Failure to take immediate action to discontinue, remedy or prevent the violations may result in the immediate suspension of all operations and other penalties, as provided by law;

(3) A motor carrier that obstructs or prohibits an inspection or investigation of any of its operations or applicable records shall be deemed a risk to the public safety and be subject to an immediate cease and desist order for all or part of its operations.

[18.3.1.13 NMAC - Rp, 18.3.1.13 NMAC, 7/1/2024]

18.3.1.14 DECEPTIVE ADVERTISING PROHIBITED:

A. No motor carrier shall make a statement orally or in writing, via any medium of advertisement or communication, concerning any aspect of intrastate transportation for hire that is materially false or misleading in part or in whole. A statement shall be deemed materially false or misleading if it omits any material qualification imposed by these rules or contained in the motor carrier's operating authority.

B. A motor carrier shall be subject to potential penalties for violations of this section by persons or firms within the control of the motor carrier.

C. A motor carrier

of persons or household goods, or towing service performing non-consensual tows, shall advertise and solicit in the legal or "doing business as" name(s) contained in its approved tariff, but may advertise the name of an officially registered agent or, for household goods movers, the national affiliation or principal for interstate carriage for which the carrier is currently an agent, so long as the name of the motor carrier of persons or household goods, or towing service performing nonconsensual tows, is prominently displayed along with the agent's name.

[18.3.1.16 NMAC - Rp, 18.3.16 NMAC, 7/1/2024]

18.3.1.15 [RESERVED]

18.3.1.16 [RESERVED]

18.3.1.17 [RESERVED]

18.3.1.18 [RESERVED]

HISTORY OF 18.3.1 NMAC:

Pre-NMAC history: The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, on 6/14/1973;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;

SCCMC Rule No. 1, Rules of Procedure Governing Motor Carriers, filed on 3/5/1982;

SCCMC Rule No. 28, Complaints, filed on 3/5/1982;

SCCMC Rule No. 29, Inspector

Authority, filed on 3/5/1982;
SCC Rule 201, Prefatory Rules, filed on 1/5/1993;
SCC Rule 202, Definitions, filed on 1/5/1993;
SCC Rule 203, Commission Forms, filed on 1/5/1993;
SCC Rule 206, Commission Procedures, filed on 1/5/1993;
SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on
SCC Rule 231, General Compliance Requirements;
SCC Rule 261, Motor Carriers of Property-General Provisions, filed on 1/5/1993;
SCC Rule 271, Enforcement-General Provisions, filed on 1/5/1993;
SCC Rule 272, Inspections;
SCC Rule 273, Administrative Enforcement Proceedings, filed on 1/5/1993.

History of repealed material.

SCC Rule 201, Prefatory Rules, filed on 1/5/1993;

SCC Rule 202, Definitions, filed on 1/5/1993;

SCC Rule 203, commission Forms, filed on 1/5/1993;

SCC Rule 206, Commission Procedures, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements;

SCC Rule 261, Motor Carriers of Property-General Provisions, filed on 1/5/1993;

SCC Rule 271, Enforcement-General Provisions, filed on 1/5/1993;

SCC Rule 272, Inspections;

SCC Rule 273, Administrative Enforcement Proceedings, filed on 1/5/1993.

18.3.1 NMAC, Motor Carrier General Provisions - General Provisions, filed 12/10/02, repealed 2/13/2015.

18.3.1 NMAC, Motor Carrier General Provisions - General Provisions, filed 1/28/2015, repealed 7/1/2024.

Other: 18.3.1 NMAC, Motor Carrier General Provisions - General Provisions, filed 1/28/2015, replaced by 18.3.1 NMAC, Motor Carrier General Provisions - General Provisions, effective 7/1/2024.

**TRANSPORTATION,
DEPARTMENT OF**

**TITLE 18
TRANSPORTATION AND
HIGHWAYS
CHAPTER 3 MOTOR
CARRIER GENERAL
PROVISIONS
PART 2 OPERATING
AUTHORITIES**

18.3.2.1 ISSUING
AGENCY: New Mexico Department of Transportation.
[18.3.2.1 NMAC - Rp, 18.3.2.1 NMAC, 7/1/2024]

18.3.2.2 SCOPE: This rule applies to all motor carriers in New Mexico subject to the jurisdiction of the department.
[18.3.2.2 NMAC - Rp, 18.3.2.2 NMAC, 7/1/2024]

18.3.2.3 STATUTORY
AUTHORITY: Sections 65-2A-4 and 65-2A-19 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81.
[18.3.2.3 NMAC - Rp, 18.3.2.3 NMAC, 7/1/2024]

18.3.2.4 DURATION:
Permanent.
[18.3.2.4 NMAC - Rp, 18.3.2.4 NMAC, 7/1/2024]

18.3.2.5 EFFECTIVE
DATE: July 1, 2024, unless a later date is cited at the end of a section.
[18.3.2.5 NMAC - Rp, 18.3.2.5 NMAC, 7/1/2024]

18.3.2.6 OBJECTIVE: The purpose of this rule is to implement Sections 65-2A-5 through 65-2A-13 NMSA 1978.
[18.3.2.6 NMAC - Rp, 18.3.2.6 NMAC, 7/1/2024]

18.3.2.7 DEFINITIONS:
See 18.3.1.7 NMAC.
[18.3.2.7 NMAC - Rp, 18.3.2.7 NMAC, 7/1/2024]

18.3.2.8 OPERATING
AUTHORITY REQUIRED:
An operating authority is required

for each type of service offered. An operating authority issued for one service will not serve as authorization for another service.

A. Warrants. A warrant is required for each of the following service types:

- (1) charter services;
- (2) towing services, including for repossessions; and
- (3)

transportation of property, excluding household good services for which a certificate is required, and cadaver transports regulated under the Funeral Services Act, Chapter 61, Article 32 NMSA 1978.

B. Certificates. A certificate is required for each of the following service types:

- (1) ‘full service’ types are required to meet specific standards of service to a community.
- (a)

- municipal taxicab services;
- (b) scheduled shuttle services;
- (c) ambulance services;
- (2) ‘general service’ types are not required to provide marginally- or un-profitable services.

- (a) general taxicab services;
- (b) general shuttle services;
- (c) household goods services; or a
- (d) specialized passenger service types: tour and sightseeing, non-emergency medical transport, and limousine services.

[18.3.2.8 NMAC - Rp, 18.3.2.8 NMAC, 7/1/2024]

18.3.2.9 APPLICATIONS FOR OPERATING

AUTHORITIES: These requirements apply to both warrant and certificate applications (including for certificate amendment, lease or transfer). Certain service types or certificate amendments may

require additional information and documents, as described in these rules. The following are general application requirements for all operating authorities.

A. Applicant information:

- (1) the applicant’s name, phone number and e-mail address for department communications;
- (2) if the applicant is a sole proprietor, the applicant’s social security number for purposes of verifying parental responsibility act compliance;
- (3) name, mailing and e-mail address for a designated agent to receive service of process;
- (4) the applicant’s authority over, and legal relationship to, the business.

B. Business information:

- (1) all applicable business names to include trade or “doing business as” names;
- (2) business telephone number;
- (3) a mailing and physical address for the principal place of business in New Mexico, where all required records are maintained for review;
- (4) physical addresses of every facility, office or storage yard used in its motor carrier operations;
- (5) a combined reporting system (CRS) number obtained from the New Mexico taxation and revenue department;
- (6) a U.S. department of transportation safety rating, if one exists;
- (7) a certificate of workers’ compensation insurance or a certificate of exemption from the workers’ compensation administration;
- (8) the required forms and amounts of financial responsibility, to include proof of garage keepers and on the hook liability insurance for towing services;
- (9) a proposed

tariff (rates, applicable schedules, dispatch process and other terms of service) for ambulance, non-consensual towing, specialized passenger (non-emergency medical, limousine, tour or sightseeing), shuttle (general or scheduled), taxi (general or municipal) or household goods services;

(10) the desired authorization in terms of type of service and the service territory expressed as either statewide or within or between specified counties;

(11) a description of the form of ownership, the date the business entity was created, names and addresses of all principal owners and managers, the percentage of ownership interest of each and, for a corporation:

(a) authorization by the office of the secretary of state to do business in New Mexico and evidence of good corporate standing; and

(b) the names and addresses of any shareholders who own ten percent or more of the voting stock of the corporation.

C. Vehicles and equipment:

(1) a list of all equipment and vehicles to be used in the operations;

(2) an annual inspection form for each, completed by a qualified inspector in the preceding 12 months, to satisfy the applicable state and federal motor carrier safety regulations;

(3) a written preventive maintenance program for all motor vehicles as required; and

(4) the designated stationing point(s) for all vehicles and equipment.

D. Driver information:

(1) a list of all drivers;

(2) license information for each driver to include: the state of issuance, license number, and class of license;

(3) legible copies of each driver's:

(a) license;

(b) motor vehicle record from the state licensing agency under which the driver is licensed; and

(c) medical examiner's certificate, if required by 49 CFR 391.43(g);

E. Application fee:
Application fees are provided by rule. Fees must be received prior to notice and consideration of the application. If an application is not complete 60 days after initial submission, then the application fee is forfeited to the state.

F. Statements of applicant:

(1) a statement disclosing all operating authorities owned or operated, in full or in part, by the applicant and certifying that the operating authority sought in the application does not duplicate the service and territory of any existing operating authority of the holder;

(2) a statement certifying that all drivers meet the driver qualifications, that a drug and alcohol testing program is in place to meet the requirements of 49 CFR Parts 40 and 382, and that driver qualification files will be maintained for each driver;

(3) a notified oath that all statements in the application are true and correct.

(4) for taxi service (general or municipal) applicants only, a description of how calls for service are centrally dispatched, including the location of the dispatcher(s).

(5) for ambulance service applicants only, affidavits or other evidence to show:

(a) that the proposed service is or will serve a useful public purpose that is responsive to a public demand or need and that the ambulance service that currently exists in the territory sought in the application is inadequate; and

(b) the effect that issuance of the certificate would have on existing ambulance service in the territory sought in the application.

(6) for scheduled shuttle service applicants only, a daily time schedule for services.
[18.3.2.9 NMAC - Rp, 18.3.2.13 NMAC, 7/1/2024]

18.3.2.10 APPLICATION FOR TEMPORARY AUTHORITY:

An applicant for a certificated service (including for amendment, lease or transfer or a tariff rate increase) may apply for temporary authority pursuant to Section 65-2A-11 NMSA 1978. The original and temporary applications must be complete, and all fees received, prior to consideration. A grant of temporary authority is discretionary and shall not create a presumption that permanent authority will be granted. Any motor carrier operating pursuant to a temporary authority must comply with all applicable laws.

A. Public safety, a governmental program, or a specific public event: An application for temporary authority involving public safety, a governmental program or a specific public event must be submitted with the original application or at least five days prior to the expiration of the notice period. The applicant must also provide:

(1) affidavits from one or more persons having urgent need of the service; and

(2) a statement regarding either the nonexistence of, or inadequate service provision by, motor carriers authorized to provide the needed service in that territory.

B. Hearing of a contested application: An applicant subject to a hearing on its original application may submit a motion for a grant of temporary authority or temporary rate increase for a term extending until the department issues its final decision on the original application. The authority may be modified in the temporary authority in consideration of the issues raised in the objections of the parties to the hearing.

[18.3.2.10 NMAC - Rp, 18.3.2.25 NMAC, 7/1/2024]

18.3.2.11 NOTICES:

Notices are posted on the department’s website and sent to all motor carriers and other persons or entities who have previously submitted an electronic address for the purpose of receiving such notices. Notice is required as required by law for all complete certificate applications (including for amendment, lease or transfer), existing and proposed tariffs, certain proposed rate increases, certain contemplated penalties, proposed rulemakings, and orders of general application.
[18.3.2.11 NMAC - Rp, 18.3.2.15 NMAC 7/1/2024]

18.3.2.12 REVIEW AND

ISSUANCE: Applications are complete once all the information and documentation required is submitted and the requisite fees are received. Applications must be complete prior to the noticing and consideration by the department. Completed applications are reviewed for legal compliance. The applicant shall be notified of any deficiencies and given an opportunity to submit corrections. Operating authorities are issued in the company or sole proprietor’s name and not in the trade or “doing business as” name.

A. Warrants: A warrant will generally be issued once a completed application is determined to satisfy all legal requirements. For a towing service seeking to provide non-consensual tows, the proposed tariff must be approved by the department prior to issuance of the warrant.

B. Certificates: A certificate (new, amended, lease or transfer) will generally be issued after the notice period only if the completed application is uncontested and determined to satisfy all legal requirements. A certificate for passenger services may be delayed, modified, or not issued if the application is contested during the notice period since the department is required to consider the issues. Furthermore, some issues may require a full hearing for proper

consideration. If an application is contested and the issue is set for a hearing, the applicant may apply for a temporary authority to provide services until the hearing process is concluded and the department issues a determination.
[18.3.2.12 NMAC - Rp, 18.3.2.14 NMAC, 7/1/2024]

18.3.2.13 CONTESTED CERTIFICATE APPLICATIONS:

During the notice period, an application for a certificate (including for amendment, lease or transfer) for passenger services may be contested by protest or objection, or by the department if staff require a hearing on the application.

A. Protests. Only full service carriers may file a protest of a certificate application. A protest is deemed denied if it is not submitted with the requisite fee during the notice period. A protest must include:

- (1) a copy of the protestor’s full service operating authority;
- (2) a description of how the proposed service territory in the certificate application overlaps with the protestor’s existing certificated service territory; and
- (3) if the protestor is not an ambulance service, a reasonable description of the potential adverse impact the granting of the certificate application would have on the existing provision of full service passenger services to the public within the protestor’s full service territory;

(4) a protesting carrier meeting these requirements may proceed to a hearing on the application as an intervenor;

(5) if a protesting carrier withdraws the protest, withdraws as an intervenor or fails to appear at the hearing, the application shall be processed as an uncontested application.

B. Objections: Anyone may file an objection to, or offer information regarding, a certificate application during the

notice period. The department is not required to, but may, hold a hearing on a timely objection.
[18.3.2.13 NMAC - Rp, 18.3.2.16 NMAC, 7/1/2024]

18.3.2.14 REQUIRED TERMS AND CONDITIONS OF SERVICE:

A. Requirements for all motor carriers:

(1) **Service restrictions:** The provisions governing the scope, terms and conditions of motor carrier services are provided in the applicable statutes, rules and the specifications of each operating authority. Authorized services must be provided consistent with these governing provisions, including service definitions.

(2) **Placement of operating authorities:**

An operating authority must be maintained by the motor carrier at the principal place of business identified in the application, and a copy of the authority for the specific service type being provided must be carried in each vehicle that a motor carrier operates in New Mexico.

(3) **Financial responsibility:** The required amounts and types of financial responsibility must be continuously maintained for the authorized services for all periods of operation.

(4) **Safety requirements:** All vehicles, equipment, drivers and applicable resources must be properly inspected and maintained to ensure that all safety requirements are satisfied at all times. Motor carriers are prohibited from placing a motor vehicle into service that has any defect or deficiency that may be capable of causing an accident or mechanical malfunction.

B. Certificate requirements for all passenger services:

(1) **Continuous and adequate service:** All certificate holders must ensure that the offering of its transportation services is reasonably and continuously available to the public.

For full service carriers, the provision of services must meet the prescribed standards and be reasonably and continuously available to the public within the entire authorized service territory.

(2) Notice for consumer concerns: The following notice must be posted in a space visible to the public passengers in each vehicle, as well as in the motor carrier’s principal place of business: “This motor carrier operates pursuant to New Mexico Operating Authority No. ____ (insert appropriate number), issued by the New Mexico Department of Transportation. If you have any questions or concerns regarding the services provided, you may contact the company’s management at: ____ (insert phone number). If the management is unable to resolve your concerns, you may contact the New Mexico Department of Transportation at: 505-795-1401.”

(3) Passenger comfort: A passenger service carrier shall ensure that every motor vehicle it operates is clean and equipped with a heating, cooling, and air filtration system capable of providing a reasonable level of comfort inside the motor vehicle.

(4) Security of property: No passenger service carrier may transport unsecured property (including baggage) in any quantity or manner that endangers, or interferes with the comfort or safety of, passengers or obscures the driver’s view.

C. Taxi service requirements: The following terms and conditions apply to municipal and general taxi services:

(1) Shortest route: Unless expressly requested to do otherwise, a taxicab service shall transport metered-fare passengers over the shortest available route. A predetermined full fare shall be calculated on the basis of the shortest available route.

(2) Posting of rates: Rates for metered services must be posted in the passenger compartment of the vehicle in a

manner that is readily accessible and viewable.

(3) Multiple passengers, rate: Rates for multiple passengers shall be based on one charge based on metered rates for the first person and an additional small fixed charge for each additional person. Alternatively, at the passenger’s option, a predetermined calculated full fare based on drop flag and mileage component rates as provided by tariff, and may use surge pricing as provided by tariff;

(4) Direction. Exclusive direction shall be granted to the first person engaging the taxicab;

(5) Requests for service: A taxicab may respond only to street hailed requests, pre-arranged service requests (when call for service is received 30 minutes or more before service is required), and requests issued by the dispatch service.

D. Scheduled shuttle service requirements:

(1) Posting of schedules: A scheduled shuttle service shall post in a conspicuous place, readily available for public inspection, at each station or place where passengers are regularly received or discharged, at least one copy of its current schedule of arrivals and departures.

(2) Compliance with time schedules required: A scheduled shuttle service picking up passengers may delay its departure when reserved passengers are delayed as a result of another carrier’s late arrival or delayed baggage handling, provided that:

(3) Delay for reserved passengers: If a vehicle has no loaded passengers and has no other pickup points on its route, the scheduled shuttle service may delay its departure for late arriving reserved passengers;

(4) Delay of passengers: If a vehicle has passengers loaded, but has no other pickup points on its route, the vehicle may delay its departure by up to 15 minutes past its scheduled departure

time.

(5) Interruption of service reports: Each scheduled shuttle service shall promptly report in writing any interruption in service which is likely to continue for more than 24 hours, stating in detail the cause of the interruption and its expected duration.

E. Non-emergency medical transport service requirements: Prohibited from transport of passengers who require medical monitoring or intervention to maintain their level of response, airway, breathing and circulatory status, with the exception of self-administered oxygen not to exceed six liters per minute via a nasal cannula; the oxygen container must be secured in accordance with other state and federal laws.

F. Warranted charter service requirements:

(1) Prohibited terms. A charter service is prohibited from using the terms bingo bus, commuter service, shared ride, shuttle or terminal shuttle service in its business name, vehicle markings and advertising; and

(2) Prearranged contracts: A single prearranged written contract that is not arranged, accepted, entered into or paid for by the driver, must be entered into with the group prior to providing services. [18.3.2.14 NMAC - Rp, 18.3.2.9, & 18.3.2.20 through 18.3.2.24 NMAC, 7/1/2024]

- 18.3.2.15 [RESERVED]
- 18.3.2.16 [RESERVED]
- 18.3.2.17 [RESERVED]
- 18.3.2.18 [RESERVED]
- 18.3.2.19 [RESERVED]
- 18.3.2.20 [RESERVED]
- 18.3.2.21 [RESERVED]
- 18.3.2.22 [RESERVED]
- 18.3.2.23 [RESERVED]
- 18.3.2.24 [RESERVED]
- 18.3.2.25 [RESERVED]
- 18.3.2.26 [RESERVED]

HISTORY OF 18.3.2 NMAC:

Pre-NMAC History: The material in this rule was previously filed with the

state records center as:
 SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968;
 SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971;
 SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;
 SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;
 SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;
 SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;
 SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;
 SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;
 SCCMC Rule No. 4, Application for Certificates and Permits, filed on 3/5/1982;
 SCCMC Rule No. 25, Pet Animals, filed on 3/5/1982;
 SCCMC Rule No. 27, Bus Express, filed on 3/5/1982;
 SCCMC Rule No. 32, Continuous and Adequate Service, filed on 3/5/1982;
 SCCMC Rule No. 33, Business-Like Operations, filed on 3/5/1982;
 SCCMC Rule No. 43, Hearing on Application-Public Notice, filed on 3/5/1982;
 SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 1/5/1993;
 SCC Rule 211, General Operating Authority Provisions, filed on 1/5/1993;
 SCC Rule 212, Certificates of Public Convenience and Necessity for Common Motor Carriers, filed on 1/5/1993;
 SCC Rule 213, Permits for Contract Motor Carriers, filed on 1/5/1993;
 SCC Rule 214, Warrants for Limited Operating Authority, filed on 1/5/1993;
 SCC Rule 216, Licenses for Transportation Brokers, filed on 1/5/1993

SCC Rule 217, Emergency and Temporary Authority, filed on 1/5/1993;
 SCC Rule 221, Tariffs, Rates and Schedules, filed on 1/5/1993;
 SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;
 SCC Rule 251, Motor Carriers of Persons-General Provisions, filed on 1/5/1993;
 SCC Rule 261, Motor Carriers of Property-General Provisions, filed on 1/5/1993;
 SCC Rule 273, Administrative Enforcement Proceedings, filed on 1/5/1993.

History of Repealed Material:

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 211, General Operating Authority Provisions (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 212, Certificates of Public Convenience and Necessity for Common Motor Carriers (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 213, Permits for Contract Motor Carriers (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 214, Warrants for Limited Operating Authority (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 216, Licenses for Transportation Brokers (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 217, Emergency and Temporary Authority (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 221, Tariffs, Rates and Schedules (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 231, General Compliance Requirements (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 251, Motor Carriers of Persons-General Provisions (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 261, Motor Carriers of Property-General Provisions (filed 1/5/1993) repealed 12/30/2002.
 SCC Rule 273, Administrative Enforcement Proceedings (filed 1/5/1993) repealed 12/30/2002.
 18.3.2 NMAC, Motor Carrier General Provisions - Operating Authorities (filed 12-16-04); repealed 2/13/2015.
 18.3.2 NMAC, Motor Carrier General

Provisions - Operating Authorities (filed 1/28/2015); repealed 7/1/2024.

Other History:

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property (filed 1/5/1993); SCC Rule 211, General Operating Authority Provisions (filed 1/5/1993); SCC Rule 212, Certificates of Public Convenience and Necessity for Common Motor Carriers (filed 1/5/1993); SCC Rule 213, Permits for Contract Motor Carriers (filed 1/5/1993); SCC Rule 214, Warrants for Limited Operating Authority (filed 1/5/1993); SCC Rule 216, Licenses for Transportation Brokers (filed 1/5/1993); SCC Rule 217, Emergency and Temporary Authority (filed 1/5/1993); SCC Rule 221, Tariffs, Rates and Schedules (filed 1/5/1993); SCC Rule 231, General Compliance Requirements (filed 1/5/1993); SCC Rule 251, Motor Carriers of Persons-General Provisions (filed 1/5/1993); SCC Rule 261, Motor Carriers of Property-General Provisions (filed 1/5/1993); and SCC Rule 273, Administrative Enforcement Proceedings (filed 1/5/1993) all replaced by 18.3.2 NMAC, Operating Authorities, effective 12/30/2002.
 18.3.2 NMAC, Operating Authorities (filed 12-16-04) was replaced by 18.3.2 NMAC, Operating Authorities, effective 2/13/2015.
 18.3.2 NMAC, Operating Authorities (filed 1/28/2015) was replaced by 18.3.2 NMAC, Operating Authorities, effective 7/1/2024.

TRANSPORTATION, DEPARTMENT OF

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS PART 3 FINANCIAL RESPONSIBILITY

18.3.3.1 ISSUING
AGENCY: New Mexico Department of Transportation.

[18.3.3.1 NMAC - Rp, 18.3.3.1 NMAC, 7/1/2024]

18.3.3.2 SCOPE: This rule applies to all motor carriers subject to the jurisdiction of the department.

[18.3.3.2 NMAC - Rp, 18.3.3.2 NMAC, 7/1/2024]

18.3.3.3 STATUTORY AUTHORITY: Sections 65-2A-4, 65-2A-12, 65-2A-18 and 65-2A-27 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81.

[18.3.3.3 NMAC - Rp, 18.3.3.3 NMAC, 7/1/2024]

18.3.3.4 DURATION: Permanent.

[18.3.3.4 NMAC - Rp, 18.3.3.4 NMAC, 7/1/2024]

18.3.3.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[18.3.3.5 NMAC - Rp, 18.3.3.5 NMAC, 7/1/2024]

18.3.3.6 OBJECTIVE: The purpose of this rule is to implement Section 65-2A-18 NMSA 1978.

[18.3.3.6 NMAC - Rp, 18.3.3.6 NMAC, 7/1/2024]

18.3.3.7 DEFINITIONS: See 18.3.1.7 NMAC.

[18.3.3.7 NMAC - Rp, 18.3.3.7 NMAC, 7/1/2024]

18.3.3.8 PROOF OF FINANCIAL RESPONSIBILITY:

Every motor carrier must ensure that the minimum required financial responsibility is on file with the department during all periods of operation. The insurance policy must be in the exact legal and “doing business as” name of the motor carrier and be endorsed with the expiration date of “until canceled”. Insurance companies are required to submit the uniform filing forms directly to the department.

A. Bodily injury and property damage coverage: The following documents are accepted:

(1) a uniform

filing “form E” submitted to the department by an insurance company authorized to transact insurance business in New Mexico; or

(2) a uniform filing “form G” for a surety bond issued by a company authorized to do surety business in New Mexico; or

(3) a copy of the motor carrier’s self-insured policy.

B. Cargo liability coverage: A uniform filing “form H” submitted to the department by a company authorized to transact insurance business in New Mexico.

[18.3.3.8 NMAC - Rp, 18.3.3.8 NMAC, 7/1/2024]

18.3.3.9 PENALTIES FOR CANCELED OR INSUFFICIENT COVERAGE:

Insurance companies are required to timely submit all uniform filing forms to the department directly. Copies of coverage submitted by the motor carrier will not serve as proof of coverage. Anyone aggrieved by the action or omission of an insurance company related to these required filings may file a consumer complaint with the office of superintendent of insurance (www.osi.state.nm.us).

A. Immediate suspension: A motor carrier’s operating authority is subject to immediate suspension for lack of financial responsibility if, for any reason, its current coverage is not on file with the department or does not meet the minimum requirements.

B. Warrant revocation: A warrant holder’s operating authority is subject to immediate revocation if, for any reason, its coverage is not on file with the department for a period of four consecutive months.

[18.3.3.9 NMAC - N, 7/1/2024]

18.3.3.10 MINIMUM INSURANCE COVERAGE:

A. Passenger services: Motor carriers of passenger services must maintain the minimum levels of coverage required by 49 CFR 387.33, except that taxicab services utilizing vehicles with seating capacities of six or fewer passengers

(including the driver) must maintain a combined single-limit policy of one million dollars (\$1,000,000) per occurrence. This taxicab exception to the minimum coverage expires on June 30, 2025. Taxicab services failing to ensure full compliance with the minimum coverage requirements of 49 CFR 387.33 on or before July 1, 2025, will be subject to penalties as provided by law, to include immediate suspension.

B. Property services: Towing services, household goods movers, and motor carriers of property (including hazardous materials) must maintain the minimum levels of coverage, as required by 49 CFR 387.9 and 49 CFR 303(b)(2). In addition:

(1) Towing services must maintain fifty thousand dollars (\$50,000) of both on-the-hook and garage-keepers’ liability insurance.

(2) Household goods carriers must maintain fifty thousand dollars (\$50,000) cargo liability insurance per shipper for loss or damage to cargo of the shipper. [18.3.3.10 NMAC - Rp, 18.3.3.10 NMAC, 7/1/2024]

18.3.3.11 MAXIMUM DEDUCTIBLE LIMIT:

No insurance policy shall have a deductible in excess of five thousand dollars (\$5,000), unless the department approves a higher deductible for a motor carrier that provides:

A. a surety bond in an amount equal to the difference between five thousand dollars (\$5,000) and the amount of the higher deductible; or

B. a copy of the motor carrier’s self-insured policy coverage for an amount equal to or greater than the amount of the higher deductible. [18.3.3.11 NMAC - Rp, 18.3.3.12 NMAC, 7/1/2024]

18.3.3.12 [RESERVED]

18.3.3.13 [RESERVED]

18.3.3.14 [RESERVED]

HISTORY OF 18.3.3 NMAC:

Pre-NMAC History. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68;
 SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;
 SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;
 SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;
 SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;
 SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;
 SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;
 SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;
 SCCMC Rule No. 30, Insurance, filed on 3/5/1982;
 SCCMC Rule No. 41, Uniform Standards, filed on 3/5/1982;
 SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;
 SCC Rule 232, Insurance Requirements, filed on 1/5/1993.

History of Repealed Material.
 SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;
 SCC Rule 232, Insurance Requirements, filed on 1/5/1993.
 18.3.3 NMAC, Motor Carrier General Provisions - Financial Responsibilities, filed 12/10/2002, repealed 2/13/2015
 18.3.3 NMAC, Motor Carrier General Provisions - Financial Responsibilities, filed 1/28/2015, repealed 7/1/2024.

Other: 18.3.3 NMAC, Motor Carrier General Provisions - Financial Responsibilities, filed 1/28/2015, Replaced by 18.3.3 NMAC, Motor Carrier General Provisions - Financial Responsibilities, effective 7/1/2024.

TRANSPORTATION, DEPARTMENT OF

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS PART 4 SAFETY REQUIREMENTS

18.3.4.1 ISSUING AGENCY: New Mexico Department of Transportation.
 [18.3.4.1 NMAC - Rp, 18.3.4.1 NMAC, 7/1/2024]

18.3.4.2 SCOPE: This rule applies to all motor carriers subject to the jurisdiction of the department.
 [18.3.4.2 NMAC - Rp, 18.3.4.2 NMAC, 7/1/2024]

18.3.4.3 STATUTORY AUTHORITY: Sections 65-2A-4, 65-2A-19 and 65-6-4 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81.
 [18.3.4.3 NMAC - Rp, 18.3.4.3 NMAC, 7/1/2024]

18.3.4.4 DURATION: Permanent.
 [18.3.4.4 NMAC - Rp, 18.3.4.4 NMAC, 7/1/2024]

18.3.4.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
 [18.3.4.5 NMAC - Rp, 18.3.4.5 NMAC, 7/1/2024]

18.3.4.6 OBJECTIVE: The purpose of this rule is to implement Sections 65-2A-19 and 65-6-4 NMSA 1978 by establishing safety requirements for drivers, motor vehicles, and motor carriers.
 [18.3.4.6 NMAC - Rp, 18.3.4.6 NMAC, 7/1/2024]

18.3.4.7 DEFINITIONS:
 As used in this rule:
A. CDL driver means a driver who is required by 49 CFR

383.3 or Section 66-5-59 NMSA 1978 to have a commercial driver's license;

B. driver means a person who drives a motor vehicle as, for, or on behalf of a motor carrier;

C. MVD means the motor vehicle division of the New Mexico taxation and revenue department.
 [18.3.4.7 NMAC - Rp, 18.3.4.7 NMAC, 7/1/2024]

18.3.4.8 AVAILABILITY OF CITED MATERIAL: The sections of the code of federal regulations cited in this rule may be found on the government printing office website at <http://www.gpoaccess.gov/cfr/>.
 [18.3.4.8 NMAC - Rp, 18.3.4.8 NMAC, 7/1/2024]

18.3.4.9 SUBSTITUTION OF TERMS ADOPTED FROM FEDERAL LAW: Wherever the following terms appear in a part or section of title 49 of the code of federal regulations (CFR), for purposes of this rule and as adopted by reference in this rule, these federal terms shall be read as if substituted by the terms provided below.

A. for the terms "commerce" and "interstate commerce", substitute "intrastate commerce," as it is defined in 49 CFR Section 390.5;

B. for the terms "commercial motor vehicle", "bus", "truck", and "truck tractor", substitute "motor vehicle," as defined in Section 65-2A-3 NMSA 1978, except for when these terms are used in 49 CFR Section 391.21(b)(11). For purposes of this rule, the term "motor vehicle" shall not be understood to include any limitations based on gross combination weight rating, gross vehicle weight rating, or passenger seating capacity; and

C. for the abbreviation "FMCSA" (federal motor carrier safety administration), substitute "department of transportation" or "DOT".
 [18.3.4.9 NMAC - Rp, 18.3.4.9 NMAC, 7/1/2024]

18.3.4.10 REQUIREMENTS

APPLICABLE TO ALL DRIVERS:

Motor carriers shall require and ensure that all drivers in their service, including themselves, comply with the duties and prohibitions of these rules.

A. Drug and alcohol programs and testing for drivers:

This rule adopts by reference 49 CFR Part 40 in its entirety, and 49 CFR Section 382, except for Sections 382.117 and 382.119.

B. Hours of service:

Ambulance services shall adopt and enforce a policy governing hours of service for their drivers. For other motor carriers the following restrictions apply to:

(1) drivers operating for taxicab services, non-emergency medical transportation services, specialized passenger services, and intrastate shuttle service with passenger capacity of 15 or less, a driver shall not drive the service vehicle for more than 12 hours out of any 24 hour period;

(2) all other drivers, this rule adopts by reference 49 CFR Part 395, except that section 395.1(e)(1) is amended to add: “or operates in intrastate commerce within a 150 air-mile radius of the normal work reporting location.”

C. Pre-employment criminal and driver background reports:

Prior to hiring or contracting with a potential driver, all motor carriers shall obtain a nationwide criminal record report and a nationwide motor vehicle report (MVR) to review that candidate’s prior record for any relevant public safety violations. For household goods service carriers, a criminal background report is additionally required for each employee entering private dwellings.

[18.3.4.10 NMAC - Rp, 18.3.4.10 NMAC, 7/1/2024]

18.3.4.11 REQUIREMENTS

APPLICABLE ONLY TO CDL DRIVERS:

A. Commercial drivers’ licenses: This rule adopts by reference the New Mexico

commercial driver’s license act, Sections 66-5-52 through 66-5-72 NMSA 1978.

B. Qualifications of drivers and longer combination vehicle (LCV) driver instructors:

This rule adopts by reference 49 CFR Part 391, with the following changes:

(1) Section 391.11(b)(1) is amended to add: “or is 18 years old and drives only in intrastate commerce motor vehicles that are not required to be placarded for hazardous materials;”

(2) Section 391.15 is not adopted;

(3) Section 391.49(a) is amended to add: “or the director of MVD has granted a waiver to that person pursuant to 18.19.5.33 NMAC.”

C. Driving of commercial motor vehicles: This rule adopts by reference 49CFR Part 392 in its entirety.

D. Parts and accessories necessary for safe operation:

This rule adopts by reference 49 CFR Part 393 in its entirety.

E. Inspection, repair and maintenance: This rule adopts by reference 49 CFR Part 396 in its entirety.

F. Transportation of hazardous material; driving and parking rules:

This rule adopts by reference 49 CFR Part 397 in its entirety.

[18.3.4.11 NMAC – Rp, 18.3.4.11 NMAC, 7/1/2024]

18.3.4.12 REQUIREMENTS

APPLICABLE ONLY TO NON-CDL DRIVERS:

A. Operators’

licenses: This rule adopts by reference the licensing provisions of the New Mexico motor vehicle code, Sections 66-5-1 through 66-5-48, NMSA 1978.

B. Qualifications, investigations, inquiries, reporting, records, driving, equipment, inspection repair and maintenance by and for all passenger vehicles and drivers:

(1) Before

allowing a transportation service driver to provide carriage:

(a) the prospective driver shall submit an application to the transportation service that includes the individual’s address, age, driver’s license number and state, and driving history;

(b) the transportation service shall obtain a local and national criminal background check for the prospective driver that shall include:

(i) multistate or multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation and primary source search; and

(ii) a national sex offender registry; and

(iii) the transportation service shall obtain and review a driving history research report for the prospective driver.

(2) A transportation service shall not permit a person to act as a transportation service driver who:

(a) has had more than three moving violations in the preceding three-year period or one violation in the preceding three-year period involving any attempt to evade law enforcement, reckless driving or driving on a suspended or revoked license;

(b) has been convicted within the past seven years of:

(i) a felony;

(ii) misdemeanor driving under the influence, reckless driving, leaving the scene of an accident or any other driving-related offense or any misdemeanor violent offense or sexual offense; or

(c) more than three misdemeanors of any kind;

(d) is identified by a national sex offender registry;

(e) does not possess a valid license; or

(f) is not at least 21 years old.

(3) A transportation service shall not use a small passenger vehicle that:

(a) is not in compliance with all federal, state and local laws concerning the operation and maintenance of the motor vehicle;

(b) has fewer than four doors; or

(c) is designed to carry more than eight passengers, including the driver.

(4) A transportation service shall inspect or cause to be inspected every motor vehicle used by a driver to provide transportation services before allowing the driver to use the motor vehicle to provide transportation services and not less than once each year thereafter. The type of inspection required shall follow the Commission rules for annual inspections for transportation network company service driver vehicles promulgated as 18.17.1.8 NMAC.

(5) Provided that passenger services may voluntarily adopt and implement other more stringent policies and procedures for small passenger vehicles and drivers of small passenger vehicles, including full or modified forms of federal safety policies and procedures.

C. Qualifications of drivers: This rule adopts by reference only the following specific sections of 49 CFR Part 391:

(1) **general qualifications of drivers:** Section 391.11(b)(8);

(2) **application for employment:** Section 391.21;

(3) **investigations and inquiries:** Section 391.23, except that Section 391.23(d)(2) the term “as specified in section 390.15(b)(1) of this chapter” is substitute for this rule by the term, “in the uniform crash report form prescribed by the state of New Mexico”;

(4) **annual**

inquiry and review of driving record: Section 391.25, except that:

(a) Subsections 391.25(a) and (b) are amended to delete: “Except as provided in subpart G of this part;”

(b) Section 391.25 shall not apply to volunteer drivers;

(5) **record of violations:** Section 391.27, except that section 391.27(a) is amended to delete: “Except as provided in subpart G of this part;”

(6) **road test:** Section 391.31, except that section 391.31(a) is amended to delete: “Except as provided in subpart G;”

(7) **equivalent of road test:** Section 391.33; except that an ambulance service may also accept from a person who seeks to drive an ambulance a copy of a certificate of completion from an emergency vehicle operator’s course approved by the emergency medical services (EMS) bureau of the department of health (DOH);

(8) **physical qualifications for drivers:** Section 391.41, except that drivers for ambulance are exempt from Section 391.41(a);

(9) **medical examinations; certificate of physical examination:** Section 391.43, except that for volunteer drivers of ambulance services only, the medical examiner (as defined in 49 CFR Section 390.5) shall perform a medical examination sufficient to enable the medical examiner to certify, in accordance with Subsection C of 18.19.5.33 NMAC, whether or not the driver has a condition that may interfere with the safe operation of an ambulance;

(10) **persons who must be medically examined and certified:** Section 391.45, except that this section shall not apply to volunteer drivers;

(11) **general requirements for driver qualification files:** Section 391.51, except that Subsections 391.51(b)(8) and (d)(5) are not adopted;

(12) **driver**

investigation history file: Section 391.53, except that this section shall not apply to commuter services.

D. Driving of commercial motor vehicles: This rule adopts by reference the following sections of 49 CFR Part 392:

(1) **ill or fatigued operator:** Section 392.3;

(2) **drugs and other substances:** Section 392.4;

(3) **alcohol prohibition:** Section 392.5;

(4) **emergency equipment, inspection and use:** Section 392.8, except that this section is amended to substitute “Section 66-3-849 NMSA 1978”, certain vehicles to carry flares or other warning devices, for the federal reference to “Section 393.95”;

(5) **inspection of cargo, cargo securement devices and systems:** Section 392.9, except that this section shall only apply to a motor vehicle with a gross vehicle weight rating of 10,000 pounds or more;

(6) **hazardous conditions; extreme caution:** Section 392.14, except that this section shall not apply to ambulance services;

(7) **use of seat belts:** Section 392.16;

(8) **obscured lamps or reflectors:** Section 392.33;

(9) **ignition of fuel; prevention:** Section 392.50;

(10) **safe operation, buses:** Section 392.62;

(11) **towing or pushing loaded buses:** Section 392.63;

(12) **riding within closed commercial motor vehicles without proper exits:** Section 392;

(13) **carbon monoxide; use of commercial motor vehicle when detected:** Section 392.66;

(14) **radar detectors; use and/or possession:** Section 392.71.

E. Equipment for vehicles, seatbelts and child restraints: This rule adopts by

reference Sections 66-3-801 through 66-3-901 NMSA 1978. In addition, passenger vehicles capable of transporting 15 or fewer persons including the driver shall provide a separate seat belt assembly for each passenger and shall ensure child restraint systems comply with all federal and state requirements.

F. Inspection, repair and maintenance for vehicles: This rule adopts by reference the following sections of 49 CFR Part 396:

(1) **inspection, repair and maintenance:** Section 396.3, but this section shall not apply to commuter services;

(2) **lubrications:** Section 396.5;

(3) **driver vehicle inspection reports:** Section 396.1;

(4) **driver inspection:** Section 396.13;

(5) **periodic inspection:** Section 396.17;

(6) **inspector qualifications:** Section 396.19;

(7) **periodic inspection recordkeeping requirements:** Section 396.21;

(8) **equivalent to periodic inspection:** Section 396.23(a);

(9) **qualifications of brake inspectors:** Section 396.25.

[18.3.4.12 NMAC - Rp, 18.3.4.12 NMAC, 7/1/2024]

18.3.4.13 IDENTIFICATION OF EQUIPMENT:

A. Issuance: The department shall assign an operating authority number to each motor carrier service when it issues an operating authority. Any operating authority number issued shall be displayed as required by this rule.

B. Display: The letters and numbers must be not less than one-half inch (1/2") wide and not less than two and one-half inches (2 1/2") high. The operating authority number will be displayed in the following manner: "NM 123".

(1) **Placement on limousines:** The NM operating

authority number must be distinctly displayed on the front and rear bumpers of each limousine operated in New Mexico.

(2) **Placement on all other motor vehicles:** The name or d/b/a name of the motor carrier or commuter service and the NM operating authority number must be distinctly displayed and permanently affixed to the right and left doors, or sides of the power unit, of each motor vehicle operated in New Mexico, except that for motor vehicles leased or rented for authorized operations the required display need not be permanently affixed.

C. Exceptions:
(1) Interstate motor carriers that display a federal operating authority number are not required to display the NM operating authority number.

(2) Intrastate motor carriers that display a New Mexico safety identification number issued by the MVD are not required to display the NM operating authority number.
[18.3.4.13 NMAC - Rp, 18.3.4.13 NMAC, 7/1/2024]

18.3.4.14 MINIMUM EQUIPMENT STANDARDS: A motor carrier shall only use equipment for vehicles that is produced and constructed by a manufacturer of such equipment that regularly produces such equipment of guaranteed quality. The department may approve the use of non-guaranteed equipment only if the motor carrier submits a written request for use of such equipment accompanied by a verified statement from a reputable testing laboratory regularly engaged in the testing of the same equipment to certify that the equipment is appropriate for the intended purpose. The motor carrier shall bear all costs of testing and certification.

[18.3.4.14 NMAC - Rp, 18.3.4.14 NMAC, 7/1/2024]

History of 18.3.4 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the

state records center as:
SCCMC Rule No. 3, Hours of Service, filed on 3/5/1982;
SCCMC Rule No. 6, Qualifications of Drivers, filed on 3/5/1982;
SCCMC Rule No. 7, Driving of Motor Vehicles, filed on 3/5/1982;
SCCMC Rule No. 8, Emergency Equipment, filed on 3/5/1982;
SCCMC Rule No. 9, Securing of Load and Equipment, filed on 3/5/1982;
SCCMC Rule No. 11, Emergency Signals, filed on 3/5/1982;
SCCMC Rule No. 12, Head Lamps and Auxiliary Road Lighting Lamps, filed on 3/5/1982;
SCCMC Rule No. 13, Brakes, filed on 3/5/1982;
SCCMC Rule No. 14, Equipment Required on Certain Vehicles, filed on 3/5/1982;
SCCMC Rule No. 15, Windshields Must be Unobstructed and Equipped with Wipers, filed on 3/5/1982;
SCCMC Rule No. 16, Mirrors, filed on 3/5/1982;
SCCMC Rule No. 17, Horns and Warning Devices, filed on 3/5/1982;
SCCMC Rule No. 37, Slick Tires, filed on 3/5/1982;
SCCMC Rule No. 39, Identification of Equipment, filed on 3/5/1982;
SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968;
SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971;
SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;
SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;
SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;
SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;
SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;
SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994; SCC Rule 231, General Compliance Requirements, filed on 1/5/1993; SCC Rule 231, General Compliance Requirements, filed on 10/27/1993. SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

History of repealed material.
 SCC Rule 207, Emergency Rule Governing Motor Carriers of Property (filed 12/28/1994) repealed 12/30/2002.
 SCC Rule 231, General Compliance Requirements (filed 10/27/1993) repealed 12/30/2002.
 SCC Rule 241 Records of Motor Transportation Entities (filed 1/5/1993) repealed 12/30/2002.
 18.3.4 NMAC, Qualifications of Drivers (filed 12/10/2002) repealed 1/1/2005.
 18.3.4 NMAC, Operating Requirements (filed 12/10/2002) repealed 1/1/2005.
 18.3.4 NMAC, Operating Requirements (filed 12-16-2004) repealed 2/13/2015.
 18.3.4 NMAC, Operating Requirements (filed 1/28/2015) repealed 7/1/2024.

Other History:
 That applicable portion of SCC Rule 231, General Compliance Requirements (filed 10/27/1993) replaced by 18.3.4 NMAC, Qualifications of Drivers effective 12/30/2002; SCC Rule 207, Emergency Rule Governing Motor Carriers of Property (filed 12/28/1994); that applicable portion of SCC Rule 231, General Compliance Requirements (filed 10/27/1993); and SCC Rule 241 Records of Motor Transportation Entities (filed 1/5/1993) all replaced by 18.3.5 NMAC, Operating Requirements, effective 12/30/2002; 18.3.4 NMAC, Qualifications of Drivers (filed 12/10/2002) and 18.3.5 NMAC, Operating Requirements (filed 12/10/2002) both replaced by 18.3.4 NMAC, Safety Requirements, effective 1/1/2005.

18.3.4 NMAC, Safety Requirements (filed 12/16/2004) was replaced by 18.3.4 NMAC, Safety Requirements, effective 2/13/2015.
 18.3.4 NMAC, Safety Requirements (filed 1/28/2015) was replaced by 18.3.4 NMAC, Safety Requirements, effective 7/1/2024.

**TRANSPORTATION,
 DEPARTMENT OF**

**TITLE 18
 TRANSPORTATION AND
 HIGHWAYS
 CHAPTER 3 MOTOR
 CARRIER GENERAL
 PROVISIONS
 PART 5 FEES AND
 PENALTIES**

18.3.5.1 ISSUING
AGENCY: New Mexico Department of Transportation.
 [18.3.5.1 NMAC - N, 7/1/2024]

18.3.5.2 SCOPE: This rule applies to motor carriers and applicants subject to the jurisdiction of the department of transportation.
 [18.3.5.2 NMAC - N, 7/1/2024]

18.3.5.3 STATUTORY
AUTHORITY: Sections 65-2A-32 and 65-2A-36 NMSA 1978 and 2023 N.M. Laws, Chapter 100, Section 81.
 [18.3.5.3 NMAC - N, 7/1/2024]

18.3.5.4 DURATION:
 Permanent.
 [18.3.5.4 NMAC - N, 7/1/2024]

18.3.5.5 EFFECTIVE
DATE: July 1, 2024, unless a later date is cited at the end of a section.
 [18.3.5.5 NMAC - N, 7/1/2024]

18.3.5.6 OBJECTIVE:
 The purpose of this rule is to set forth the required processing and service fees and the standards for the determination of any applicable penalties under the Motor Carrier Act, Chapter 65, Article 2A NMSA 1978.
 [18.3.5.6 NMAC - N, 7/1/2024]

18.3.5.7 REQUIRED

FEES:

A. Certificate applications:

(1) New certificate \$300

(2) Temporary authority (for public safety, government program or public event) \$100

(3) Temporary authority (for a challenged application otherwise approved) \$0

(4) Temporary authority (for period of hearing on tariff service rate increase) \$100

(5) Change to certificate (with statutory hearing requirement) \$200

(6) Tariff change (to rates or terms of service) \$200

(7) Lease or transfer of certificate \$100

B. Warrant application: \$50

C. Reinstatement applications:

(1) Following a voluntary suspension (no hearing requirement) \$0

(2) Following an involuntary suspension (for public safety risk) \$100

(3) Following an involuntary suspension (for other noncompliance) \$200

(4) Following an involuntary suspension (for lack of insurance on file) \$100

D. Other submissions and filings:

(1) Miscellaneous filings and submissions (not otherwise listed) \$0

(2) Equipment lease form submission \$0

(3) Objection to an application (no request for intervention) \$0

(4) Leave to protest and intervene by right (by a full-service carrier) \$150

(5) Leave to intervene by permission (by interested person) \$100

(6) Voluntary suspension (up to 12-months) or cancellation of authority \$0

(7) Transfer by operation of law (change of certificate holder) \$0

(8) Change of control of certificate by transfer of legal interest \$50

(9) Change to business trade name or holder's legal name \$0
[18.3.5.7 NMAC - N, 7/1/2024]

18.3.5.8 [RESERVED]

[18.3.5.8 NMAC - Repealed, 7/1/2024]

HISTORY OF 18.3.5 NMAC:

Pre-NMAC History. The material in this rule was previously filed with the State Records Center as:

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968;

SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;

SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;

SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;

SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;

SCCMC Rule No. 3, Hours of Service, filed on 3/5/1982;

SCCMC Rule No. 6, Qualifications of Drivers, filed on 3/5/1982;

SCCMC Rule No. 7, Driving of Motor Vehicles, filed on 3/5/1982;

SCCMC Rule No. 8, Emergency Equipment, filed on 3/5/1982;

SCCMC Rule No.9, Securing of Load and Equipment, filed on 3/5/1982;

SCCMC Rule No.11, Emergency Signals, filed on 3/5/1982;

SCCMC Rule No.12, Head Lamps and Auxiliary Road Lighting Lamps, filed on 3/5/1982;

SCCMC Rule No.13, Brakes, filed on 3/5/1982;

SCCMC Rule No.14, Equipment Required on Certain Vehicles, filed on 3/5/1982;

SCCMC Rule No.15, Windshields Must be Unobstructed and Equipped with Wipers, filed on 3/5/1982;

SCCMC Rule No.16, Mirrors, filed on 3/5/1982;

SCCMC Rule No.17, Horns and Warning Devices, filed on 3/5/1982;

SCCMC Rule No. 37, Slick Tires, filed on 3/5/1982;

SCCMC Rule No. 39, Identification of Equipment, filed on 3/5/1982;

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994.

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993;

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

SCC Rule 231, General Compliance Requirements, filed on 10/27/1993

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993.

SCC Rule 207, Emergency Rule Governing Motor Carriers of Property, filed on 12/28/1994;

SCC Rule 231, General Compliance Requirements, filed on 1/5/1993;

18.3.5 NMAC, Operating Requirements was repealed on 1/1/2005 and replaced with 18.3.4 NMAC.

18.3.5 NMAC, Operating Requirements filed 12/16/2004 was replaced by 18.3.5, Fees and Penalties effective 7/1/2024.

TRANSPORTATION, DEPARTMENT OF

TITLE 18

TRANSPORTATION AND HIGHWAYS

CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS

PART 6 TARIFFS

18.3.6.1 ISSUING

AGENCY: New Mexico Department of Transportation.

[18.3.6.1 NMAC - Rp, 18.3.6.1 NMAC, 7/1/2024]

18.3.6.2 SCOPE:

This rule applies to motor carriers of tarified services to include ambulance, household goods, shuttle, taxicab, nonconsensual towing, and specialized passenger services (limousine, non-emergency medical, tour and sightseeing).

[18.3.6.2 NMAC - Rp, 18.3.6.2 NMAC, 7/1/2024]

18.3.6.3 STATUTORY

AUTHORITY: Section 65-2A-4 NMSA 1978 and 2023 N.M. Laws, Chapter 100, Section 81.

[18.3.6.3 NMAC - Rp, 18.3.6.3 NMAC, 7/1/2024]

18.3.6.4 DURATION:

Permanent.

[18.3.6.4 NMAC - Rp, 18.3.6.4 NMAC, 7/1/2024]

18.3.6.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section.

[18.3.6.5 NMAC - Rp, 18.3.6.5 NMAC, 7/1/2024]

18.3.6.6 OBJECTIVE:

The purpose of this rule is to implement Sections 65-2A-20 through 65-2A-22

NMSA 1978.

[18.3.6.6 NMAC - Rp, 18.3.6.6 NMAC, 7/1/2024]

18.3.6.7 DEFINITIONS:

See 18.3.1.7 NMAC.

[18.3.6.7 NMAC - Rp, 18.3.6.7 NMAC, 7/1/2024]

18.3.6.8 COMMENCEMENT OF OPERATIONS:

Prior to the performance of any operations, a tariff containing rates, terms and conditions, and any applicable time schedules of service must be approved by, and on file with, the department.

[18.3.6.8 NMAC - Rp, 18.3.6.8 NMAC, 7/1/2024]

18.3.6.9 CONTENTS OF TARIFFS:

All proposed tariffs shall be in the prescribed form and for scheduled shuttle services, or for general shuttle services opting to operate pursuant to a set schedule, shall include the daily presentment times for each end or intermediate terminal location. A proposed tariff shall include specific rates, not ranges of rates, and shall not include any provision for mandatory gratuities or any limits to liability for negligence.

[18.3.6.9 NMAC - Rp, 18.3.6.9 NMAC, 7/1/2024]

18.3.6.10 COMPUTATION OF DISTANCES:

A. A motor carrier shall use the least expensive route when charging by mileage, consistent with existing events and road and weather conditions, unless the passenger or customer directs otherwise.

B. A motor carrier other than a taxicab service shall compute actual distances, as applicable, using odometer readings, global positioning system (GPS) data, or the official road map of New Mexico issued by the department.

C. Any remaining fraction of less than one-half mile will be omitted; any remaining fraction of one-half mile or greater will be increased to the next whole mile.

[18.3.6.10 NMAC - Rp, 18.3.6.10 NMAC, 7/1/2024]

18.3.6.11 TARIFFS TO BE AVAILABLE:

Tariffs must be maintained as a record at the motor carrier's principal place of business and must be available to the public at all times the motor carrier is open for business. For shuttle services, rates and applicable terminal presentment schedules must be posted at each terminal. Motor carriers providing certificated passenger services shall additionally post the tariff rates in the passenger compartment of each service vehicle.

[18.3.6.11 NMAC - Rp, 18.3.6.11 NMAC, 7/1/2024]

18.3.6.12 TARIFF CHANGE APPLICATIONS:

A motor carrier that proposes to change its rates, terms and conditions of service, shall file an application for a change in tariff with any required fee and submit a proposed tariff to reflect the desired changes, and provide additional information as specified below.

A. Rate increases for a full service carriers and towing services: A tariff change application submitted by a municipal taxicab, a scheduled shuttle, an ambulance service, or a towing service providing non-consensual tows, that proposes to increase rates shall include:

(1) a side-by-side comparison of the proposed tariff rates and the current tariff rates a balance sheet for the preceding fiscal year;

(2) an income statement for the preceding fiscal year;

(3) all documentary evidence which the applicant believes supports its proposed change in rates; and

(4) pre-filed direct testimony explaining why a change in rates is required for the motor carrier to achieve revenue levels that will provide a flow of net income adequate to support reasonable expense levels, including reasonable depreciation expense and repayment of a reasonable level of debt, and permit the raising of needed

equity capital.

B. Rate increases for general service carriers: A tariff change application submitted by a general taxicab, general shuttle, a household goods, or specialized passenger (limousine, non-emergency medical, tour or sightseeing) service carrier shall include:

a side-by-side comparison of the proposed tariff rates and the current tariff rates.

C. Scheduled shuttle service daily schedule change: A tariff change application seeking to change the daily time schedule for a scheduled shuttle service shall include:

(1) a side-by-side comparison of the proposed schedule and the current schedule; and

(2) a description of the need or reason for the proposed changes.

[18.3.6.12 NMAC - Rp, 18.3.6.12 NMAC, 7/1/2024]

18.3.6.13 NOTICE, REVIEW AND DETERMINATION:

A. Notice period: The department shall issue notice of a completed application for tariff change with a copy of the proposed tariff. The notice period is 19 calendar days after a completed application is filed with the department, excluding the day of filing, and including weekends and holidays. If the last day is a weekend or holiday, then the notice period ends on the next business day.

B. Review: No protest or objection is permitted or considered in response to a tariff change application. A hearing on a proposed tariff rate increase may be either requested by the applicant or required by the department during the notice period to further consider the lawfulness or reasonableness of the proposed rate increase. If a hearing is initiated, the motor carrier may apply for temporary authority to increase rates during the period of consideration and until the department issues a determination on the tariff change application.

C. Determination:**(1) Approved**

by default: If no hearing is initiated for the purpose of reviewing a proposed tariff rate increase, a tariff change shall be approved by default and become effective 20 days after the date that the completed application was filed with the department.

(2) Final

decision: If a hearing is initiated on the tariff change application, or if a complaint is received that requires an investigation of the applicant's existing or proposed tariff, a determination will be delayed for further consideration and required proceedings. Following such administrative proceedings, a final written determination shall be issued to approve, deny, or modify the proposed tariff as provided by law. [18.3.6.14 NMAC - N, 7/1/2024]

18.3.6.14 COMPLAINTS, INVESTIGATIONS AND

PENALTIES: If a written complaint is submitted to the department regarding tariff rates, terms of service, or related practice, that suggests that the tariff service is provided in a manner that is inconsistent with the laws, operating authority or approved tariff, the department may immediately suspend the operation of the rate, term of service or practice for up to 60 days to investigate. If the department determines that the complaint is substantiated, the department may modify and impose a tariff to comply with the legal requirements and pursue any penalties as prescribed by law. [18.3.6.14 NMAC - N, 7/1/2024]

HISTORY OF 18.3.6 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as: SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968; SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971; SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;

SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974; SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975; SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975; SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976; SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977; SCCMC Rule No. 5, Tariffs and Schedules, filed on 3/5/1982; SCCMC Rule No. 26, New Time Schedules, filed on 3/5/1982; SCC Rule 221, Tariffs, Rates and Schedules, filed on 1/5/1993; SCC Rule 222, Motor Carrier Agreements, filed on 1/5/1993; SCC Rule 267, Wrecker Services.

History of repealed material.

SCC Rule 221, Tariffs, Rates and Schedules, filed on 1/5/1993; SCC Rule 222, Motor Carrier Agreements, filed on 1/5/1993; SCC Rule 267, Wrecker Services. 18.3.6 NMAC, Tariffs, (filed on 12/10/2002) - repealed effective 2/13/2015. 18.3.6 NMAC, Tariffs, (filed on 1/28/2015) - repealed effective 7/1/2024.

Other: 18.3.6 NMAC, Tariffs, (filed on 1/28/2015) was replaced by 18.3.6 NMAC, Tariffs, effective 7/1/2024.

**TRANSPORTATION,
DEPARTMENT OF****TITLE 18
TRANSPORTATION AND
HIGHWAYS
CHAPTER 3 MOTOR
CARRIER GENERAL
PROVISIONS
PART 7 REPORTS,
RECORDS, AND ACCOUNTS**

**18.3.7.1 ISSUING
AGENCY:** New Mexico Department of Transportation.

[18.3.7.1 NMAC - Rp, 18.3.7.1 NMAC, 7/1/2024]

18.3.7.2 SCOPE: This rule applies to all motor carriers subject to the jurisdiction of the department. [18.3.7.2 NMAC - Rp, 18.3.7.2 NMAC, 7/2/2024]

**18.3.7.3 STATUTORY
AUTHORITY:** Sections 65-2A-4, and 65-2A-29 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81. [18.3.7.3 NMAC - Rp, 18.3.7.3 NMAC, 7/1/2024]

18.3.7.4 DURATION: Permanent. [18.3.7.4 NMAC - Rp, 18.3.7.1 NMAC, 7/1/2024]

**18.3.7.5 EFFECTIVE
DATE:** July 1, 2024, unless a later date is cited at the end of a section. [18.3.7.5 NMAC - Rp, 18.3.7.5 NMAC, 7/1/2024]

18.3.7.6 OBJECTIVE: The purpose of this rule is to implement Section 65-2A-29 NMSA 1978. [18.3.7.6 NMAC - Rp, 18.3.7.6 NMAC, 7/1/2024]

18.3.7.7 DEFINITIONS: See 18.3.1.7 NMAC. [18.3.7.7 NMAC - Rp, 18.3.7.7 NMAC, 7/1/2024]

**18.3.7.8 MANDATORY
REPORTING OF CERTAIN
ACCIDENTS:** Every motor carrier shall immediately report to law enforcement and, and promptly report to the department, any accident which occurs during authorized operations within the state that results in the death of a person, an injury to a person that requires licensed professional medical treatment, or an imminent risk to the public health and safety such as a fire or release of hazardous materials. A completed uniform crash report shall be obtained from law enforcement and submitted to the department by the motor carrier as soon as reasonably possible. [18.3.7.8 NMAC - Rp, N, 7/1/2024]

18.3.7.9 RECORDS:

A. Retention: All required records shall be retained for a period of no less than three complete calendar years beginning the first January after the creation of the record or, for driver and equipment files, after the date of permanent departure from engagement in the motor carrier’s authorized operations.

B. Preservation: A motor carrier shall take reasonable steps to protect required records from destruction and physical hazards and shall promptly notify the department if any required records are substantially damaged or destroyed.

C. Location: Required records must be maintained at the motor carrier’s principal place of business within the state unless the department issues a written exception for good cause on a showing by the motor carrier that records maintained outside the state will be reasonably accessible to the department for inspection upon demand.

D. Production: Records are subject to inspection by the department at any time and shall be maintained so that they are reasonably accessible.

E. Required records:

(1) Financial accounts: An ordered system of financial records shall be maintained in conformity with generally accepted accounting principles (GAAP) such that all expenditures and revenues in connection with intrastate operations in New Mexico are fully documented and supported, to include:

(a) all invoices, work orders, fuel records, bills of landing, warehouse receipts, vouchers and statements supporting disbursements;

(b) all receipts or memoranda with respect to all petty cash reimbursements; and

(c) all bank statements, deposit slips and canceled checks.

(2) Passenger services: All passenger lists, number of runs and number of passengers transported, trip sheets and daily dispatch records.

(3) Equipment and maintenance:

(a) equipment lists must be up to date and identify all motor vehicles, whether in or out of service, by make, model, year, VIN, license plate number, and state whether the vehicle is owned or leased;

(b) all driver and mechanic inspections;

(c) equipment records of title and registration certificates, repair and maintenance reports.

(4) Driver files: Must include all employment contracts, hire and separation dates, qualifications, duty status, drug and alcohol testing forms and records.

(5) Service complaints: A log and documentation of all complaints received regarding the motor carrier’s operations to include rates, service and safety concerns for equipment, facilities or drivers.
[18.3.7.9 NMAC - N, 7/1/2024]

18.3.7.10 ANNUAL REPORT: Every motor carrier shall file on the prescribed form a completed annual report of its operations on or before March 1 of each year for the immediately preceding calendar year unless March 1 is a holiday or weekend, then reports shall be due on the next business day.

A. Authorized affirmation: The accuracy of the contents of the report must be affirmed by the authorized signature(s) of: the owner, if the motor carrier is a sole proprietorship; a partner, if the motor carrier is a partnership; an authorized member, if the motor carrier is a limited liability company; or the president and secretary, if the motor carrier is a corporation.

B. Penalties for failure to timely file: The commission may assess fines and may initiate proceedings to suspend the operating authority of a motor carrier for failure to timely file a completed annual report as required by these

rules.
[18.3.7.10 NMAC - Rp, 18.3.7.8 NMAC, 7/1/2024]

18.3.7.11 CONTENTS OF ANNUAL REPORT: The annual report shall be on the prescribed form and include all information as listed below.

A. Identifying information: Some information may be provided by checking a box on the prescribed form. For example, a check-the-box option may be provided to indicate that there are no changes to report for that specific item from the annual report or application submitted by the motor carrier in the prior calendar year.

(1) operating authority number(s);

(2) the authorized signatory’s name, title, phone number and e-mail address;

(3) the business name, all trade or d/b/a names, and business telephone number;

(4) physical and mailing address of the principal place of business;

(5) name, mailing and e-mail address for a designated agent for service of process;

B. Vehicle and driver information:

(1) a list of all drivers, employed or contracted;

(2) the equipment list of vehicles, as required by rule;

(3) affirmations to certify that:

(a) all vehicles and equipment passed an inspection within the preceding 12 months, as required by rule; and

(b) a current MVD printout of the driving record and all other driver information required by these rules is maintained for each of its drivers.
[18.3.7.11 NMAC - Rp, 18.3.7.9 NMAC, 7/1/2024]

18.3.7.12 - 18.3.7.16 [RESERVED]

HISTORY OF 18.3.7 NMAC**Pre-NMAC History.**

SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968;
 SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1979;
 SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;
 SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;
 SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;
 SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;
 SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;
 SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;
 SCCMC Rule No. 34, Report of Accident, filed on 3/5/1982;
 SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993;
 SCC Rule 242, Accounts, filed on 1/5/1993;
 SCC Rule 243, Annual Reports, filed on 1/5/1993;
 SCC Rule 244, Other Reports, filed on 1/5/1993.

History of Repealed Material.

SCC Rule 241, Records of Motor Transportation Entities, filed on 1/5/1993;
 SCC Rule 242, Accounts, filed on 1/5/1993;
 SCC Rule 243, Annual Reports, filed on 1/5/1993;
 SCC Rule 244, Other Reports, filed on 1/5/1993.
 18.3.7 NMAC, Motor Carrier General Provisions - Reports, Records and Accounts (filed 12/10/02), repealed 2/13/2015.
 18.3.7 NMAC, Reports, Records and Accounts (filed 1/28/2015), repealed 7/1/2024.

Other History:

18.3.7 NMAC, Reports, Records, and Accounts (filed 12/10/2002) was replaced by 18.3.7 NMAC, Reports, Records, and Accounts, effective 2/13/2015.
 18.3.7 NMAC, Reports, Records, and Accounts (filed 1/28/2015) was replaced by 18.3.7 NMAC, Reports, Records, and Accounts, effective 7/1/2024.

TRANSPORTATION, DEPARTMENT OF

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 3 MOTOR CARRIER GENERAL

PROVISIONS

PART 8 CHANGES IN CERTIFICATES

18.3.8.1 ISSUING

AGENCY: New Mexico Department of Transportation.

[18.3.8.1 NMAC - Rp, 18.3.8.1 NMAC, 7/1/2024]

18.3.8.2 SCOPE: This rule applies to all motor carriers operating pursuant to a certificate issued by the department.

[18.3.8.2 NMAC - Rp, 18.3.8.2 NMAC, 7/1/2024]

18.3.8.3 STATUTORY

AUTHORITY: Section 65-2A-4 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81.

[18.3.8.3 NMAC - Rp, 18.3.8.3 NMAC, 7/1/2024]

18.3.8.4 DURATION:

Permanent.

[18.3.8.4 NMAC - Rp, 18.3.8.4 NMAC, 7/1/2024]

18.3.8.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section.

[18.3.8.5 NMAC - Rp, 18.3.8.5 NMAC, 7/1/2024]

18.3.8.6 OBJECTIVE:

The purpose of this rule is to implement Section 65-2A-14 NMSA 1978.

[18.3.8.6 NMAC - Rp, 18.3.8.6 NMAC, 7/1/2024]

18.3.8.7 DEFINITIONS:

See 18.3.1.7 NMAC.

[18.3.8.7 NMAC - Rp, 18.3.8.7 NMAC, 7/1/2024]

18.3.8.8 CERTIFICATE CHANGE FOLLOWING A TRANSFER BY OPERATION

OF LAW: This section shall apply whenever the ownership of, or interest in, a certificate passes to another by operation of law, such as upon inheritance, bequest, order in bankruptcy or insolvency, execution sale, repossession upon default of a loan, lease or executory sales contract.

A. Notice: The personal representative, executor, administrator, receiver, trustee or other representative or successor in interest of the operating authority shall sign and submit to the department a notice of transfer by operation of law. The notice shall contain:

(1) the name of the holder from whom the certificate is to be transferred;
 (2) the circumstances resulting in the transfer by operation of law; and

(3) a certified copy of a court order or other document admissible pursuant to the New Mexico rules of evidence, establishing that the transfer by operation of law has occurred;

(4) whether the successor intends to modify or continue operations under the certificate, or to voluntarily suspend or cancel the certificate.

B. Department approval required: The successor must apply for, and receive, department approval for any change to, or continued operations under, the certificate. Approvals may be expedited under Subsection C of Section 65-2A-14 NMSA 1978.
 [18.3.8.8 NMAC - Rp, 18.3.8.8 NMAC, 7/1/2024]

18.3.8.9 CHANGE TO THE FORM OF LEGAL ENTITY, NAME OR CONTROL OF A

CERTIFICATE HOLDER:

A. An application for a change of name, form or control of legal entity, or control of a holder of the certificate shall be on the prescribed form accompanied by any required fee, and shall include updates to the information, documents and statements required for applications in 18.3.2.9 NMAC, and insurance filing forms in the new name, if applicable.

B. The department shall conduct a legal review to ensure that the change does not involve a transfer or lease of authority for which a notice and hearing are required, and additional documents may be required for the purpose of such review. Once the application is deemed complete and appropriate to the situation, the department shall promptly issue a new certificate to reflect the change [18.3.8.9 NMAC - Rp, 18.3.8.10 NMAC, 7/1/2024]

18.3.8.10 LEASE OR VOLUNTARY TRANSFER OF A CERTIFICATE: If a certificate holder seeks to lease all or part of its certificate, or to transfer its certificate, an application for certificate authorization, as described in 18.3.2 NMAC, must be submitted along with any required fee. Additional information is required as part of that application, as provided below, and the application may be contested by protest, objection, or by staff.

A. Lease of certificate information: An applicant for a lease of a certificate, in whole or in part, shall submit:

(1) whether the certificate will be leased in whole or in part, describing the part;

(2) a copy of the proposed lease, containing provisions specifying:

(a) that the proposed lease is not effective until approved by the department;

(b) the term of the lease providing specific dates or conditions.

B. Voluntary transfer of certificate information: An applicant for the permanent conveyance of a certificate, in whole

or in part, shall also submit:
(1) whether the certificate will be transferred in whole or in part, describing the part;

(2) a notarized joint affidavit, executed by the transferor-applicant and the transferee-applicant, certifying that all accrued taxes, rents, wages of employees and all other indebtedness incident to the transferor-applicant's operations have been paid in full, or that the transferee-applicant will assume responsibility for paying them if they have not been paid in full.

C. Notice and hearing requirements: Once the application is complete and any fees received, the department must provide public notice of the application to provide an opportunity for the application to be challenged. The application shall receive a hearing only if intervenor status is granted in response to a timely objection or protest, or if the staff request a hearing. If after the notice period the application is uncontested, the department shall approve the application. [18.3.8.10 NMAC - N, 7/1/2024]

18.3.8.11 CERTIFICATE CANCELLATION, VOLUNTARY SUSPENSION AND REINSTATEMENT:

A. Application: A certificate holder may apply to permanently cancel its certificate or to voluntarily suspend all or a part of its certificate for a period of up to 12 consecutive months. The application shall be submitted on the prescribed form with any required fee and contain:

(1) whether the suspension is sought for all or part of its certificate, with a description of the partial nature of any suspension sought; and

(2) the date on which the applicant proposes to permanently cancel or to suspend all or part of its certificate and the length of the suspension period, which shall not exceed 12 consecutive months.

B. Approval: Once the application is complete, the department shall promptly cancel, or

suspend either in whole or in part, the certificate.

C. Reinstatement of certificate following a voluntary suspension: Following a voluntary suspension, in whole or in part, that did not exceed 12 consecutive months, an applicant may submit the prescribed form for full reinstatement with any required fees and provide a notarized statement that the applicant is fit and able to render reasonably continuous and adequate service. The department may promptly conduct an inspection and require any identified deficits to be remedied prior to approving the reinstatement request. [18.3.8.11 NMAC - Rp, 18.3.8.11 NMAC, 7/1/2024]

18.3.8.11 - 18.3.8.13 [RESERVED]

HISTORY OF 18.3.8 NMAC:
Pre-NMAC history. The material in this rule was previously filed with the state records center as:
SCC 68/16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/191968;
SCC 71/6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971;
SCC 73/1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;
SCC 74/1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;
SCC 75/1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;
SCC 75/3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;
SCC 76/1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;
SCC 77/1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;
SCCMC Rule No. 20, Legal Entry, filed on 3/5/1982;
SCCMC Rule No. 21, Transfer of Certificates, filed on 3/5/1982;
SCCMC Rule No. 22, Lease of Certificates, filed on 3/5/1982;

SCCMC Rule No. 42, Consolidation of Certificates, filed on 3/5/1982; SCC Rule 218, Changes in Operating Authority, filed on 1/5/1993.

History of Repealed Material:

SCC Rule 218, Changes in Operating Authority (filed 1/5/1993) repealed 12/30/2002.

18.3.8 NMAC, Changes in Certificates of Public Convenience and Necessity and Permits (filed 12/10/2002) repealed 1/1/2005.

18.3.8 NMAC, Motor Carrier General Provisions / Changes in Certificates and Permits (filed 12/16/2004), repealed 2/13/2015.

18.3.8 NMAC, Motor Carrier General Provisions / Changes in Certificates and Permits (filed 1/28/2015), repealed 7/1/2024.

Other History:

SCC Rule 218, Changes in Operating Authority (filed 1/5/1993) was replaced by 18.3.8 NMAC, Changes in Certificates of Public Convenience and Necessity and Permits, effective 12/30/2002.

18.3.8 NMAC, Changes in Certificates of Public Convenience and Necessity and Permits (filed 12/10/2002) was replaced by 18.3.8 NMAC, Changes in Certificates and Permits, effective 1/1/2005.

18.3.8 NMAC, Changes in Certificates and Permits (filed 12/16/2004) was replaced by 18.3.8 NMAC, Changes in Certificates and Permits effective 2/13/2015.

18.3.8 NMAC, Changes in Certificates and Permits (filed 1/28/2015) was replaced by 18.3.8 NMAC, Changes in Certificates effective 7/1/2024.

**TRANSPORTATION,
DEPARTMENT OF**

**TITLE 18
TRANSPORTATION AND
HIGHWAYS
CHAPTER 3 MOTOR
CARRIER GENERAL
PROVISIONS
PART 9 LEASING OF
EQUIPMENT**

18.3.9.1 ISSUING AGENCY: New Mexico Department of Transportation.
[18.3.9.1 NMAC - Rp, 18.3.9.1 NMAC, 7/1/2024]

18.3.9.2 SCOPE: This rule applies to all motor carriers leasing equipment.
[18.3.9.2 NMAC - Rp, 18.3.9.2 NMAC, 7/1/2024]

18.3.9.3 STATUTORY AUTHORITY: Section 65-2A-4 NMSA 1978, 2023 N.M. Laws, Chapter 100, Section 81.
[18.3.9.3 NMAC - Rp, 18.3.9.3 NMAC, 7/1/2024]

18.3.9.4 DURATION: Permanent.
18.3.9.4 NMAC - Rp, 18.3.9.4 NMAC, 7/1/2024]

18.3.9.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[18.3.9.5 NMAC - Rp, 18.3.9.5 NMAC, 7/1/2024]

18.3.9.6 OBJECTIVE: The purpose of this rule is to implement Section 65-2A-24 NMSA 1978.
[18.3.9.6 NMAC - Rp, 18.3.9.6 NMAC, 7/1/2024]

18.3.9.7 DEFINITIONS: See 18.3.1.7 NMAC.
[18.3.9.7 NMAC - Rp, 18.3.9.7 NMAC, 7/1/2024]

18.3.9.8 NOTICE OF LEASE: Prior to, or within three days of, placing a leased vehicle into use a motor carrier must file a notice of equipment lease with the department. The notice shall include:

A. the date that the vehicle is or was placed in service, the period of the lease or the final date that the vehicle was used; full identification of the vehicle make, model, model year and VIN; the state of registration; and the registration license plate number;

B. verification that each vehicle leased or to be leased

complies with all applicable laws including financial responsibility and safety requirements.
[18.3.9.8 NMAC - Rp, 18.3.9.8 NMAC, 7/1/2024]

18.3.9.9 [RESERVED]

18.3.9.10 RESPONSIBILITY FOR COMPLIANCE WITH APPLICABLE LAW:

A. The motor carrier is responsible at all times for ensuring that the leased vehicle complies with all applicable laws.

B. The motor carrier shall maintain a copy of the written lease and a record of use of the leased vehicle in its equipment records, including the dates that the vehicle is or was in service; full identification of the vehicle make, model, model year and VIN; the state of registration; and the registration license plate number.
[18.3.9.10 NMAC - Rp, 18.3.9.10 NMAC, 7/1/2024]

HISTORY OF 18.3.9 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:
SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968;
SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971;
SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;
SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;
SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;
SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;
SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;
SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;
SCCMC Rule No. 24, Lease and Interchange, filed on 3/5/1982;

SCC Rule 223, Leasing and Interchange of Equipment, filed on 1/5/1993.

HISTORY OF REPEALED MATERIAL:

SCC Rule 223, Leasing and Interchange of Equipment, filed on 1/5/1993.
 18.3.9 NMAC, Motor Carrier General Provisions - Leasing of Equipment filed 12/10/2002, repealed 2/13/2015
 18.3.9 NMAC, Motor Carrier General Provisions - Leasing of Equipment filed 1/28/2015, repealed 7/1/2024

Other History:

18.3.9 NMAC, Leasing of Equipment filed 12/10/2002 was replaced by 18.3.9 NMAC, Leasing of Equipment effective 2/13/2015.
 18.3.9 NMAC, Leasing of Equipment filed 1/28/2015 was replaced by 18.3.9 NMAC, Leasing of Equipment effective 7/1/2024.

**TRANSPORTATION,
DEPARTMENT OF**

**TITLE 18
TRANSPORTATION AND
HIGHWAYS
CHAPTER 3 MOTOR
CARRIER GENERAL
PROVISIONS
PART 10 PARENTAL
RESPONSIBILITY**

18.3.10.1 ISSUING AGENCY: New Mexico Department of Transportation.
 [18.3.10.1 NMAC - Rp 18.3.10.1 NMAC, 7/1/2024]

18.3.10.2 SCOPE: This rule applies to the issuance, renewal, suspension or revocation of any operating authority issued by the department.
 [18.3.10.2 NMAC - Rp 18.3.10.2 NMAC, 7/1/2024]

18.3.10.3 STATUTORY AUTHORITY: Section 40-5A-9 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81.
 [18.3.10.3 NMAC - Rp, 18.3.10.3

NMAC, 7/1/2024]

18.3.10.4 DURATION: Permanent.
 [18.3.10.4 NMAC - Rp 18.3.10.4 NMAC, 7/1/2024]

18.3.10.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
 [18.3.10.5 NMAC - Rp 18.3.10.5 NMAC, 7/1/2024]

18.3.10.6 OBJECTIVE: The purpose of this rule is to implement the requirements of the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978.
 [18.3.10.6 NMAC - Rp, 18.3.10.6 NMAC, 7/1/2024]

18.3.10.7 DEFINITIONS: In addition to the definitions in Section 40-5A-3NMSA 1978, as used in this rule:

A. holder means a sole proprietorship or partnership that has an operating authority from the commission;

B. HCA means the New Mexico health care authority;

C. operating authority means a certificate or warrant issued by the department;

D. statement of compliance means a recent certified statement from HCA stating that an applicant or holder is in current compliance with a judgment and order for support.

[18.3.10.7 NMAC - Rp, 18.3.10.7 NMAC, 7/1/2024]

18.3.10.8 HCA-CERTIFIED LIST: Upon receipt of an HCA-certified list, the department shall review the list against a current list of applicants and holders. By the end of the month in which the HCA-certified list is received, the director shall report to HCA the names of any applicants and holders who are on the HCA-certified list and the actions taken with regard to such applicants and holders.

[18.3.10.8 NMAC - Rp, 18.3.10.8 NMAC, 7/1/2024]

18.3.10.9 NOTICE:

A. The department shall notify the applicant or holder in writing that a statement of compliance is due within 30 days of the date the notification was issued.

B. The notice shall advise that a failure to timely provide the statement of compliance shall result in the rejection of an application or the commencement of a formal hearing to suspend or revoke any associated operating authorities.
 [18.3.10.9 NMAC - Rp 18.3.10.9 NMAC, 7/1/2024]

18.3.10.10 SANCTIONS: If an applicant or holder fails to provide a timely statement of compliance, the department shall:

A. reject the application on the grounds that the applicant is ineligible under Section 40-5A-4 NMSA 1978; or
B. initiate a proceeding to suspend or revoke the holder's operating authority pursuant to this rule and Section 40-5A-6 NMSA 1978.

[18.3.10.10 NMAC - Rp, 18.3.10.10 NMAC, 7/1/2024]

18.3.10.11 EVIDENCE AND PROOF: In a compliance hearing, relevant evidence is limited to the accuracy of the identification of the holder on the HCA-certified list and the failure of the holder to timely provide a statement of compliance. Extenuating circumstances may be presented and considered, subject to objection.

[18.3.10.12 NMAC - Rp, 18.3.10.11 NMAC, 7/1/2024]

HISTORY OF 18.3.10 NMAC Pre-NMAC history. The material in this rule was previously filed with the State Records Center as: SCC Rule 95-04-TR, Parental Responsibility Act Rule, filed on 10/18/1995.

History of repealed material. SCC Rule 95-04-TR, Parental Responsibility Act Rule, filed on 10/18/1995.
 18.3.10 NMAC, Motor Carrier General Provisions / Parental

Responsibility (filed 12/10/2002), repealed 7/1/2024.

Other History:

18.3.10 NMAC, Parental Responsibility (filed 12/10/2002) was replaced by 18.3.10 NMAC, Parental Responsibility effective 7/1/2024.

**TRANSPORTATION,
DEPARTMENT OF**

TITLE 18

**TRANSPORTATION AND
HIGHWAYS**

**CHAPTER 3 MOTOR
CARRIER GENERAL
PROVISIONS**

**PART 11 HOUSEHOLD
GOODS CARRIERS**

18.3.11.1 ISSUING

AGENCY: New Mexico Department of Transportation.

[18.3.11.1 NMAC - Rp, 18.3.11.1 NMAC, 7/1/2024]

18.3.11.2 SCOPE: This rule applies to all household goods carriers (HGCs) subject to the jurisdiction of the department.

[18.3.11.2 NMAC - Rp, 18.3.11.2 NMAC, 7/1/2024]

18.3.11.3 STATUTORY

AUTHORITY: Sections 65-2A-4, 65-2A-25, and 65-2A-26 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 8.

[18.3.11.3 NMAC - Rp, 18.3.11.3 NMAC, 7/1/2024]

18.3.11.4 DURATION:

Permanent.

[18.3.11.4 NMAC - Rp, 18.3.11.4 NMAC, 7/1/2024]

18.3.11.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section.

[18.3.11.5 NMAC - Rp, 18.3.11.5 NMAC, 7/1/2024]

18.3.11.6 OBJECTIVE: The

purpose of this rule is to implement Sections 65-2A-25 and 65-2A-26 NMSA 1978.

[18.3.11.6 NMAC - Rp, 18.3.11.6 NMAC, 7/1/2024]

18.3.11.7 DEFINITIONS:

A. accessorial services means services such as packing, marking, unpacking, and appliance servicing, assembling, and disassembling that the shipper requests to be performed or are necessary because of special circumstances;

B. bill of lading means the receipt for the shipper's household goods and the contract for their transportation;

C. binding estimate means an agreement made in advance between the shipper and the HGC that guarantees the total cost of the move based on the quantities and services shown on the estimate;

D. exclusive use of a vehicle means an agreement that the shipper's shipment will be moved by itself on the HGC's transporting motor vehicle;

E. expedited service means an agreement between the shipper and the HGC to perform transportation by a set date in exchange for a higher charge;

F. guaranteed pickup and delivery service means an agreement between the shipper and the HGC to pick up and deliver the shipment on specified dates that provides for the HGC to reimburse the shipper for delays;

G. inventory means the detailed descriptive list of the shipper's household goods showing the number and condition of each item;

H. non-binding estimate means the carrier's approximation of the cost of the move based on the estimated weight of the shipment and the accessorial services requested; a non-binding estimate is not enforceable against the carrier as the final charges are based on the actual weight and tariff provisions in effect;

I. shipper means the consumer of the HGC services.

J. storage in transit means temporary storage of the

shipper's shipment pending further transportation.

[18.3.11.7 NMAC - Rp, 18.3.11.7 NMAC, 7/1/2024]

18.3.11.8 COST

ESTIMATES: An HGC must provide a writ10 cost estimate to the shipper prior to loading the household goods. The estimate must clearly describe the shipment and all services requested and list the maximum amount the shipper may be required to pay. The HGC shall retain for inspection a copy of each estimate that resulted in the provision of services for a period of three years.

A. Binding estimates of total cost:

(1) The HGC may charge for providing a binding estimate.

(2) Charges are limited to the maximum amount listed on the binding estimate and payment is due at the time of delivery. Upon such payment, the HGC must release the goods to the shipper. If the shipper does not pay the charges at the time the shipment is delivered, the HGC may place the shipment in storage at the shipper's expense until the charges are paid.

B. Non-binding estimates of approximate cost:

(1) An HGC shall not charge for providing a non-binding estimate.

(2) If the HGC provides a non-binding estimate, the shipper shall not be required to pay more than the amount of the original estimate, plus 10 percent, at the time of delivery and, upon such payment, the HGC must release the goods to the shipper. The shipper shall have 30 days after delivery to pay any remaining charges. If the shipper cannot pay the required charges at the time the shipment is delivered, the HGC may place the shipment in storage at the shipper's expense until the charges are paid.

(3) If the HGC is asked or required to provide more services than those included in the estimate, the HGC must present an itemized list of charges for those

services to the shipper at the time of delivery. The shipper shall have 30 days after delivery to pay the additional charges.

[18.3.11.8 NMAC - Rp, 18.3.11.8 NMAC, 7/1/2024]

18.3.11.9 LIMITATIONS ON SERVICE OPTIONS:

An HGC may offer the following service options. However, an HGC may not charge for these or any other services unless the charge is included in the HGC's commission-approved tariff.

A. Space reservation:

The HGC may not enter into an agreement for the shipper to pay for a minimum number of cubic or linear feet in the HGC's transporting vehicle, regardless of how much space is actually occupied by the shipment, when the shipment completely occupies the transporting vehicle.

B. Expedited service:

An HGC may subject shipments weighing less than the minimums specified in this subsection to reasonable delay for consolidation aboard a single vehicle. When a shipper orders expedited service with a specified delivery date and the HGC is unable to consolidate the shipment with other shipments, the HGC may base transportation charges on the specified minimum weights.

(1) Shipments moving zero to fifty miles, 3,000 pounds minimum;

(2) Shipments moving fifty miles to one hundred miles, 5,000 pounds minimum;

(3) Shipments moving one hundred and one miles to two hundred miles, 8,000 pounds minimum;

(4) Shipments moving two hundred and one miles to 300 miles, 10,000 pounds minimum;

(5) Shipments moving three hundred and one miles and up, 12,000 pounds minimum.

C. Exclusive use of a vehicle:

(1) An HGC may require a minimum charge for exclusive use of a vehicle.

(2) An HGC may not enter into an exclusive use

of vehicle agreement with a shipper when the shipment completely occupies the transporting vehicle.

D. Guaranteed

pickup and delivery: The liability provided by a guaranteed pickup and delivery agreement is in addition to and shall in no way limit the liability of the HGC otherwise provided by law.

E. Storage in transit:

(1) A shipper may place a shipment that is in transit in storage one or more times for an aggregate of no more than 180 days.

(2) Upon the expiration of the 180 day period, the storage facility shall be considered the final destination and all accrued charges shall become due and payable.

(3) The shipper or the shipper's agent may add to or remove goods from storage and the HGC shall adjust the charges to the new weight of the shipment.

F. Accessorial

services. An HGC shall clearly describe on the bill of lading each accessorial service provided to a shipper.

G. Advanced charges.

The HGC may bill a shipper for services not performed by the HGC but by a third party at the shipper's request only if such services are clearly described on the bill of lading and supported by a copy of the third party's invoice.

[18.3.11.9 NMAC - Rp, 18.3.11.9 NMAC, 7/1/2024]

18.3.11.10 BILL OF LADING:

A. Before accepting household goods for transport, the HGC shall prepare and deliver to the shipper a complete bill of lading for every shipment it will transport.

B. A copy of the bill of lading should accompany the shipment at all times.

C. The HGC shall retain a copy of the bill of lading in its files for a period of three years.

D. All bills of lading shall comply with, be governed by, and have the consequences stated in

the Uniform Commercial Code of New Mexico and any other applicable law. [18.3.11.10 NMAC - Rp, 18.3.11.10 NMAC, 7/1/2024]

18.3.11.11 CON10TS OF THE BILL OF LADING:

Use of the uniform bill of lading meets the requirements of this rule. If another form is used, the bill of lading must contain at least the following information:

A. the number of the bill of lading;

B. the name, address, telephone number and NMPRC transportation number of the issuing HGC;

C. the name and address of any other HGCs participating in the shipment, if known;

D. the date the shipment was received by the HGC;

E. the name, address and, if available, telephone number of the shipper;

F. the points of origin and destination;

G. a description of the items 10dered and received for transportation;

H. the weight, volume, or measurement of the items 10dered and received for transportation, if applicable to the rating of the freight;

I. where applicable, the valuation of the shipment on which the bill of lading was issued;

J. if known, the amount of charges, method of payment and, if a cash on delivery (COD) shipment, the amount of the COD charges and the name of the person who is to pay the charges;

K. agreed pick-up and delivery date, if any; and

L. identification number assigned to the shipment by the HGC, if any.

[18.3.11.11 NMAC - Rp, 18.3.11.11 NMAC, 7/1/2024]

18.3.11.12 INVENTORY: Required:

The HGC shall prepare an inventory of each shipment prior to transport.

(1)

The inventory shall consist of a description of each article in the shipment, shall list any damage or unusual wear, and shall indicate which containers were packed or crated by the HGC and which were packed or crated by the shipper.

(2)

The HGC and the shipper shall each sign the inventory, and the shipper shall then be solely responsible for its accuracy.

(3)

At the time the shipment is delivered, the shipper shall be given the opportunity to check the items delivered against the items listed on the inventory. If new damage is discovered, the shipper shall be given the opportunity to record it on the inventory.

(4)

The HGC shall retain a legible copy of the inventory in its files for a period of three years.

B. Exception:

A shipper may waive in writing the requirement for an inventory if:

(1)

the pickup and delivery points for the shipment are no more than 30 miles apart;

(2)

the shipment is billed at an hourly rate; and

(3)

the shipper has exclusive use of the vehicle. [18.3.11.12 NMAC - Rp, 18.3.11.12 NMAC, 7/1/2024]

18.3.11.13 WEIGHING:**A.**

The HGC shall follow weighing practices designed to ensure reasonable accuracy.

B.

Each time a weighing is performed the HGC shall obtain a weight ticket showing the date and place of weighing and the weight obtained. The person who performed the weighing shall sign the ticket.

C.

The weight of a shipment shall be the difference between the tare weight of the vehicle on which the shipment is loaded and the gross weight of the same vehicle after the shipment is loaded.

D.

While weighing, the HGC's vehicle shall have full fuel tanks and shall contain the equipment

required to transport the shipment, including pads, dollies and ramps.

E.

Shipments weighing less than 1,000 pounds may be weighed separately on a certified scale.

F.

The shipper or its agent has the right to observe all weighings.

G.

A shipper or its agent may request a re-weigh prior to the HGC unloading the shipment. Charges shall be based on the re-weigh.

H.

No HGC shall charge for weighing or re-weighing. [18.3.11.13 NMAC - Rp, 18.3.11.13 NMAC, 7/1/2024]

18.3.11.14 RECEIPT FOR DELIVERY:**A.**

The HGC shall provide the shipper with a receipt for delivery that includes at a minimum the bill of lading, a copy of the inventory and, if applicable, the weigh tickets.

B.

No HGC shall require a shipper to sign a receipt that relieves the HGC from all liability for loss or damage to the shipment. [18.3.11.14 NMAC - Rp, 18.3.11.14 NMAC, 7/1/2024]

18.3.11.15 LIABILITY FOR LOSS AND DAMAGE: The HGC is required to assume, at a minimum, liability for the released value of the shipper's goods.

A. Released value:

(1)

The HGC shall not charge for assuming liability for the released value of a shipment.

(2)

The HGC shall specify in its tariff a rate per pound for released value liability.

(3)

The HGC shall settle loss or damage claims based on the pound weight of the lost or damaged article multiplied by the tariffed rate.

(4)

The shipper must declare acceptance of released value liability on the bill of lading.

B. Declared value:

(1)

The HGC shall specify in its tariff a rate per

thousand dollars, or fraction thereof, for declared value liability.

(2)

The shipper must declare a specific dollar amount for the declared value of the shipment.

(3)

The HGC shall settle loss or damage claims based on the declared value of the lost or damaged items up to the maximum liability for the entire shipment.

(4)

The shipper must declare acceptance of declared value liability on the bill of lading.

C. Replacement**value:**

(1)

The HGC shall specify in its tariff a rate per thousand dollars, or fraction thereof, for replacement value liability.

(2)

The shipper must declare a specific dollar amount for the replacement cost value of the shipment.

(3)

The HGC shall settle loss or damage claims based on the replacement cost of the lost or damaged items up to the maximum liability for the entire shipment.

(4)

The shipper must declare acceptance of replacement cost liability on the bill of lading.

D. Articles of

extraordinary value: The HGC may, but is not required to, assume liability for documents, currency, jewelry, precious stones, accounts, bills, deeds, securities, notes, stamp or coin collections, letters, art, or other articles of peculiar inherent value, if the articles are listed on the bill of lading with a specific value for each article. If the HGC refuses to assume such liability, the HGC shall notify the shipper in writing before accepting such articles for shipment. [18.3.11.15 NMAC - Rp, 18.3.11.15 NMAC, 7/1/2024]

18.3.11.16 CLAIMS:**A.**

Upon discovery of a claim for loss, damage, overcharge, or any other matter, the shipper shall immediately notify the HGC in writing and give the HGC a

reasonable opportunity to inspect the item that is the basis for the claim and the original package, if any. The claim shall be accompanied by the original or a true copy of the bill of lading.

B. The HGC shall not be responsible for loss or damage occurring:

(1) after the shipper or the shipper’s agent has been given the opportunity to check the items delivered against the items listed on the inventory and has signed the inventory without noting any loss or damage;

(2) when the shipper directs the HGC to deliver the shipment to a place where the shipper or the shipper’s agent is not present; or

(3) when the HGC is directed to load a shipment at a place where the shipper or the shipper’s agent is not present.

C. A HGC shall be responsible for the repair or replacement of a lost or damaged article that is a matched piece or part of a set but shall not be liable for replacing the entire set.

D. When liability is measured by weight of a container or carton, and actual weights are unobtainable, the following items shall be deemed to have the following weights, unless specific evidence is presented to the contrary:

(1) dish-pack drum, 60 pounds;

(2) cartons less than one and one-half cu. ft., 20 pounds;

(3) cartons one and one-half cu. ft. to less than three cu. ft., 25 pounds;

(4) cartons three cu. ft. to less than four and one-half cu. ft., 30 pounds;

(5) cartons four and one-half cu. ft. to less than six cu. ft., 35 pounds;

(6) cartons six cu. ft. to less than six and one-half cu. ft., 45 pounds;

(7) cartons six and one-half cu. ft. and over, 50 pounds;

(8) wardrobe carton, 50 pounds;

(9) mattress or box spring carton not exceeding 54” x 75”, 60 pounds;

(10) mattress or box spring carton exceeding 54” x 75”, 80 pounds;

(11) crib mattress carton, 22 pounds;

(12) cartons containing books, phonograph records, tapes or CDs, 50 pounds;

(13) cartons containing lampshades, five pounds; and

(14) items not identified on the inventory as to contents will be settled for the heaviest weight on the schedule for the container.

[18.3.11.16 NMAC - Rp, 18.3.11.16 NMAC, 7/1/2024]

18.3.11.17 NOTICE TO

PROSPECTIVE SHIPPERS: An HGC shall deliver to every shipper a written notice containing a statement in substantially the following form: “This motor carrier operates pursuant to NMDOT Operating Authority No., (insert operating authority number). If you have questions or problems with the service provided by this company, contact the New Mexico department of transportation, P.O. Box 1149, Santa Fe, NM 87504-1149, 505-795-1401.”

[18.3.11.17 NMAC - Rp, 18.3.11.17 NMAC, 7/1/2024]

18.3.11.18 HOUSEHOLD GOODS AGENTS:

A. Any contract or agreement between an HGC and its agent shall be in writing and shall specify the territory in which the agent is to serve. Each party shall keep a copy of the contract as part of its records at its principal place of business.

B. Each HGC shall file a current, accurate list of its agents and their telephone numbers and physical locations and mailing addresses with its annual report. An HGC shall report any additions or deletions from the list to the

commission as they occur.

C. The HGC’s agent shall operate under the trade name of the HGC it represents, shall display the trade name of the HGC prominently in its advertising and shall, in all representations to the public, prominently display the name of the HGC and the fact that the agent is acting as the HGC’s agent.

D. The HGC’s agent shall prominently display the trade name of the HGC principal on all vehicles owned by the agent and used in the pick-up and delivery of intrastate shipments.

E. The HGC’s agent shall maintain at its place of business for inspection by the public copies of the tariffs under which the HGC operates.

F. The HGC’s agent shall retain as part of its records for a period of three years all documents relating to every shipment that it negotiates or handles, including but not limited to all estimates, contracts, bills of lading, waybills, and freight bills.

[18.3.11.18 NMAC - Rp, 18.3.11.18 NMAC, 7/1/2024]

18.3.11.19 JOINT TRANSPORTATION BETWEEN HGCs:

A. No HGC shall arrange any shipment to, from, or between points it is not authorized to serve.

B. An HGC may share in the revenue from a shipment only if it has authority to haul it. All charges for joint transportation shall be collected by the HGC domiciled in New Mexico who booked or transported it and that HGC shall account to all participating HGCs for their share of the charges.

C. Each bill of lading, route manifest, and freight bill shall bear the name of every HGC participating in the transportation of the shipment.

[18.3.11.19 NMAC - Rp, 18.3.11.19 NMAC, 7/1/2024]

18.3.11.20 PROVISIONS REGARDING SPECIFIC TYPES

OF ARTICLES:**A. Hazardous matter:**

The HGC shall not accept or transport hazardous matter or articles that cannot be taken from the premises without damaging the articles or the premises. When the HGC reasonably believes articles or con10ts of packages must be inspected for compliance with this rule, the HGC shall make or cause such inspection, and may subsequently require sufficient evidence to determine the actual character of the articles. The shipper shall reimburse the HGC according to labor rates published in the HGC's tariff.

B. Perishable

articles: The HGC shall not accept perishable articles or articles requiring refrigeration. The HGC may, in its discretion, accept frozen foods under the following conditions:

- (1) the food is contained in a regular food freezer and is frozen solid at the time of loading;
- (2) both the point of origin and the destination of the shipment are within New Mexico;
- (3) no storage or delay is required in transit;
- (4) delivery may be accomplished within 24 hours of the time of loading; and
- (5) notwithstanding any other provision of this rule, the HGC shall in no case be liable for the condition or flavor of the food.

[18.3.11.20 NMAC - Rp, 18.3.11.20 NMAC, 7/1/2024]

18.3.11.21

IMPRACTICABLE OPERATIONS AND SERVICE: No HGC shall be required to perform any service at a place which is inaccessible, or where the operation of motor vehicles or presence of personnel would subject either to unreasonable risk, loss or damage such as, but not limited to, road conditions, buildings, riots, strikes, war, civil disturbances, and all other hazards.

A. When, due to inaccessibility or otherwise, a HGC cannot perform pickup, delivery, or

other services, the HGC will make the motor vehicle available at the nearest accessible point deemed reasonably safe for its operation and personnel.

B. When an HGC, due to inaccessibility or otherwise, cannot operate its motor vehicle to the point of pick-up or delivery, upon permission of the shipper or consignee the HGC may utilize smaller equipment and more labor to continue the move and may charge additionally as provided in the HGC's tariff.

C. When a shipper will not accept delivery at the nearest point of safe approach, the HGC may place the shipment in the nearest public warehouse or storage facility. At that time, the shipment shall be deemed delivered and all charges shall be due and payable immediately. Transport charges shall be computed from the loading point of origin to the delivery destination point, and then from the destination point to the public warehouse or storage facility, on a continuous mileage or hourly basis, whichever is applicable.

[18.3.11.21 NMAC - Rp, 18.3.11.21 NMAC, 7/1/2024]

18.3.11.22**MISCELLANEOUS PROVISIONS:**

A. Packing and marking: The HGC shall properly pack fragile or breakable articles and mark the fragile character of the con10ts on the containers in distinct letters.

B. Minimum shipment charge: Unless otherwise provided, shipments moving on a weight or time basis shall be subject to a minimum charge based on 1,000 pounds or one hour, at rates provided in the HGC's tariff.

C. Failure to make delivery: When, through no fault of its own, the HGC is unable to locate a consignee at the address furnished by the shipper, or if the consignee is unable to accept or declines delivery, the HGC shall mail, telephone, or fax notification of failure to make delivery to the shipper or consignee and shall place the shipment in storage. If the shipper requests

subsequent delivery, the HGC may assess charges for delivery from storage to the destination in addition to the transportation and storage charges already accrued.

D. Pickup or delivery at warehouses and docks: If a shipper orders pickup or delivery at a warehouse, dock or other point which charges a fee for pick up or delivery, the shipper will pay such fee in addition to paying the HGC's rates for loading or unloading at the warehouse dock, door, or other point accessible to the HGC's vehicle.

E. Reasonable dispatch: Each HGC accepting shipments of household goods shall transport the shipment with reasonable dispatch, within the time specified in the bill of lading. The HGC shall notify the shipper of any delay as soon as it becomes apparent to the HGC that it will be unable to comply with the anticipated delivery date.

[18.3.11.22 NMAC - Rp, 18.3.11.22 NMAC, 7/1/2024]

18.3.11.23 VOLUNTARY DISPUTE SETTLEMENT PROGRAM:

A shipper may avail himself or herself of the dispute settlement program by submitting a writ10 request to the department.

A. Upon receipt of the informal complaint, the department shall request that the HGC submit a response to the informal complaint. The department may request any information from the shipper or the HGC that it deems relevant to the dispute. The department shall review the submissions and issue a writ10 determination on the dispute to the shipper and the HGC.

B. The determination shall be binding on the parties 15 days after it is issued. Either party may request a reconsideration of the determination in writing within 10 days after the date of issuance of the determination. The request for reconsideration must contain:

- (1) a copy of the determination;
- (2) a clear and concise statement of the relief sought;

(3) a list of each fact or legal principle that the requestor believes were misunderstood, and a brief statement as to why the department should reconsider each item on the list;

(4) the mailing address and exact legal and “doing business as” name of the HGC; and

(5) the name, phone, e-mail and mailing address of the shipper.

[18.3.11.23 NMAC - Rp, 18.3.11.23 NMAC, 7/1/2024]

18.3.11.24 MAXIMUM ALLOWABLE RATES: The maximum allowable rate for HGC service shall be the rate approved and posted by the department, and calculated in accordance with these rules.

[18.3.11.24 NMAC - Rp, 18.3.11.24 NMAC, 7/1/2024]

HISTORY OF 18.3.11 NMAC Pre-NMAC history. The material in this rule was previously filed with the State Records Center as: SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968; SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971; SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973; SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974; SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975; SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975; SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976; SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977; SCC Rule 262, Bills of Lading and Route Manifests, filed on 1/5/1993; SCC Rule 268, Household Goods Carriers, filed on 1/5/1993.

HISTORY OF REPEALED MATERIAL:
 SCC Rule 262, Bills of Lading and Route Manifests, filed on 1/5/1993;
 SCC Rule 268, Household Goods Carriers, filed on 1/5/1993.
 18.3.11 NMAC, Motor Carrier General Provisions - Household Good Carriers, filed 12/10/2002, repealed 2/13/2015.
 18.3.11 NMAC, Motor Carrier General Provisions - Household Good Carriers, filed 1/28/2015, repealed 7/1/2024.

OTHER HISTORY:
 18.3.11 NMAC, Household Good Carriers (filed 1/28/2015) was replaced by 18.3.11 NMAC, Household Good Carriers effective 7/1/2024.

TRANSPORTATION, DEPARTMENT OF

**TITLE 18
 TRANSPORTATION AND HIGHWAYS
 CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS
 PART 12 TOWING SERVICES**

18.3.12.1 ISSUING AGENCY: New Mexico Department of Transportation.
 [18.3.12.1 NMAC - Rp, 18.3.12.1 NMAC, 7/1/2024]

18.3.12.2 SCOPE: This rule applies to all towing services providing non-consensual tows and all repossession services using towing equipment and is in addition to all other applicable requirements of these rules.
 [18.3.12.2 NMAC - Rp, 18.3.12.2 NMAC, 7/1/2024]

18.3.12.3 STATUTORY AUTHORITY: Sections 8-8-4 and 65-2A-4 NMSA 1978.
 [18.3.12.3 NMAC - Rp, 18.3.12.3 NMAC, 7/1/2024]

18.3.12.4 DURATION:
 Permanent.
 [18.3.12.4 NMAC - Rp, 18.3.12.4 NMAC, 7/1/2024]

18.3.12.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
 [18.3.12.5 NMAC - Rp, 18.3.12.5 NMAC, 7/1/2024]

18.3.12.6 OBJECTIVE: The purpose of this rule is to establish requirements for towing services subject to the limitations and policy of 49 U.S.C. 14501. The clearing of public highways and roads is a matter of public safety, which cannot be reasonably accomplished by state and local law enforcement officials, unless uniform maximum rates for service are required for tows requested or directed by law enforcement or other safety officials. Public safety also requires secure storage yards for vehicles and reasonable access to towed vehicles, and particularly requires reasonably rapid access to operable vehicles that have been towed as the result of trespass tows, which may unexpectedly deprive members of the public of transportation as well as the personal items stored in their vehicle. Reasonable proximity of the carrier’s office and books and records is required for efficient and effective inspections of safety and financial responsibility requirements, as well as the public’s ability to retrieve towed vehicles.
 [18.3.12.6 NMAC - Rp, 18.3.12.6 NMAC, 7/1/2024]

18.3.12.7 DEFINITIONS:
 In addition to the definitions in Section 65-2A-3 NMSA 1978 and 18.3.1.7 NMAC, as used in this rule:
A. MVD means the motor vehicle division of the New Mexico taxation and revenue department;
B. consensual tow means a motor vehicle tow which has not been directed or requested by a law enforcement official, and for which actual consent has been obtained by the towing service from

the owner or operator of the vehicle prior to the tow;

C. nonconsensual tow has the meaning given in Subsection JJ of Section 65-2A-3 NMSA 1978 for purposes of this rule, regardless of whether the owner or operator of the towed vehicle has consented to a tow requested or directed by a law enforcement official;

D. normal business hours means any eight hours between the hours of 8:00 a.m. to 5:00 p.m. excluding one hour lunch on every weekday excluding state recognized holidays;

E. owner of a motor vehicle means a person who holds legal title to a motor vehicle or a person legally entitled to possession of the motor vehicle;

F. proof of ownership means a certificate of title, evidence of current registration of a motor vehicle or other legal documentation of ownership including but not limited to the vehicle owner's delegation of the power of attorney, assignment of agent by notarized letter, or a report from MVD or other reliable source identifying the current registered owner, and sufficient other documentation to identify an individual as the person described in the documents or as the person's agent;

G. public directive tow means any nonconsensual motor vehicle tow performed at the direction or request of a law enforcement official, including tows assigned by law enforcement agencies through a rotational call system, regardless of whether the owner or operator of the towed vehicle ever consented to the tow;

H. storage means the safekeeping of motor vehicles entrusted to the custody of a towing service;

I. trespass tow means the nonconsensual tow of a motor vehicle which is illegally parked on property other than a public roadway, for which actual consent has been obtained by the towing service from the owner or lessee of the private property or the owner's or lessee's

agent prior to the tow and for which actual consent has not been obtained by the towing service from the owner or operator of the vehicle prior to the tow, but does not include a motor vehicle tow performed at the request or direction of a law enforcement official;

J. unclaimed motor vehicle means a vehicle that has been placed in a storage or impound lot to which no owner or lienholder of record has asserted a valid claim after required attempts to contact the owner and lienholder have been made. [18.3.12.7 NMAC - Rp, 18.3.12.7 NMAC, 7/1/2024]

18.3.12.8 MINIMUM EQUIPMENT STANDARDS: A towing service shall use only those winches and towing equipment that have been produced and constructed by a manufacturer of such equipment that regularly produces winches and towing equipment of guaranteed quality. [18.3.12.8 NMAC - Rp, 18.3.12.8 NMAC, 7/1/2024]

18.3.12.9 CLASSIFICATION OF TOWING EQUIPMENT: The standards for each class of towing service shall be determined solely by the manufacturer's specifications for the capabilities of tow and vehicle carrier trucks and towing equipment.

A. Class A - operating authority for towing up to 8,000 pounds;

B. Class B - operating authority for towing between 8,001 and 12,000 pounds;

C. Class C - operating authority for towing between 12,001 and 25,000 pounds;

D. Class D - operating authority for towing 25,001 pounds and over.

[18.3.12.9 NMAC - Rp, 18.3.12.9 NMAC, 7/1/2024]

18.3.12.10 CLASS A TOWING EQUIPMENT: A class A towing service shall maintain equipment adequate to transport motor vehicles, provided that the total gross weight of the vehicle, special

equipment, special bodies and lading shall not exceed 8,000 pounds.

A. Tow truck specifications.

- (1) GVW rating of not less than 10,000 pounds;
- (2) Minimum of 60" cab to axle length;
- (3) Automatic or manual transmission;
- (4) Dual rear wheels.

B. Towing equipment specifications.

- (1) Lifting capacity of not less than four tons;
- (2) Winching capacity of not less than four tons, single line pull;
- (3) 3/8" cable for winch;
- (4) Tow bar, cradle, sling attachment, under reach, or roll-back vehicle carrier.

C. Vehicle carrier truck specifications.

- (1) GVW of not less than 10,000 pounds;
- (2) Minimum of 96" cab to axle length;
- (3) Dual rear wheels;
- (4) Automatic or manual transmission.

D. Vehicle carrier bed specifications.

- (1) Minimum of 17' of length;
- (2) Winching capacity of not less than four tons;
- (3) 3/8" cable for winch.

[18.3.12.10 NMAC - Rp, 18.3.12.10 NMAC, 7/1/2024]

18.3.12.11 CLASS B TOWING EQUIPMENT: A class B towing service shall maintain equipment adequate to transport passenger cars, trailers, semi-trailers, trucks and truck-tractors, provided that the total gross weight of vehicle, special equipment, special bodies and lading shall exceed 8,001 pounds, but shall not exceed 12,000 pounds. Unless otherwise specifically restricted by its operating authority, a class B towing service may also

render class A service but must charge the tariffed rates for class A service when it does so and must use class B equipment.

A. Tow truck specifications:

- (1) GVW rating of not less than 11,000 pounds;
- (2) Minimum of 60" cab to axle length;
- (3) Dual rear wheels;
- (4) Automatic or manual transmission.

B. Towing equipment specifications:

- (1) Lifting capacity of not less than eight tons;
- (2) Winching capacity of not less than eight tons;
- (3) 3/8" cable for winch;
- (4) Tow bar, cradle, or sling attachment, under reach, or roll-back vehicle carrier.

C. Vehicle carrier truck specifications:

- (1) GVW of not less than 14,000 pounds;
- (2) Minimum of 108" cab to axle length;
- (3) Dual rear wheels;
- (4) Automatic or manual transmission.

D. Vehicle carrier bed specifications:

- (1) Minimum of 17' of length;
- (2) Winching capacity of not less than four tons;
- (3) 3/8" cable for winch.

[18.3.12.11 NMAC - Rp, 18.3.12.11 NMAC, 7/1/2024]

18.3.12.12 CLASS C TOWING EQUIPMENT: A class C towing service shall maintain equipment adequate to transport trailers, semi-trailers, trucks, truck-tractors and other vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall exceed 12,001 pounds, but shall not exceed 25,000 pounds. Unless otherwise specifically restricted by its operating authority,

a class C towing service may also render class A or class B service but must charge the tariffed rates for class A or class B service when it does so and must use class C equipment.

A. Tow truck specifications:

- (1) GVW rating of not less than 25,000 pounds;
- (2) Dual rear wheels;
- (3) Automatic or manual transmission;
- (4) Full air brakes, constructed so as to lock power wheels upon air failure.

B. Towing equipment specifications:

- (1) Lifting capacity of not less than 10 tons;
- (2) Combined winching capacity of not less than 10 tons;
- (3) 7/16" cable for winch;
- (4) Tow bar, cradle or sling attachment, under reach, or roll-back vehicle carrier.

C. Use of lowboy: A towing service may use a tractor to tow a trailer when the trailer is part of a damaged or disabled unit. A towing service may use a lowboy when a tractor, trailer, or other class C vehicle cannot be towed by a tractor. A towing service may transport the contents of a damaged or disabled unit by means of a carrier or trailer when appropriate.

[18.3.12.12 NMAC - Rp, 18.3.12.12 NMAC, 7/1/2024]

18.3.12.13 CLASS D TOWING EQUIPMENT: A class D towing service shall maintain equipment adequate to transport trailers, semi-trailers, trucks, truck-tractors and other vehicles, provided that the total gross weight of the vehicle, special equipment, special bodies and lading shall exceed 25,001 pounds. Unless otherwise specifically restricted by its operating authority, a class D towing service may also render class A, class B, or class C service but must charge the tariffed rates for class A or class B or class C service when it does so and must use

class D equipment.

A. Tow truck specifications:

- (1) Gross Vehicle Weight (GVW) rating of not less than 49,000 pounds;
- (2) Manual transmission;
- (3) Dual axle (tandem) rear wheels;
- (4) Minimum of 120" cab to axle length;
- (5) Full air brakes constructed so as to lock power wheels upon air failure.

B. Towing equipment specifications:

- (1) Lifting capacity of not less than 25 tons;
- (2) Combined winching capacity of not less than 25 tons;
- (3) 5/8" cable for winch;
- (4) Tow bar, cradle or sling attachment, under reach or roll-back vehicle carrier.

C. Use of lowboy: A towing service may use a tractor to tow a trailer when the trailer is part of a damaged or disabled unit. A towing service may use a lowboy when a tractor, trailer, or other class D vehicle cannot be towed by a tractor. A towing service may transport the contents of a damaged or disabled unit by means of a carrier or trailer when appropriate.

[18.3.12.13 NMAC - Rp, 18.3.12.13 NMAC, 7/1/2024]

18.3.12.14 AUTHORIZATION AND PROCEDURE FOR MOVING MOTOR VEHICLES:

A. A towing service shall only perform the following tows:

- (1) **By consent:** A warranted towing service may perform a consensual tow pursuant to the procedures specified in this rule and other applicable rules.

- (2) **By directive:** A warranted towing service may perform a motor vehicle tow explicitly ordered by a law enforcement officer. In the event of a tow explicitly ordered by a law enforcement official, the

towing service shall attempt to first obtain written authorization from a law enforcement officer and a written inventory of the contents of the vehicle. If the towing service is unable to first obtain a written authorization and inventory from a law enforcement officer, the towing service shall obtain the name of the officer ordering the tow, the agency that employs the officer, and any other identifying employment information, such as badge number, and shall perform its own inventory of the contents of the vehicle.

(3) Necessary

for public safety: A warranted towing service may perform a motor vehicle tow necessary for public safety, but only for the distance necessary to remove the hazard to other motor vehicles using the highway and only where:

(a) no

law enforcement officer is available within a period of three or more hours; and

(b)

the accident or abandonment has occurred at a point on the highway which may be dangerous to other motor vehicles using the highway and it is not possible to detour other motor vehicles around the damaged or disabled motor vehicle.

(4) Trespass

tows: No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle illegally parked on property other than a public roadway without having first obtained written authorization from the owner or lessee of the property, or the owner's or lessee's agent. Written authorization shall include the name and signature of the owner or lessee of the property or the name and signature of the property owner's or lessee's agent if different, the location of the private property, the amount of time the motor vehicle has been on the property, a description of the vehicle, the date and time the towing service removed the vehicle from the property, and a statement by the owner, lessee or agent that the vehicle is illegally parked.

(a)

Before towing a motor vehicle that is illegally parked on private property, the towing service shall take a digital photograph or photographs of the motor vehicle showing its position on the private property.

(b)

No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle illegally parked on commercial property or at an apartment unless the property contains visible signs notifying the public that illegally parked motor vehicles may be towed. The visible signs shall specify the exact time periods (starting and ending hours) when the vehicle is determined to be "illegally parked" on commercial property or at an apartment house. Before towing a motor vehicle that is illegally parked on private commercial property or at an apartment, the towing service shall take a digital photograph or photographs of the signage notifying the public that illegally parked motor vehicles may be towed.

B. Additional

requirements: When towing motor vehicles, a towing service shall:

(1) ensure

that at least two wheels of the motor vehicle, front or rear, are clear of the highway;

(2) use a

cradle or bar to provide a rigid space between the motor vehicle and the tow truck; and

(3) use a

cradle or rigid bar without lifting the front or rear wheels if the total gross weight of the motor vehicle, including lading, exceeds 10,000 pounds.

C. Prohibitions: A

towing service shall not:

(1) pay or

refund, directly or indirectly, any remuneration or anything of value to a private property owner or agent for the ability to perform nonconsensual tows on the private property;

(2) transport a

motor vehicle of any type by pushing;

(3) transport

a disabled motor vehicle on a dolly or other wheeled auxiliary device,

except when the auxiliary device is specifically designed for, and used only for, the towing of disabled motor vehicles;

(4) use a

wheeled auxiliary device unless it is necessary to prevent further mechanical damage to the motor vehicle being moved; or

(5) use a

wheeled auxiliary device unless the nature of the existing damage prohibits moving the motor vehicle in any other way.

[18.3.12.14 NMAC - Rp, 18.3.12.14 NMAC, 7/1/2024]

18.3.12.15 SECUREMENT:

A towing service shall secure every towed motor vehicle to the towing vehicle in accordance with 49 CFR 393, Subpart F, Coupling Devices and Towing Methods, and Subpart I, Protection Against Shifting and Falling Cargo.

[18.3.12.15 NMAC - Rp, 18.3.12.15 NMAC, 7/1/2024]

18.3.12.16 USE OF DOLLY OR SUPPLEMENTARY WHEELS:

A. A towing service shall not use a wheeled auxiliary device when such use could jeopardize the safety of the public.

B. Only class A and class B towing services may use dollies or supplementary wheels and then only when necessary.

C. Class C and class D towing services may use converter dollies when necessary to transport class C or class D motor vehicles.

D. A towing service may use a dolly when both ends of the motor vehicle to be towed are damaged or it is necessary to prevent further damage.

[18.3.12.16 NMAC - Rp, 18.3.12.16 NMAC, 7/1/2024]

18.3.12.17 DISCONNECTION OF DRIVELINE:

A towing service may disconnect or remove the driveline from a motor vehicle to be towed when:

A. it is necessary to prevent mechanical damage to the

motor vehicle; or

B. the motor vehicle’s front end is so damaged, or for some other reason, it cannot be towed by lifting the rear end.

[18.3.12.17 NMAC - Rp, 18.3.12.17 NMAC, 3/14/2017; Rp, 18.3.12.17 NMAC, 7/1/2024]

18.3.12.18 SAFETY CONSIDERATIONS:

A. Unsafe conditions:

A towing service is not obligated to transport shipments when, in the service’s judgment, weather or road conditions make it impracticable or unsafe to operate.

B. Passengers prohibited: No person, other than an employee of the towing service, shall ride in a disabled motor vehicle while it is being transported.

C. Chains or cable across highway: A towing service shall not stretch or place any motor vehicles, cables or chains across any highway unless and until flagmen are placed a minimum distance of 300 feet from the obstruction in each direction along the highway to stop or warn approaching traffic. A towing service shall equip flagmen with red flags during daylight hours and electric lanterns with red lights during hours of darkness.

[18.3.12.18 NMAC - Rp, 18.3.12.18 NMAC, 7/1/2024]

18.3.12.19 SAFETY EQUIPMENT REQUIREMENTS:

All towing services must maintain the following safety equipment on each tow truck at all times for the described use:

A. flashing blue, amber or a combination of both colors of lights, front and rear, which shall be in operation whenever a towing service is standing on a roadway for the purpose of removing a motor vehicle and at all times while transporting a motor vehicle;

B. stop, tail, and turn signals on any motor vehicle in tow that can be operated from the towing vehicle;

C. spot lights that are capable of lighting the scene of

disability after dark and additional spotlights or work lights positioned behind the cab of the towing service that can be used to illuminate the motor vehicle being serviced;

D. one hand axe;
E. one wrecking bar at least four feet in length;

F. at least one broom, one shovel, and one bag or container for removal of broken glass and debris from highway;

G. one 10 unit type first-aid kit;

H. at least three triangle-type reflectors;

I. at least six electronic fuses, 25 minute flares, or reflective cones;

J. at least four red signal flags (minimum dimensions - two feet by two feet (2’ x 2’); and

K. at least one charged fire extinguisher having a minimum capacity of 10 pounds of dry chemical capable of extinguishing class A, B and C fires.

[18.3.12.19 NMAC - Rp, 18.3.12.19 NMAC, 7/1/2024]

18.3.12.20 DEADHEAD MILEAGE:

Except as otherwise provided in this rule, a towing service may assess deadhead mileage charges when performing a nonconsensual tow of a vehicle, and the owner or operator of the towed vehicle asks or directs the towing service to tow the vehicle to a location other than the towing service’s base of operation or storage facility. When calculating deadhead mileage charges in such case, deadhead mileage shall not exceed total mileage less loaded mileage.

A. Total mileage calculation: Total mileage shall equal the sum of:

(1) the mileage from the base of operation to the loading pick up point;

(2) the mileage from the loading pick-up point to the destination; and

(3) the mileage from the destination back to the original base of operation.

B. Loaded mileage

calculation: Loaded mileage shall equal the number of miles from the loading pick-up point to the destination.

C Excess deadhead mileage charges: A towing service performing a public directive tow may assess excess deadhead mileage charges for the unloaded mileage from its base of operation to the scene and from the scene back to its base of operation when the vehicle needs to be recovered, but the vehicle is not towed.

[18.3.12.20 NMAC - Rp, 18.3.12.20 NMAC, 7/1/2024]

18.3.12.21 TOWING MULTIPLE MOTOR VEHICLES IN ONE TRIP:

When a towing service tows two or more disabled motor vehicles during one trip, it may charge the reasonable and appropriate tariff rates for the second and succeeding motor vehicles as though each were an independent tow, including but not limited to separate charges for hookup, mileage, etc. for each vehicle.

[18.3.12.21 NMAC - Rp, 18.3.12.21 NMAC, 7/1/2024]

18.3.12.22 ALTERED, MUTILATED, OR MISSING VEHICLE IDENTIFICATION NUMBER (VIN):

A towing service must notify the local law enforcement agency or the New Mexico state police in writing as soon as it discovers an altered, mutilated, or missing VIN on a motor vehicle in its custody, unless the motor vehicle has been impounded by a law enforcement officer aware of the altered, mutilated, or missing VIN.

[18.3.12.22 NMAC - Rp, 18.3.12.22 NMAC, 7/1/2024]

18.3.12.23 STORAGE FACILITIES:

Towing service includes the storage of motor vehicles. Towing service begins when the motor vehicle is entrusted to the towing service and ends when the towing service delivers the motor vehicle to the owner or the owner’s agent. Storage begins when the motor vehicle arrives at the storage facility

and ends when the motor vehicle leaves the storage facility.

A. Storage Facility:

A towing service that performs nonconsensual tows must maintain at least one of the following classes of storage facility:

- (1) Type 1 - a fenced and locked area;
- (2) Type 2 - a fenced, lighted, and locked area; or
- (3) Type 3 - an enclosed, roofed and locked structure.

B. Office Location:

A towing service that performs nonconsensual tows must have its office located either within or in the immediate vicinity of the storage facility. For purposes of this rule, "immediate vicinity" means the area within one mile measured as the straight line distance between the property line of the storage facility and the property line of the property within which the office is located.

C. Staffing and

Access:

(1) A towing service that performs trespass tows must have a person working in an office that is within or in the immediate vicinity of the storage facility during normal business hours who is able to provide the services specified in Subsections A and B of 18.3.12.24 NMAC.

(2) A towing service that performs public directive tows must have a person working at, or available to meet with the public at, the storage facility or the office in the immediate vicinity of the storage facility by appointment during normal business hours within two hours from the time of telephone call requesting an appointment, who is able to provide the services specified in Subsections A and B of 18.3.12.24 NMAC.

D. Required Signage:

(1) The office of a towing service shall have prominent signage which may be read by a person in a passing vehicle, providing the name, address and contact telephone number of the towing service. If the office is not located within the storage facility, the

office signage shall also include the address of the storage facility.

(2) If the storage facility is not located where the towing service office is located, the storage facility shall have prominent signage which may be read by a person in a passing vehicle, providing the name of the towing service, the address of the storage facility, the address of the towing service office, and the contact telephone number of the towing service.

E. Lists or Logs of Nonconsensually Towed Vehicles:

(1) A towing service that performs nonconsensual tows must maintain the following records in addition to all other records required by rule:

(a) a list or log of each and all vehicles currently held in the storage yard which were towed to the storage yard as the result of a trespass tow; and

(b) a list or log of each and all vehicles currently held in the storage yard which were towed to the storage yard as the result of a public directive tow.

(2) Each list or log required in this rule shall be available to provide to an employee of the transportation division of the department or for transmission to the transportation division of the department upon the request or directive of an employee of the transportation division of the department. Each list or log shall contain, for each vehicle required to be listed:

(a) a description of the vehicle, including the make, model, model year, color and vehicle identification number;

(b) the date that the vehicle was towed to the storage yard;

(c) whether the owner of the vehicle or a representative of the owner has been allowed access to the vehicle, and if so, the name of the person allowed access and the date of each access; and

(d)

whether the vehicle has been legally abandoned, surrendered or transferred for charges by the owner, and, if so, the type and date of legal transfer. [18.3.12.23 NMAC - Rp, 18.3.12.23 NMAC, 7/1/2024]

18.3.12.24 INSPECTION AND RELEASE OF TOWED MOTOR VEHICLES:

A. Motor vehicles ordered held for investigation: If a law enforcement agency orders a towing service to hold a motor vehicle for investigation, the towing service shall not, without specific written authorization of the law enforcement agency:

(1) allow the owner of the motor vehicle, the owner's agent, or a lienholder to inspect the motor vehicle or remove proof of ownership or personal property from the motor vehicle; or

(2) release the motor vehicle to any person, including the owner, the owner's agent, or a lienholder.

B. Motor vehicles not held for investigation:

(1) If a law enforcement agency does not order a motor vehicle to be held for investigation, the towing service shall allow the owner, the owner's agent, or the lienholder of the motor vehicle without charge, during normal business hours, to:

(a) inspect the motor vehicle;

(b) remove proof of ownership from the motor vehicle; or

(c) remove personal property from the motor vehicle if he or she presents proof of ownership.

(2) The owner, the owner's agent, or the lienholder of a stored motor vehicle that has not been ordered held for investigation may obtain possession of the motor vehicle by paying all just and reasonable charges and providing proof of ownership:

(a) as a matter of right, during normal or extended business hours; or

(b) at the option of the towing service, during non-business hours; if a towing service elects to deliver a motor vehicle during non-business hours, it must assess the tariffed administrative charge for such delivery.

C. If the owner, the owner’s agent, or the lienholder of a motor vehicle disputes any of the charges for towing or storage, or feels the motor vehicle was illegally towed, the towing service shall furnish to the disputant a written statement containing the name, address, and telephone number of the consumer relations division of the department and advising the disputant that he or she may file a complaint with the department as provided by applicable department rules. The written statement shall be in substantially the following form: “If you have a dispute with the towing service regarding charges for towing or storage, and are not satisfied with the solution offered by the towing service, you may file a complaint with the department.

D. Towing services shall accept payment in cash. Additionally, towing services shall accept payment by either credit card or check. Towing services shall post in a conspicuous location at their place of business which forms of payment, are accepted. Nothing in this rule shall be deemed to restrict the forms of payment that a towing service may accept.

[18.3.12.24 NMAC - Rp, 18.3.12.24 NMAC, 7/1/2024]

18.3.12.25 [RESERVED]

18.3.12.26 NOTICE TO OWNERS OF TOWED MOTOR VEHICLES:

A. Identification of owner:

(1) On site. Before a towing service tows a motor vehicle, it shall request ownership information from the authorizing law enforcement officer on scene.

(2) From the storage facility: If a towing service has not already obtained ownership

information on a motor vehicle, it shall obtain the name and address of the registered owner and any lienholder of the motor vehicle.

(a) If the motor vehicle has New Mexico plates, the towing service shall request ownership information within three business days after the motor vehicle comes into its possession.

(b) If the motor vehicle has out-of-state plates or the towing service has other reason to believe that the motor vehicle is registered in a state other than New Mexico, the towing service must request the information from the appropriate agency of that state within three business days after the motor vehicle comes into its possession.

(3) Documentation:

(a) Information requested from the Motor Vehicle Division of any state: A towing service shall retain in its files a photocopy of MVD Form 10705, Vehicle or Hull Identification Number Verification, indicating the date ownership and lienholder information was requested and a copy of any document received in response.

(b) Information requested from other sources:

(i) Electronically: A towing service shall print out and retain in its files a copy of the ownership and lienholder information shown on the computer screen, notated with the name of the person making the request and the date and time the request was made.

(ii) By other means: A towing service shall maintain a record in its files indicating the name of the person requesting ownership and lienholder information, the source from which the information was requested, and the date and time the information was requested, and a copy of any document received from the source in response.

B. Notification of owner:

(1) Within two business days of receiving

information identifying the registered owner or any lienholder of the motor vehicle, the towing service shall notify the registered owner and the lienholder, if any, that the towing service has the motor vehicle in its possession.

(2) The towing service shall use MVD Form 10058, notice of mechanic’s or landowners’s lien, and shall mail the notice by certified mail, return receipt requested, to the registered owner and the lienholder, if any.

(3) This requirement applies even if the VIN is altered, mutilated, or missing.

C. Penalty for failure to comply with this section: A towing service shall not collect any charges or liens for storage of an unclaimed motor vehicle if it fails to either:

(1) request ownership information within three business days after a motor vehicle comes into its possession; or

(2) mail notice to the registered owner and any lienholder within two business days of receipt of ownership information.

D. Exception: A towing service shall not be required to give the notice required by Subsection B of this section to the owner if, before the notice is required to be sent, the owner of the motor vehicle identifies himself to the towing service and makes any arrangement the towing service deems necessary for the payment of the towing and storage charges. However, the towing service shall still be required to give the notice to the lienholder of the motor vehicle.

[18.3.12.26 NMAC - Rp, 18.3.12.26 NMAC, 7/1/2024]

18.3.12.27 TOWING SERVICE RESPONSIBILITY: A towing service shall be responsible for:

A. removing debris at the scene of an accident whether or not specifically directed to do so by law enforcement authorities; and

B. the safekeeping and delivery of a motor vehicle and its

contents entrusted to it or which come into its custody in the course of its authorized operations.

[18.3.12.27 NMAC - Rp, 18.3.12.27 NMAC, 7/1/2024]

18.3.12.28 RECORDS: A towing service shall maintain for a period of three years complete and permanent records of income, photographs, tow bills, and any other documentation required by this rule for non-consensual tows separate and apart from any other towing services and from any other business conducted by the towing service. [18.3.12.28 NMAC - Rp, 18.3.12.28 NMAC, 7/1/2024]

18.3.12.29 TOWING SERVICES WITH MULTIPLE STORAGE FACILITIES: A towing service may apply to operate with multiple storage facilities by completing the application form prescribed by the director. The director shall approve the application if it contains the name of the towing service, the warrant number, the mailing address of the new storage facility, the physical address of the new storage facility, and a list of the equipment the towing service will station at the new storage facility. A towing service performing non-consensual tows shall transport towed vehicles to the nearest storage facility. [18.3.12.29 NMAC - Rp, 18.3.12.29 NMAC, 7/1/2024]

HISTORY OF 18.3.12 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:
SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968;
SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971;
SCC 72-12, N.M. Wrecker Tariff No. 1-B, Issued September 29, 1969, filed on 10/2/1972;
SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;
SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July

1, 1973, filed on 2/5/1974;
SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;
SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;
SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;
SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;
SCC 77-3, N.M. Wrecker Tariff No. 1-D, Issued July 1, 1976, filed on 6/6/1977;
SCC 79-2, N.M. Wrecker Tariff No. 3-D, Issued April 15, 1979, filed on 5/25/1979;
SCC 86-4, In the Matter of Minimum Specifications for Wreckers-General Order No. 42 (1986 Revision), filed 9/29/1986;
SCC 92-4-TR, New Mexico Wrecker Rules, filed on 7/29/1992;
SCCMC Rule No. 14, Equipment Required on Certain Vehicles, filed on 3/5/1982;
SCC Rule 202, Definitions, filed on 1/5/1993;
SCC Rule 267, Wrecker Services, filed on 1/5/1993.

HISTORY OF REPEALED MATERIAL:

SCC Rule 202, Definitions, filed on 1/5/1993;
SCC Rule 267, Wrecker Services, filed on 1/5/1993.

18.3.12 NMAC, Motor Carrier General Provisions - Towing Service, filed 12/10/2002, repealed 2/13/2015
18.3.12 NMAC, Motor Carrier General Provisions - Towing Service, filed 1/28/2015, repealed 3/14/2017
18.3.12 NMAC, Motor Carrier General Provisions - Towing Service, filed 3/2/2017, repealed 7/1/2024

OTHER HISTORY:

18.3.12 NMAC, Towing Service (filed 3/2/2017) was replaced by 18.3.12 NMAC, Towing Service effective 7/1/2024.

**TRANSPORTATION,
DEPARTMENT OF**

**TITLE 18
TRANSPORTATION AND
HIGHWAYS
CHAPTER 3 MOTOR
CARRIER GENERAL
PROVISIONS
PART 13 REGISTRATION
OF INTERSTATE CARRIERS**

18.3.13.1 ISSUING AGENCY: New Mexico Department of Transportation. [18.3.13.1 NMAC - Rp, 18.3.13.1 NMAC, 7/1/2024]

18.3.13.2 SCOPE: This rule applies to interstate motor carriers that identify New Mexico as their base state. [18.3.13.2 NMAC - Rp, 18.3.13.2 NMAC, 7/1/2024]

18.3.13.3 STATUTORY AUTHORITY: Section 65-2A-4, NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81. [18.3.13.3 NMAC - Rp, 18.3.13.3 NMAC, 7/1/2024]

18.3.13.4 DURATION: Permanent. [18.3.13.4 NMAC - Rp, 18.3.13.4 NMAC, 7/1/2024]

18.3.13.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section. [18.3.13.5 NMAC - Rp, 18.3.13.5 NMAC, 7/1/2024]

18.3.13.6 OBJECTIVE: The purpose of this rule is to implement Section 65-2A-16 NMSA 1978. [18.3.13.6 NMAC - Rp, 18.3.13.6 NMAC, 7/1/2024]

18.3.13.7 DEFINITIONS:
A. FMCSA authorized carrier means a motor carrier subject to the authority of the United States department of transportation (U.S. DOT) and authorized by the federal motor carrier safety administration (FMCSA) to engage in compensated transportation in interstate or foreign

commerce;

B. unified carrier registration (UCR) means the federal requirements for state registration of FMCSA authorized carriers. [18.3.13.7 NMAC - Rp, 18.3.13.7 NMAC, 7/1/2024]

18.3.13.8 REGISTRATION OF FMCSA AUTHORIZED CARRIERS:

A. Yearly UCR registration is required of FMCSA authorized carriers. Registration may be completed on-line through the national registration system (NRS) portal (www.ucr.gov).

B. FMCSA authorized carriers that identify New Mexico as their base state shall pay yearly registration fees as required by the UCR Plan (<https://plan.ucr.gov/regulation>). Fees must be paid to the department before January 1 of the registration year, and may be submitted on-line at the time of registration (www.ucr.gov), or by mail in a check to the address shown on the registration website. [18.3.13.8 NMAC - Rp, 18.3.13.8 NMAC, 7/1/2024]

HISTORY OF 18.3.13 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the state records center as:
 SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3/14/1968;
 SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9/21/1971;
 SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6/14/1973;
 SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2/5/1974;
 SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4/17/1975;
 SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9/19/1975;
 SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4/15/1976;

SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1/25/1977;
 SCCMC Rule No. 46, Standards for Operations of Interstate Carriers, filed on 3/5/1982;
 NMSCC Rule No. 40, NMSCC Cab Card, filed on 3/5/1982;
 SCC Rule 215, Registration of Interstate Carriers, filed on 1/5/1993;
 SCC Rule 215, Registration of Interstate Carriers, filed on 10/27/1993.

History of repealed material:

SCC Rule 215, Registration of Interstate Carriers, filed on 10/27/1993.
 18.3.13 NMAC, Motor Carrier General Provisions / Registration of Interstate Carriers (filed 12/10/2002), repealed 7/1/2024.

Other History:

18.3.13 NMAC, Registration of Interstate Carriers (filed 12/10/2002) was replaced by 18.3.13 NMAC, Registration of Interstate Carriers effective 7/1/2024.

TRANSPORTATION, DEPARTMENT OF

**TITLE 18
 TRANSPORTATION AND HIGHWAYS
 CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS
 PART 14 AMBULANCE SERVICES**

18.3.14.1 ISSUING AGENCY: New Mexico Department of Transportation. [18.3.14.1 NMAC - Rp, 18.3.14.1 NMAC, 7/1/2024]

18.3.14.2 SCOPE:
A. This rule applies to all ambulance services subject to the jurisdiction of the department.
B. In addition to the exemptions stated in 65-2A-38 and 65-6-6 NMSA 1978, this rule does not apply to:

(1) agencies of

the United States government or (2) ambulance services authorized in another state or country that are engaged in interstate transportation of patients into or out of New Mexico. [18.3.14.2 NMAC - Rp, 18.3.14.2 NMAC, 7/1/2024]

18.3.14.3 STATUTORY AUTHORITY: Sections 65-2A-4 and 65-6-4 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81. [18.3.14.3 NMAC - Rp, 18.3.14.3 NMAC, 7/1/2024]

18.3.14.4 DURATION: Permanent. [18.3.14.4 NMAC - Rp, 18.3.14.4 NMAC, 7/1/2024]

18.3.14.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited within a section. [18.3.14.5 NMAC - Rp, 18.3.14.5 NMAC, 7/1/2024]

18.3.14.6 OBJECTIVE: The purpose of this rule is to establish requirements for ambulance vehicles, equipment, operations, drivers and attendant services. [18.3.14.6 NMAC - Rp, 18.3.14.6 NMAC, 7/1/2024]

18.3.14.7 DEFINITIONS: In addition to the definitions in 7.27.2 NMAC, as used in this rule:

A. advanced level means emergency medical services above the New Mexico Emergency Medical Technician (EMT) basic level including EMT intermediate, EMT paramedic, and special skills which include enhanced emergency medical services and critical care transport;

B. critical care transport (CCT) means the inter-facility ambulance transportation of patients requiring critical care and medical interventions or equipment ordered by a licensed physician. CCT may be provided only by an ambulance agency that has received special skill approval by the department of health (DOH) emergency medical services (EMS)

bureau and EMS medical direction committee for CCT. Critical care includes the use of specialized ventilators, multiple medications being monitored via intravenous (IV) pumps, intra-aortic balloon pumps, and external pacemakers.

C. emergency medical technician basic (EMT basic) means the pre-hospital and inter-facility care and treatment identified in the EMS scope of practice rules issued by the department of health for application by all licensed emergency medical technicians;

D. emergency medical technician intermediate (EMT intermediate) means certain advanced pre-hospital and inter-facility care and treatment identified in the EMS scope of practice rules issued by the department of health for application by licensed EMT intermediates operating pursuant to physician directives;

E. emergency medical technician paramedic (EMT paramedic) means advanced pre-hospital assessment, and inter-facility care and treatment identified in the EMS scope of practice rules issued by the department of health for application by a licensed EMT paramedic operating pursuant to physician directive;

F. emergency means the sudden occurrence or onset of what reasonably appears to be a traumatic or medical condition that manifests itself by symptoms of sufficient severity, which may include severe pain, that the absence of immediate medical attention could reasonably be expected by a lay person to result in;

(1) jeopardy of the person's physical and or mental health;

(2) serious impairment of bodily functions;

(3) serious dysfunction of any bodily organ or part; or

(4) disfigurement to the person.

G. EMS means emergency medical services.

H. EMS bureau is the emergency medical systems bureau in the New Mexico department of health.

I. inter-facility transport means the transportation of a person between health care facilities under the directive of a sending and a receiving physician;

J. mutual aid agreement means a written agreement between one municipality, county or emergency medical service and other municipalities, counties or emergency medical services for the purpose of ensuring adequate coverage of emergency medical services in their respective authorized territories;

K. NEMSIS means the national emergency medical services information system, the federal EMS data collection system administered by the United State department of transportation national highway traffic safety administration (NHTSA).

L. NMEMSTARS means the New Mexico EMS tracking and reporting system of pre-hospital data, and includes any subsequent contractor of these services by the department of health's EMS bureau.

M. patient catchment area means an area outside the territory authorized by the operating authority issued by the commission that an ambulance service is permitted to serve in emergencies or pursuant to mutual aid agreements;

N. pre-hospital response time means the period in minutes that measures from the time a dispatch agency has the necessary information to dispatch an ambulance service until the time an EMS crew arrives at the scene of the emergency;

O. special event ambulance means an ambulance staffed with a minimum of two licensed EMT's, working under agreement or contract within its authorized territory or pursuant to a grant of temporary authority in dedicated stand-by status at a special event such as a football game, concert, wildland fire event, rodeo, community festival or movie set.. [18.3.14.7 NMAC - Rp, 18.3.14.7

NMAC, 7/1/2024]

18.3.14.8 DUTY TO PROVIDE SERVICE:

A. It shall be unlawful for an ambulance service, or any of its personnel or agents, to refuse to provide service to a willing person in need of emergency medical treatment or transportation, or to require advance payment prior to rendering such service. A responding ambulance service may comply with a written refusal of treatment or transport from a patient or guardian who has been informed of the potential medical consequences of such a refusal. All written refusals must be maintained as an ambulance service record.

B. When ambulance transport is requested and is determined to be necessary upon review by an ambulance service, the patient shall be delivered to the closest appropriate facility capable of providing definitive care and treatment, as determined by the service's medical director through local EMS system protocol.

C. An ambulance service shall give priority to emergency response calls.

D. An ambulance service shall be available 24 hours a day, every day of the year.

[18.3.14.8 NMAC - Rp, 18.3.14.8 NMAC, 7/1/2024]

18.3.14.9 MUTUAL AID:

Ambulance services shall develop mutual aid agreements with all appropriate entities that may be implemented anytime an ambulance service cannot respond to a call or if a disaster or mass casualty situation occurs. Mutual aid may be provided pursuant to an established written agreement or when requested by state or local authorities, including law enforcement.

[18.3.14.9 NMAC - Rp, 18.3.14.9 NMAC, 7/1/2024]

18.3.14.10 OPERATIONS PLAN:

Each ambulance service shall have a written operations plan setting forth its policies and procedures. The

plan shall be periodically updated and shall be available for inspection by the department at all times. The plan shall include:

- A. all operational guidelines and medical protocols;
- B. a quality assurance plan;
- C. personnel policies for drug and alcohol testing of employees who present as impaired while on duty or are suspected of impairment related to a work related accident or event;
- D. all mutual aid agreements;
- E. a disaster and mass casualty plan;
- F. infection control procedures;
- G. a description of emergency medical dispatch capabilities;
- H. work schedule standards to ensure staff are rested and fit-for-duty; and
- I. anticipated pre-hospital response times in the ambulance service’s territory or patient catchment area, and a description of factors that could cause delays to those response times. Factors may include:
 - (1) topography of service territory;
 - (2) staffing issues (ex. volunteers, remote residency, high turnover);
 - (3) density or specific challenges presented by population served (ex. industrial risk, socio-economic factors, behavioral health needs, language barriers);
 - (4) stationing points for ambulances and crews; and
 - (5) variance in weather conditions.

[18.3.14.10 NMAC - Rp, 18.3.14.10 NMAC, 7/1/2024]

18.3.14.11 MINIMUM PERSONNEL REQUIREMENTS:

- A. **Ambulances:**
 - (1) A minimum of two licensed EMTs from the ambulance service shall be present at the scene of the emergency, except that two EMTs need not be present at

the scene for prearranged transfers of a stable patient or in those situations where there are overlapping calls, disasters, or similar circumstances which result in an insufficient number of EMTs being available.

(2) A minimum of one EMT shall be in the patient compartment during patient care and transport.

B. Exceptions:

(1) An EMT is required to be aboard the ambulance but is not required in the patient compartment, when a member of a neonatal intensive care team is attending a patient in a self-contained newborn intensive care isolette.

(2) Subject to the policies of the service, additional non-EMT medical personnel, functioning within the scope of their licensure and the scope of skills and medications approved for the service by the EMS Bureau and EMS medical direction committee, may accompany a patient in an ambulance patient compartment, as long as one EMT is also present in the patient compartment.

(3) For ambulances with approval as critical care units, one special skill critical care certified paramedic must be in the patient compartment along with at least one advanced provider who is:

- (a) a special skill critical care paramedic; or
- (b) a nurse trained and approved by the EMS agency medical director for the scope of skills and medications listed in the critical care special skills application; or

(c) other advanced care provider, such as a physician, certified nurse practitioner, physician assistant, respiratory therapist, or other specially trained caregiver appropriate for the advanced care needed, as determined by the ambulance service’s medical director.

(4) For EMS bureau approved community EMS or advanced paramedic practice programs, at least one caregiver

trained and certified as required by the EMS bureau, and approved by the ambulance service’s medical director, must attend and assess the patient.

C. Training coordinator required:

Each ambulance service shall designate a coordinator of appropriate training and continuing education required for all ambulance service personnel.

D. Medical director required:

Each ambulance service shall designate a medical director, working under agreement or contract, who meets the department of health requirements prescribed in 7.27.3 NMAC. If an ambulance service is temporarily without a medical director, it shall establish temporary medical direction services with a local, regional or state EMS medical director.

[18.3.14.11 NMAC - Rp, 18.3.14.11 NMAC, 7/1/2024]

18.3.14.12 VEHICLE LIST:

A. Each ambulance service shall maintain a current list of ambulances used in its authorized operations. The list shall identify each ambulance by type (I, II, III), manufacturer, serial number, registration number, and other descriptive information sufficient for identification, and shall state whether the ambulance is leased or owned.

B. An ambulance service may only use ambulances on the vehicle list, unless the service is temporarily utilizing a borrowed vehicle from another EMS agency due to unusual and unforeseen circumstances (repair of vehicles or other situations). The department shall be notified in writing if this temporary situation persists longer than seven consecutive days.

C. An ambulance service shall submit an updated vehicle list to the department within 10 days of the date an ambulance unit is either put into service or taken out of service.

[18.3.14.12 NMAC - Rp, 18.3.14.12 NMAC, 7/1/2024]

18.3.14.13 VEHICLE

STANDARDS: All ambulances purchased, acquired, or placed into service by an authorized EMS service shall meet or exceed the general services administration (GSA) standards for operation, crash performance and safety. [18.3.14.13 NMAC - Rp, 18.3.14.13 NMAC, 7/1/2024]

18.3.14.14 REQUIRED

EQUIPMENT: When an ambulance is dispatched, it shall carry and have readily available equipment in good working order, including:

- A.** one semi-automatic defibrillator for EMT basic and EMT intermediate use or one semi-automatic/manual defibrillator monitor for paramedic use, as specified in the EMS scopes of practice and local medical protocol;
- B.** suction systems, which include:
 - (1) on-board suction unit that meets GSA standards;
 - (2) portable, manual or battery powered suction unit;
- C.** oxygen delivery and patient ventilation devices, which include:
 - (1) fixed, on-board oxygen supply which meets GSA specifications;
 - (2) portable oxygen devices which are capable of delivering at least 60 minutes of oxygen at a flow rate of 10 liters per minute or, at a minimum, two D cylinders; at least one cylinder shall be designated as primary and configured with a yoke type regulator, liter control and contents supply gauge;
 - (3) ventilation devices including manual, self-filling, bag-valve-mask (BVM) ventilation devices, in adult, child, infant and neonatal sizes; the BVM shall be equipped with a sufficient supply of see through adult, child, infant, and neonatal masks; electronic or colormetric end tidal carbon dioxide detection equipment for adults and pediatric patients are also required;
- D.** Splints, including as

a minimum:

- (1) one adult traction splint with limb supporting slings, padded ankle hitch and traction device;
- (2) two sets of rigid splinting devices, or equivalents, suitable for the immobilization of upper or lower extremities, in adult, child and infant sizes;
- E.** spine immobilization devices, one half-body device and two full-body devices, with suitable strapping, and head immobilization devices; commercial devices that stabilize head, neck, and back as one unit, may be substituted;
- F.** one commercially available obstetrical kit, or equivalent;
- G.** one sphygmomanometer in adult, child and infant sizes, or one sphygmomanometer capable of accepting various sizes of cuffs (adult, child, and infant); in the latter case, a sufficient supply of cuffs in each of the identified sizes shall be available;
- H.** one stethoscope;
- I.** two double D-cell, or equivalent, functioning flashlights;
- J.** one all-purpose multi-level ambulance stretcher, with safety straps and crash-resistant locking/securing mechanism; the locking mechanism in the vehicle shall be the mechanism designed for the stretcher being used; locking mechanisms for other stretchers or locally produced mechanisms are not allowed; in addition, the mattress shall be fluid impervious;
- K.** one minimum 10-pound, or two minimum five-pound 1A20BC, or equivalent, fire extinguisher; a current inspection tag will be displayed on all fire extinguishers;
- L.** one two-way mobile radio capable of direct communication between the EMT and the receiving medical facility, on ultra-high frequency, on federal communications commission-designated emergency medical radio service (EMRS) frequencies, and which is compatible with the state emergency medical services radio communications system (EMSCOM), and is approved by the

emergency medical services bureau (EMSB) and a copy of the EMSB/DOH "EMS communications system (EMSCOM) manual;"

- M.** scene safety protective equipment including:
 - (1) six highly visible lighted electric or chemical warning devices suitable for nighttime use;
 - (2) reflective apparel meeting American National standards institute standards for all personnel;
 - (3) a current edition of the "North American emergency response guidebook," a guidebook for first responders during the initial phase of a hazardous materials/dangerous goods incident;
 - N.** uniforms or other apparel or means of identification of a distinct design or fashion to be worn by ambulance service personnel when on duty to identify them as EMS providers and to identify the level of EMS care for which the providers are licensed. [18.3.14.14 NMAC - Rp, 18.3.14.14 NMAC, 7/1/2024]
- 18.3.14.15 REQUIRED SUPPLIES:** When an ambulance is dispatched, it shall carry adequate quantities of readily available supplies to ensure the level of care described in the ambulance service protocols signed by the physician medical director, including but not limited to:
- A.** 12 sterile bandages, soft roller, self-adhering type, or equivalent to a total length of 24 yards;
 - B.** six triangular bandages or equivalent product or substitute;
 - C.** one box adhesive bandages;
 - D.** one pair trauma shears and one penlight (either in the ambulance or on the EMT's person);
 - E.** one pair sterile scissors used for cutting the umbilical cord during a delivery; commercially available sterile cutting devices may be substituted;
 - F.** six sterile trauma dressings in large and small sizes;

G. 50, or adequate supply, sterile 4" x 4", or larger, sponges;

H. four rolls of adhesive tape;

I. four cold packs and four heat packs;

J. two sterile burn sheets, individually wrapped;

K. four sterile burn dressings;

L. two sets of oropharyngeal airways in sizes zero through five (infant through adult), and one set of nasopharyngeal airways (28FR, 32FR, 34FR, and 36FR, all for adult use);

M. three sterile suitable occlusive dressings;

N. two sets of rigid cervical collars of plastic, not foam, construction in various sizes for adult, child and infant; commercially available immobilization devices are allowed;

O. a sufficient quantity of appropriate airborne and blood-borne infection control supplies, as recommended by the centers for disease control and prevention, including gloves, masks, gowns, caps, eye protection, sharps containers, and other equipment to protect all patient care providers dispatched with the ambulance; in addition, appropriate hand-washing supplies and disinfectant shall be available on the vehicle;

P. at least two disposable high-concentration oxygen masks and two disposable nasal cannulas in adult and child sizes and at least two packages of oxygen supply tubing;

Q. appropriate large and small bore tip suction catheters (6f-14f), rigid tip suction catheter, and hoses;

R. one bulb suction device;

S. one emesis basin or large plastic bag;

T. two liters of sterile water, normal saline, or other appropriate irrigation solution; and

U. two clean sets of linen, including at least two blankets and pillows (or suitable pillow

substitutes) at all times.
[18.3.14.15 NMAC - Rp, 18.3.14.15 NMAC, 7/1/2024]

18.3.14.16 MEDICATIONS:

An ambulance service shall adhere to the appropriate EMS scopes of practice for EMS personnel regarding approved medications, provided the medications are listed in the service's treatment guidelines or protocols and approved by the physician medical director for use by the ambulance service. In some cases the medical direction committee may authorize special skills that allow unique medications not found in the scopes of practice. In such cases, these medications are allowed on the vehicle for use by the authorized personnel, as specified by the special skills approval letter provided by the EMS medical direction committee or the EMS bureau. In all cases, medications shall only be administered under medical direction, as specified in the scopes of practice and any special skills approval letters. [18.3.14.16 NMAC - Rp, 18.3.14.16 NMAC, 7/1/2024]

18.3.14.17 PORTABLE MEDICAL KITS:

In addition to the required equipment and supplies, every ambulance shall carry at least one portable medical kit containing the following items, or their appropriate equivalent:

- A.** one sphygmomanometer in adult, child and infant sizes, or one sphygmomanometer capable of accepting various sizes of cuffs (adult, child, and infant). In the latter case, a sufficient supply of cuff in each of the identified sizes shall be available.
- B.** one stethoscope;
- C.** four soft roller, self-adhering type bandages;
- D.** three triangular bandages or equivalent product/substitute;
- E.** two trauma dressings;
- F.** 10 size 4" x 4" gauze sponges;
- G.** one roll adhesive tape;

H. one pair of trauma shears (either in the ambulance or on the EMT's person);

I. one penlight (either in the ambulance or on the EMT's person);

J. two sterile burn dressings;

K. one adult-size bag-valve-mask (BVM) ventilation device. Neonate, infant and child BVM must be incorporated in the kit or readily available aboard the vehicle;

L. one set of oropharyngeal airways, sizes 0 through 6 (neonatal through adult);

M. two sterile, petroleum gel-impregnated gauze dressings, or other suitable occlusive dressings;

N. multiple pairs of disposable treatment gloves; [18.3.14.17 NMAC - Rp, 18.3.14.17 NMAC, 7/1/2024]

18.3.14.18 ADVANCED LEVEL AMBULANCE SERVICES:

A. Service requirements: An ambulance service shall meet the following requirements before it provides any advanced level treatments or procedures, including special skills:

(1) If an ambulance service represents itself or labels its vehicles as a provider of service at any level above EMT basic, that advanced level of care and treatment shall be provided 24 hours a day, every day of the year, except in those unusual situations where there are overlapping calls, disasters, or similar unforeseen circumstances.

(2) At least one trained and licensed advanced provider must respond to a call and accompany the patient in the patient compartment of the ambulance.

B. Additional supplies and equipment requirements:

The following additional items are required for advanced level ambulance services:

- (1)** one semi-automatic monitor-defibrillator for EMT intermediate or manual/semi-automatic monitor - defibrillator for

EMT paramedic, as specified in the EMS scopes of practice and local medical protocol; (note: these devices require specific training and medical director approval prior to use);

(2) assorted arm boards in infant, child and adult sizes;

(3) assorted intravenous catheters in sizes 14-24 gauge;

(4) assorted macro-drip IV devices to infuse intravenous fluids into adults (15 drops per cc or better);

(5) assorted micro-drip IV devices to manage IV administration to infants and children; these may be burettes, micro-drip tubing or in-line volume controllers;

(6) two intraosseous access devices;

(7) one pediatric drug dosage chart or tape; this may include charts listing the drug dosages in milliliters or milligrams per kilogram, pre-calculated doses based on weight, or a tape that generates appropriate equipment sizes and drug doses based on the patient's height or weight;

(8) assorted intravenous (IV) fluids that comply with the EMS scopes of practice; these fluids shall be stored within the manufacturers recommended temperature range at all times until use;

(9) one laryngoscope with straight or curved blades in infant, child and adult sizes; spare bulbs and batteries shall be readily available;

(10) two adult stylets for endotracheal tubes; if service has special skill approval for pediatric (under age 12) intubation, two pediatric stylets must be in stock;

(11) one each pediatric and adult Magill forceps;

(12) assorted endotracheal tubes in sizes: uncuffed 2.5-6.0 if service has special skill approval for pediatric (under age 12) intubation and cuffed 6.0-8.0;

(13) assorted medications and resuscitation medications that are allowed in the EMS scopes of practice and

local medical protocol; these medications shall be stored within the manufacturer's recommended temperature range at all times;

(14) adult and pediatric sized supraglottic/laryngeal airways, and multi-lumen airways as approved by the service's medical director.

[18.3.14.18 NMAC - Rp, 18.3.14.19 NMAC, 7/1/2024]

18.3.14.19 NON-EMERGENCY AND INTERFACILITY TRANSPORT:

An ambulance service may provide scheduled pre-hospital or inter-facility transport of patients, including physically or mentally impaired patients or non-ambulatory patients, who require the attending care and monitoring of qualified medical personnel. Only certified ambulances shall transport recumbent patients requiring medical monitoring. An ambulance service providing such service shall:

A. provide at least one EMT of the appropriate service level and one qualified driver; the EMT shall be in the patient compartment attending the patient whenever a patient is being cared for or transported.

B. **Stretcher or wheelchair vans:** A stretcher or wheelchair van may be used to transport a person who is:

(1) Non-ambulatory and requires non-emergency medical transportation and does not require medical monitoring or treatment during transport.

(2) An inpatient who requires transportation to another facility for diagnostic tests and a physician authorizes the use of a stretcher van.

C. **A stretcher van or wheelchair van shall not transport a person who:**

(1) Is being administered intravenous fluids;

(2) Needs oxygen, unless that person's physician has prescribed oxygen as a self-administered therapy;

(3) Needs suctioning;

(4) Has a visible injury not yet evaluated by a medical professional;

(5) Is experiencing an acute condition or the exacerbation of a chronic condition;

(6) Needs to be transported from one hospital to another hospital if the destination hospital is the same level or a higher level as the hospital of origin.

(7) Is being medically monitored at the sending facility and will continue to be medically monitored at the destination facility. [18.3.14.19 NMAC - Rp, 18.3.14.20 NMAC, 7/1/2024]

18.3.14.20 SPECIAL EVENT AMBULANCE:

Emergency transports for special events are not inter-facility transfers unless that definition is met. Dedicated stand-by status ambulances shall not respond to emergency calls off site of the event except in cases of disaster, mass casualty or other unusual medical circumstance.

[18.3.14.20 NMAC - Rp, 18.3.14.21 NMAC, 7/1/2024]

18.3.14.21 MAINTENANCE, PRESERVATION, AND RETENTION OF RECORDS:

In addition to the record requirements for motor carriers, every ambulance service shall maintain accurate and separate records of its services in New Mexico, including:

A. driver records with current licenses, history of department of transportation (DOT) physical examinations, approved firefighter fitness exam certification or other approved physician certifications, and emergency vehicle operator training history;

B. EMS personnel licensure;

C. statement of employment or volunteer status, including start and stop dates;

D. records of equipment to include inspection,

repair and maintenance records, equipment lists, vehicle title and registration certificates;

E. organized records of all ambulance runs, including a copy of the patient care record.
[18.3.14.21 NMAC - Rp, 18.3.14.23 NMAC, 7/1/2024]

18.3.14.22 QUALITY

ASSURANCE: Each ambulance service shall have a written quality assurance program, which shall provide for:

A. patient care records retention: an ambulance service shall retain pre-hospital patient care records for seven years, as approved by local medical protocol;

B. reporting: ambulance services shall complete a **patient run report** for each patient contacted during an emergency response or inter-facility transport; the minimum data elements from these reports, as identified by the EMS bureau, shall be compiled to the extent possible and submitted to the pre-hospital data collection system at the EMS bureau as prescribed in 7.27.4 NMAC, Emergency Medical Services Fund Act;

C. minimum patient information required upon patient delivery to the destination facility: pursuant to ambulance service protocol, an ambulance service shall communicate, electronically or in writing, clinical patient information to the intercepting ambulance or receiving facility at the time of patient transfer or delivery, if available:

- (1) ambulance unit number, EMT name and level of licensure;
- (2) patient age and sex;
- (3) patient's chief complaint or EMT's primary impression;
- (4) a brief history of the present illness, including scene assessment and mechanism of injury;
- (5) major past illnesses;
- (6) patient's

- mental status;
- (7) patient's baseline vital signs;
- (8) pertinent findings of the physical examination;
- (9) description of emergency medical care that has been provided for the patient, including that provided by any first response units; and
- (10) the patient's response to the emergency medical care received.

D. completed patient care records: an ambulance service shall deliver an electronic or written copy of the completed pre-hospital patient care record to the receiving facility emergency department for inclusion in the patient's permanent medical record upon delivery of the patient to the hospital; in the event the unit is dispatched on another call, the patient care record shall be delivered as soon as possible after that call, but not later than the end of a shift or twenty four (24) hours after the transportation and treatment of the patient;

E. medical protocols and operational guidelines: the ambulance service medical director shall develop and approve medical protocols and operational guidelines which should include procedures for obtaining on-line medical direction; service medical protocols shall not exceed the New Mexico EMS scope of practice, unless a special skill has been granted; medical protocols and operational guidelines should be developed in collaboration with receiving hospitals and EMS agencies within the territory or patient catchment area; adult and pediatric patient protocols shall be on the unit at all times, in electronic or hard copy form;

F. medical director review of patient care: an ambulance service medical director shall review patient care records at least quarterly to determine whether appropriate medical care is being provided; the medical director shall document the steps taken during the review; subsequent reviews will include an evaluation of whether appropriate

follow-up has been accomplished; receiving hospitals and other EMS agencies within the patient catchment area should be invited to participate in these reviews when appropriate;

G. confidentiality of medical records: an ambulance service may only release patient care records as provided by state and federal law, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA).
[18.3.14.22 NMAC - Rp, 18.13.14.24 NMAC, 7/1/2024]

18.3.14.23 - 18.3.14.26 [RESERVED]

HISTORY OF 18.3.14 NMAC:
Pre-NMAC history: The material in this rule was previously filed with the state records center as: SCC 68-16, NM Motor Carrier Act, Rules and Regulations, Effective Sept. 1, 1967, filed 3-14-68; SCC 68-50, General Order No. 38, filed 6/13/1968; SCC 71-3, General Order No. 40, Docket No. 532, filed 5/24/1971; SCC 71-5, General Suspension Order No. 41, Docket No. 540, filed 8/20/1971; SCC 71-6, NM Motor Carrier Act, Rules and Regulations, Effective July 1, 1971, filed 9/21/1971; SCC-72-13, NM Ambulance Tariff No. 3-B Issued May 8, 1972, filed 10/2/1972; SCC 73-1, NM Motor Carrier Act, Rules and Regulations, filed 6/14/1973; SCC 74-1, NM Motor Carrier Act, Rules and Regulations, Effective July 1, 1973, filed 2-5-74; SCC 75-1, NM Motor Carrier Act, Rules and Regulations, Effective Jan. 1, 1975, filed 4/17/1975; SCC 75-2, Second Revised General Order No. 35, In the Matter of Standards for Ambulance Operators, filed 7/11/1975; SCC 75-3, NM Motor Carrier Act, Rules and Regulations (Rev.), Effective Jan. 1, 1975, filed 9/19/1975; SCC 76-1, NM Motor Carrier Act, Rules and Regulations, Effective April 1, 1976, filed 4/15/1976; SCC 77-1, NM Motor Carrier Act, Rules and Regulations, Effective

Jan. 1, 1977, filed 1/25/1977; SCC-77-4, NM Ambulance Tariff No. 3-B Issued May 8, 1972, (Reissue), filed 6/6/1977;
 SCC 78-1, Third Revised General Order No. 35, In the Matter of Standards for Ambulance Operators, filed 9/5/1978;
 SCCMC Rule No. 45, Ambulance Operators are Authorized to Provide the Following Service Notwithstanding Territorial Restrictions Contained in their Certificates, filed 3/5/1982;
 SCCMC Rule No. 49, Ambulance Services - Duty to Provide Service, filed 3/5/1982;
 SCC 84-5-TD, Standards for Ambulance Operators - Seventh Revised General Order No. 35, filed 6/28/1984; SCC 92-5-TR, Ambulance Standards Rule, filed 8/18/1992;
 SCC Rule 252, Ambulance Standard, filed 1/5/1993; SCC Rule 252, Ambulance Standards, filed 10/27/1993.

HISTORY OF REPEALED MATERIAL:

SCC 68-16, NM Motor Carrier Act, Rules and Regulations, Effective Sept. 1, 1967 (filed 3/14/1968); SCC 68-50, General Order No. 38 (filed 6/13/1968);
 SCC 71-3, General Order No. 40, Docket No. 532 (filed 5/24/1971);
 SCC 71-5, General Suspension Order No. 41, Docket No. 540 (filed 8/20/1971);
 SCC 71-6, NM Motor Carrier Act, Rules and Regulations, Effective July 1, 1971 (filed 9/21/1971); SCC-72-13, NM Ambulance Tariff No. 3-B Issued May 8, 1972 (filed 10/2/1972);
 SCC 73-1, NM Motor Carrier Act, Rules and Regulations (filed 6/14/1973);
 SCC 74-1, NM Motor Carrier Act, Rules and Regulations, Effective July 1, 1973 (filed 2/5/1974); SCC 75-1, NM Motor Carrier Act, Rules and Regulations, Effective Jan. 1, 1975 (filed 4/17/1975);
 SCC 75-2, Second Revised General Order No. 35, In the Matter of Standards for Ambulance Operators (filed 7/11/1975);

SCC 75-3, NM Motor Carrier Act, Rules and Regulations (Rev.), Effective Jan. 1, 1975 (filed 9/19/1975); SCC 76-1, NM Motor Carrier Act, Rules and Regulations, Effective April 1, 1976 (filed 4/15/1976);
 SCC 77-1, NM Motor Carrier Act, Rules and Regulations, Effective Jan. 1, 1977 (filed 1/25/1977); SCC-77-4, NM Ambulance Tariff No. 3-B Issued May 8, 1972, (Reissue) (filed 6/6/1977);
 SCC 78-1, Third Revised General Order No. 35, In the Matter of Standards for Ambulance Operators (filed 9/5/1978);
 SCCMC Rule No. 45, Ambulance Operators are Authorized to Provide the Following Service Notwithstanding Territorial Restrictions Contained in their Certificates (filed 3/5/1982);
 SCCMC Rule No. 49, Ambulance Services - Duty to Provide Service (filed 3/5/1982);
 SCC 84-5-TD, Standards for Ambulance Operators - Seventh Revised General Order No. 35 (filed 6/28/1984); SCC 92-5-TR, Ambulance Standards Rule (filed 8/18/1992);
 SCC Rule 252, Ambulance Standard (filed 1-5-93); SCC Rule 252, Ambulance Standards (filed 10/27/1993);
 18 NMAC 4.2, Ambulance and Medical Rescue Services (filed 12/16/1997) repealed 1/5/2005.
 18.3.14 NMAC, Motor Carrier General Provisions - Ambulance Services, filed 12/16/2004, repealed 2/13/2015.
 18.3.14 NMAC, Motor Carrier General Provisions - Ambulance Services, filed 1/28/2015, repealed 7/1/2024.

Other history:

SCC Rule 252, Ambulance Standards (filed 10/27/1993) renumbered, reformatted and replaced by 18 NMAC 4.2, Ambulance and Medical Rescue Services, effective 1/1/1998;
 18 NMAC 4.2, Ambulance and Medical Rescue Services (filed 12/16/1997) renumbered, reformatted and replaced by 18.3.14 NMAC,

Ambulance Services, effective 1/1/2005.
 18.3.14 NMAC, Ambulance and Medical Rescue Services (filed 1/28/2015) replaced by 18.3.14 NMAC, Ambulance Services, effective 7/1/2024.

**TRANSPORTATION,
 DEPARTMENT OF**

**TITLE 18
 TRANSPORTATION AND
 HIGHWAYS
 CHAPTER 3 MOTOR
 CARRIER GENERAL
 PROVISIONS
 PART 15 FUEL
 SURCHARGE FOR NON-
 CONSENSUAL TOWS**

18.3.15.1 ISSUING

AGENCY: New Mexico Department of Transportation.
 [18.3.15.1 NMAC - Rp. 18.3.15.1 NMAC, 7/1/2024]

18.3.15.2 SCOPE: This rule applies to all towing services performing non-consensual tows.
 [18.3.15.2 NMAC - Rp. 18.3.15.2 NMAC, 7/1/2024]

18.3.15.3 STATUTORY

AUTHORITY: Sections 65-2A-4 and 65-2A-20(H) NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81.
 [18.3.15.3 NMAC - Rp. 18.3.15 NMAC, 7/1/2024]

18.3.15.4 DURATION:

Permanent.
 [18.3.15.4 NMAC - Rp. 18.3.15.4 NMAC, 7/1/2024]

18.3.15.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section.
 [18.3.15.5 NMAC - Rp. 18.3.15.5 NMAC, 7/1/2024]

18.3.15.6 OBJECTIVE: The

purpose of this rule is to establish a procedure providing for periodic fuel surcharges for towing services performing non-consensual tows.

[18.3.15.6 NMAC - Rp. 18.3.15.6 NMAC, 7/1/2024]

18.3.15.7 DEFINITIONS:

A. EIA fuel price refers to the weekly gasoline or diesel fuel price for the Rocky Mountain region, as published by the United States department of energy’s energy information administration (EIA) at: <http://www.eia.gov/petroleum/gasdiesel/>.

B. fuel surcharge means the additional charge that towing services may impose for a non-consensual tow to account for the changing price of fuel.

[18.3.15.7 NMAC - Rp. 18.3.15.7 NMAC, 7/1/2024]

18.3.15.8 FUEL SURCHARGE LINE ITEM

CALCULATION: A towing service may add to a non-consensual tow invoice a separate fuel surcharge line item that must comply with the following table and formula.

A. formula: the fuel surcharge amount is calculated by multiplying the total allowable mileage charge by the ‘multiplier’ in the table, below, that corresponds to the applicable ‘EIA gas/diesel price range for the Rocky Mountain region’. Example: if the total allowable mileage charge for the non-consensual tow is \$100, and that week’s EIA fuel price (as identified on the EIA website) is \$4.00, then that fuel price falls within the \$3.76 - \$4.00 price range, which corresponds on the table, below, to a multiplier of .0675; so the fuel surcharge is calculated as \$100 (the mileage charge) multiplied by .0675 (or 6.75%), which equals a fuel surcharge amount of \$6.75.

B. table:

EIA Fuel Price Range	Multiplier
\$2.26 - \$2.50	.0375 (or 3.75%)
\$2.51 - \$2.75	.0425 (or 4.25%)
\$2.76 - \$3.00	.0475 (or 4.75%)
\$3.01 - \$3.25	.0525 (or 5.25%)
\$3.26 - \$3.50	.0575 (or 5.75%)
\$3.51 - \$3.75	.0625 (or 6.25%)

\$3.76 - \$4.00	.0675 (or 6.75%)
\$4.01 - \$4.25	.0725 (or 7.25%)
\$4.26 - \$4.50	.0775 (or 7.75%)
\$4.51 - \$4.75	.0825 (or 8.25%)
\$4.76 - \$5.00	.0875 (or 8.75%)
\$5.01 - \$5.25	.0925 (or 9.25%)
\$5.26 - \$5.50	.0975 (or 9.75%)
\$5.51 - \$5.75	.1025 (or 10.25%)
\$5.76 - \$6.00	.1075 (or 10.75%)
\$6.01 - \$6.25	.1125 (or 11.25%)
\$6.26 - \$6.50	.1175 (or 11.75%)
\$6.51 - \$6.75	.1225 (or 12.25%)
\$6.76 - \$7.00	.1275 (or 12.75%)
\$7.01 - \$7.25	.1325 (or 13.25%)
\$7.26 - \$7.50	.1375 (or 13.75%)

[18.3.15.8 NMAC - Rp. 18.3.15.8, NMAC, 7/1/2024]

HISTORY of 18.3.15 NMAC:

History of repealed material:

18.3.15 NMAC, Motor Carrier General Provisions / Fuel Surcharge for Wrecker Services Performing Non-consensual Tows (filed 3/2/2017), repealed 7/1/2024.

Other History:

18.3.15 NMAC, Fuel Surcharge for Wrecker Services Performing Non-consensual Tows (filed 3/2/2017) was replaced by 18.3.15 NMAC Fuel Surcharge for Non-consensual Tows effective 7/1/2024.

TRANSPORTATION, DEPARTMENT OF

**TITLE 18
TRANSPORTATION AND HIGHWAYS
CHAPTER 7
TRANSPORTATION NETWORK COMPANIES
PART 1 GENERAL PROVISIONS**

18.7.1.1 ISSUING

AGENCY: New Mexico Department of Transportation.

[18.7.1.1 NMAC - Rp, 18.7.1.1 NMAC, 7/1/2024]

18.7.1.2 SCOPE: This rule applies to all transportation network companies subject to the jurisdiction of the department of transportation. [18.7.1.2 NMAC - Rp, 18.7.1.2 NMAC, 7/1/2024]

18.7.1.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Transportation Network Company Services Act, Chapter 65, Article 7 NMSA 1978 and 2023 N.M. Laws, Chapter 100, Section 81.

[18.7.1.3 NMAC - Rp, 18.7.1.3 NMAC, 7/1/2024]

18.7.1.4 DURATION:

Permanent.

[18.7.1.4 NMAC - Rp, 18.7.1.4 NMAC, 7/1/2024]

18.7.1.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section.

[18.7.1.5 NMAC - Rp, 18.7.1.5 NMAC, 7/1/2024]

18.7.1.6 OBJECTIVE:

The purpose of this rule is to set forth rules governing transportation network companies operating in New Mexico.

[18.7.1.6 NMAC - Rp, 18.7.1.6 NMAC, 7/1/2024]

18.7.1.7 DEFINITIONS:

In addition to the definitions contained in Section 65-7-2 NMSA 1978, as used in this rule:

A. “Act” means the Transportation Network Company Services Act.

B. “Department” means the New Mexico department of transportation.

[18.7.1.7 NMAC - Rp, 18.7.1.7 NMAC, 7/1/2024]

18.7.1.8 VEHICLE INSPECTIONS:

A. A transportation network company shall cause every motor vehicle to be inspected prior to initial service and once each calendar year thereafter.

B. Inspections must be performed by a mechanic certified by the national institute for automotive service excellence (ASE) or qualified pursuant to the requirements of 49 CFR 396.19. Brake inspections must be performed by a mechanic qualified pursuant to the requirements of 49 CFR 396.25.

C. Vehicle inspections must include, without limitation, an inspection of the foot and emergency brakes, steering, windshield, rear window, other glass, windshield wipers, headlights, taillights, turn indicator lights, braking lights, front seat adjustment mechanisms, doors, horn, speedometer, bumpers, muffler, exhaust, tires, rear view mirrors and safety belts of the vehicle which ensures the proper functioning of each component or an inspection complying with the requirements of 49 CFR 396.17 or 49 CFR 396.23 .

D. Records of all inspections performed pursuant to section shall be maintained in accordance with the requirements of 49 CFR 396.21 and the Act. [18.7.1.8 NMAC - Rp, 18.7.1.8 NMAC, 7/1/2024]

**18.7.1.9
TRANSPORTATION NETWORK
COMPANY PERMIT
APPLICATION PROCESS:**

A. A transportation network company shall apply for a transportation network company permit in writing on the form prescribed by the department at least 30 days prior to the intended date of operations.

B. An application for a transportation network company permit shall contain the following information and documents:

- (1) the applicant’s name;
- (2) if the applicant is a sole proprietorship or a partnership, the applicants’ social security number(s) for purposes of verifying parental responsibility act compliance;
- (3) the applicant’s d/b/a name, if applicable;
- (4) the

applicant’s principal place of business and mailing address;

- (5) the applicant’s electronic mail address;
- (6) if the applicant is a corporation:

(a) the names and addresses of two principal officers;

(b) evidence that the applicant is authorized by the office of the secretary of state to do business in New Mexico and is in good corporate standing.

(7) if the applicant is other than a corporation, a description of the form of ownership and the names and addresses of all principal owners and managers;

(8) appointment of an agent for service of process;

(9) a statement and general description of the type of services to be performed by the applicant;

(10) a permit fee as set forth in the Act;

(11) a copy of the insurance policy that meets the requirements set forth in the Act;

(12) a copy of the insurance coverage disclosures that meets the requirements set forth in the Act;

(13) the applicant’s combined reporting system (CRS) number obtained from the New Mexico taxation and revenue department;

(14) a certification that the applicant will comply with the requirements of the Act.

C. A permit will be issued within 15 days after the receipt of a completed application. Any application that remains incomplete 15 days prior to the expiration of an existing permit may delay the issuance of a new permit. Absent the issuance of a new permit, all service operations in New Mexico must immediately cease upon the expiration of an existing permit. [18.7.1.9 NMAC - Rp, 18.7.1.9 NMAC, 7/1/2024]

18.7.1.10 PROOF OF FINANCIAL RESPONSIBILITY:

A. Each transportation network company must file proof of financial responsibility with the commission in the exact legal and d/b/a names as the name in which the permit is issued.

B. Proof of the required financial responsibility for bodily injury and property damage liability must be presented on a uniform filing “Form T” issued by an insurer or eligible surplus lines insurer authorized by the New Mexico office of superintendent of insurance.

C. Cancellation of an insurance policy may be effected only by giving 30 days prior notice in writing to the department, [18.7.1.10 NMAC - Rp, 18.7.1.10 NMAC, 7/1/2024]

18.7.1.11 NON-EMERGENCY MEDICAL TRANSPORT SERVICES: This rule is adopted on an emergency basis pursuant to Section 62-19-21 NMSA 1978 and Section 14-4-5.6 NMSA 1978 to preserve the public peace, health, safety or general welfare. Non-emergency medical transport services:

A. may be provided only to riders who do not require medical intervention to maintain their level of response, airway, breathing and circulatory status, with the exception that self-administered oxygen is not to exceed six liters per minute via a nasal cannula; the oxygen container must be secured in accordance with other state and federal laws; and

B. may not be provided to riders who are recumbent (for example, on transport gurneys) or require medical monitoring or medical intervention. [18.7.1.11 NMAC - Rp, 18.7.1.11 NMAC, 7/1/2024]

**HISTORY OF 18.7.1 NMAC:
Pre-NMAC History:** None.

History of Repealed Material: 18.7.1 NMAC, Transportation

Network Companies - General Provisions filed 5-18-2016 - Repealed effective 8/15/2016.
 18.7.1 NMAC, Transportation Network Companies - General Provisions filed 8/1/2016 - Repealed effective 7/1/2024.

Other History:

18.7.1 NMAC, General Provisions (filed 8/1/2024) replaced by 18.7.1 NMAC, General Provisions, effective 7/1/2024.

**TRANSPORTATION,
 DEPARTMENT OF**

**TITLE 18
 TRANSPORTATION AND
 HIGHWAYS
 CHAPTER 9 REGULATORY
 PROCEDURES
 PART 1 GENERAL
 PROVISIONS - HEARINGS**

18.9.1.1 ISSUING AGENCY: New Mexico Department of Transportation. [18.9.1.1 NMAC - N, 7/1/2024]

18.9.1.2 SCOPE: This rule applies to all transportation service providers subject to the jurisdiction of the department of transportation under the Motor Carrier Act, Sections 65-2A-1 to -41 NMSA 1978, the Ambulance Standards Act, Sections 65-6-1 to -6 NMSA 1978, and the Transportation Network Company Services Act, Sections 65-7-1 to -22 NMSA 1978. [18.9.1.2 NMAC - N, 7/1/2024]

18.9.1.3 STATUTORY AUTHORITY: Sections 65-2A-4, 65-6-4, 65-7-21 to -22, and 67-3-6.1 NMSA 1978, and 2023 N.M. Laws, Chapter 100, Section 81. [18.9.1.3 NMAC - N, 7/1/2024]

18.9.1.4 DURATION: Permanent. [18.9.1.4 NMAC - N, 7/1/2024]

18.9.1.5 EFFECTIVE DATE: July 1, 2024 unless a later date is cited at the end of a section. [18.9.1.5 NMAC - N, 7/1/2024]

18.9.1.6 OBJECTIVE: The

purpose of this rule is to set forth the administrative hearing procedures applicable to motor carrier and transportation network services in New Mexico.

[18.9.1.6 NMAC - N, 7/1/2024]

18.9.1.7 DEFINITIONS:

A. “Applicant”
 means any party on whose behalf an application is made for approval or authorization of the department.

B. “Calendar days”
 means that the time period shall be counted as follows:

the day of the event that triggers the period shall be excluded.
 all intermediate days shall be counted, including the weekend and legal holidays; and
 the last day of the period shall be counted. However, if the last day is a weekend or legal holiday then the period is extended to the next business day.

C. “Commentor”
 means a person other than a party who provides a statement for consideration on the grounds of a public or private interest.

D. “Complainant”
 means a person who complains of anything done or omitted to be done in violation of any law, rule, or administrative order;”.

E. “Confidential information” means information that is personally sensitive or protected by law, and includes driver’s license numbers, taxpayer identification numbers, social security numbers, dates of birth, health treatments or diagnoses, and financial account numbers.

F. “Date and time of filing” means the date and time on the electronic mail transmittal that is received by the records bureau with a request for filing services.

G. “Department”
 means the New Mexico department of transportation.

H. “Director” means the supervisor of the compliance unit staff tasked with assessing the compliance of transportation services regulated by the department.

I. “Electronic

signature” means a full, printed name of the person responsible for the electronic version of the document by scanned or other electronic reproduction of the signature or by typing in the signature line the notation “/s/” followed by the name of the person signing the original document accompanied by the email address of the person signing.

J. “File, filed, or filing” means the electronic mail submission to the department’s records bureau with a request for filing services.

K. “Hearing examiner” means a person employed or designated by the department as the official tasked with conducting an administrative hearing and recommending a decision.

L. “Intervenor”
 means a person authorized by law or permitted by the hearing examiner to participate as a party in an administrative hearing.

M. “Order” means a directive, determination or ruling on a disputed matter issued by the department.

N. “Party” means a person who initiates a proceeding by filing a petition or complaint, a respondent to a filed petition or complaint, any person granted leave to intervene in a matter, and staff.

O. “Petitioner” means any party on whose behalf a petition is made for a determination or action by the department.

P. “Pleading”
 means a petition, complaint, answer, motion, response, exception, or other formal written statement filed in a proceeding.

Q. “Hearing” means a public proceeding conducted by a hearing examiner, that affords an opportunity for parties to present evidence, testimony and argument as are deemed relevant or material to the disputed issues.

R. “Respondent”
 means any party against whom any complaint is filed or any party subject to the department’s jurisdiction to whom a notice is issued instituting a proceeding or investigation.

S. “Secretary” means the secretary of the department.

T. “Staff” means persons employed by the department to assess the compliance of motor carrier and transportation network services subject to the jurisdiction of the department.

[18.9.1.7 NMAC - N, 7/1/2024]

18.9.1.8 HEARING REQUEST:

A. Written request required: Any person seeking a hearing shall timely file a written request for hearing. The request shall be brief and include:

(1) the requestor’s name, title, business name and telephone number;

(2) a short summary of the reason for the hearing request; and

(3) identify or attach the action or proposed action that is the basis for the request.

B. Time limits: A request for hearing is timely submitted if filed:

(1) to contest or protest any application, within the statutorily prescribed notice period of 19 calendar days; and

(2) to contest a notice of a proposed action by the department, within 30 calendar days of the notice date.

C. Rejection of request: A hearing request may be rejected in writing by a hearing examiner (or designee) for only the following reasons: the issues are unripe or moot, the department lacks jurisdiction, a hearing is discretionary, the request is untimely or the request is substantively deficient. Any request rejected as substantively deficient may be corrected and resubmitted but the time for submission will not be tolled. A motion for reconsideration may be filed for any rejected hearing request.

D. Acceptance of request: Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements and is not a waiver of such requirements.

E. Consolidation: Proceedings involving similar questions of law or fact may be consolidated for a single public hearing where the rights of the parties will not be prejudiced by such procedure.

F. Opening of a docket: A docket shall be opened and assigned an appropriate case docket number by the records bureau upon written request by staff or upon a determination by the hearing examiner that a hearing is warranted. [18.9.1.8 NMAC - N, 7/1/2024]

18.9.1.9 ELECTRONIC FILING AND SERVICE OF PLEADINGS:

A. Electronic filing required: All filings must be submitted electronically in PDF format to the records bureau. The hearing examiner may require that any document filed in PDF be additionally supplied directly to hearings or parties in the document’s native format.

B. Fees: A pleading will not be filed until payment of any required fee, as identified in Rule 18.3.5 NMAC, is electronically or physically received by the records bureau.

C. Public disclosure and protection of information: All records submitted, created or held by the department are subject to public disclosure with certain exceptions, as provided by law. Unauthorized or damaging public disclosure of sensitive information is avoided as follows:

(1) **Redaction requirements:** Unless critical to a determination of the issues at hearing, all confidential information shall be redacted by blacking out only the affected text prior to the submission of any filing;

(2) **Protective order:** When confidential, sensitive and protected information is critical to the determination of the issues at hearing, a motion for protective order shall be filed along with a redacted version of the document. The request shall provide any legal basis and state with particularity the injury which

may result from the disclosure of that information. The hearing examiner shall determine the extent and the manner in which that information is required to be disclosed.

D. Identifying information and signature required: The submitting party must include their name, business name and operating authority numbers as applicable, email address and telephone number, as well as their electronic or scanned signature on each filing.

E. Prompt service required: A true and correct copy of all documents filed in a proceeding shall be promptly served, by email if available, upon all parties and persons (or their attorney representative) identified on the official service list issued by the hearing examiner. If an official service list has not yet been issued for the docket, then service must be made on all known interested parties, including staff.

F. Certificate of service required: A certificate of service listing the name each person or entity served, email or physical address used for service, and date of service shall accompany each petition submitted for filing.

G. Rejection: Documents not in substantial compliance with these rules may be rejected by the records bureau or hearing examiner. Rejected documents may be amended for compliance and refiled within 24 hours after the rejection, or within the prescribed filing timeframe. Rejected filings shall not be included in the record or be considered in the final order. [18.9.1.9 NMAC - N, 7/1/2024]

18.9.1.10 REPRESENTATION IN PROCEEDINGS:

A. Representation: Only the person challenging the action or for a business, a bona fide majority owner, or an attorney licensed and authorized to practice in New Mexico may represent a person in a proceeding.

B. Entry of

appearance: A formal written entry of appearance must be filed by any attorney wishing to represent a person or party to a proceeding.

C. Verification: The hearing examiner may require any person or entity to provide appropriate documentation in order to verify any claimed representational authority.

D. Failure to appear: A party that provides no appearance at a scheduled hearing is deemed to have abandoned and dismissed their request for hearing unless, within 10 calendar days after the date of the scheduled hearing, the party presents good cause for failure to appear; “good cause” includes death in the family, disabling personal illness, or other significant emergency; at the discretion of the hearing examiner, other extraordinary circumstances may be considered good cause. [18.9.1.10 NMAC - N, 7/1/2024]

18.9.1.11 HEARING EXAMINER AUTHORITY AND DUTIES:

A. Impartiality: A hearing examiner shall disqualify themselves from any case in which they have a personal stake, relationship or prior involvement in the underlying dispute, or when their impartiality is reasonably questioned.

B. Fairness: A hearing examiner shall ensure parties are provided an opportunity to:

- (1) present their position and testimony;
- (2) present witnesses to provide relevant information;
- (3) submit evidence to establish all pertinent facts;
- (4) advance arguments without undue interference;
- (5) challenge evidence and cross examine witnesses.

C. Duties: The hearing examiner shall:

- (1) provide an explanation to participants as to how the hearing will be conducted;
- (2) ensure that

witnesses are administered oaths and affirmations;

(3) issue subpoenas upon proper application and form to compel the attendance of witnesses or the production of specific records;

(4) request, receive, and make part of the record all evidence considered necessary to decide the issues raised;

(5) allow parties to state any timely objections for the record;

(6) direct and regulate the procedural process to ensure the orderly conduct of participants;

(7) question any witness in order to fully develop the record and to clarify testimony;

(8) produce and file a recommended decision for review that clearly identifies proposed findings of fact and conclusions of law;

(9) allow, consider and file a response to any timely submitted party exceptions to the recommended decision; and

(10) take such other actions as may be reasonable and necessary in the discharge of their duties. [18.9.1.11 NMAC - N, 7/1/2024]

18.9.1.12 PRE-HEARING EVENTS:

A. Pre-hearing conference: A hearing examiner may conduct a pre-hearing conference of the parties as necessary to inform and confer on procedural issues and timelines, clarify issues in dispute, address motions or discovery disputes, and support settlement negotiations between the parties.

B. Procedural scheduling order: A hearing examiner may coordinate with the parties to create a schedule of pre-hearing events and a timeline for the hearing.

C. Subpoena: At any time prior to the hearing, a party may file a request for the issuance of a subpoena for a witness or specific document to be presented

at hearing. Such request must set forth the reasons supporting the issuance and be accompanied by a proposed subpoena form. The return of certificated service, or affidavit of service, shall be promptly filed.

D. Informal resolution: The parties are encouraged to engage in informal discussions to identify issues in dispute and consider possible resolutions or stipulations.

E. Settlement: The parties may resolve some or all of the issues at any time and file their signed, written agreement in the record. Once filed, the hearing examiner may, subject to reconsideration, limit the scope of the hearing or dismiss the case, as indicated by the agreement. [18.9.1.12 NMAC - N, 7/1/2024]

18.9.1.13 PRE-FILED DIRECT TESTIMONY:

A. Force and effect: Prepared written testimony shall be received with the same force and effect as though it were stated orally by the witness. Witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike, unless the witness’s presence at public hearing is waived without objection by the parties.

B. Form: Written testimony shall be in the following format:

- (1) the cover page shall contain the case caption, case number, name and title of the witness;
- (2) all pages are to be typed, double-spaced and numbered in the footer;
- (3) the top, bottom, and left-hand margins shall be at least one and one-half inches;
- (4) the name of the witness and the case number, if then known, shall be typed at the top center of each page in the header;
- (5) line numbers shall be present on the left-hand side of each page of testimony;
- (6) testimony shall be in question-and-answer

format;

(7) proposed exhibits relating to the testimony shall be clearly cited in, and attached to, the testimony unless otherwise directed by the hearing examiner; and

(8) testimony shall be supported by affidavit.

C. Supplemental testimony: The hearing examiner may file written questions directed at any party and require the timely filing of additional sworn testimony to respond to those questions. [18.9.1.13 NMAC - N, 7/1/2024]

18.9.1.14 ADMISSIBILITY OF EVIDENCE:

A. Formal rules of evidence and civil procedure do not apply: An orderly exchange of relevant information is encouraged with consideration for the legal requirement that any final decision be supported by competent evidence.

B. Limited objections to exclude evidence: All evidence is subject to appropriate and timely objection. The hearing examiner may exclude irrelevant evidence and limit repetitive or unduly cumulative evidence, with or without objection. Admitted evidence shall be provided the appropriate deference and weight by the hearing examiner with respect to its necessity, competence, availability, and trustworthiness.

C. Administrative notice: The hearing examiner may take administrative notice of any matter in which courts of this state may take judicial notice, including of laws, court orders, official agency records, and the department (or its predecessor's) orders, filings and records. Matters noticed are admitted into evidence to the same extent as other relevant evidence, either by citation to a publicly accessible document or by inclusion in the record of a copy of the relevant portion of the document(s). [18.9.1.14 NMAC - N, 7/1/2024]

18.9.1.15 EXHIBITS AND STIPULATIONS:

A. Marking of exhibits: Exhibits shall be paginated

and marked numerically in the order of introduction by the moving party.

B. Availability:
(1) Evidence to be presented as exhibits must be made available to all parties at least ten (10) calendar days prior to the hearing;

(2) Partial documents. If only a portion of a document is offered as evidence, then the parties and hearing examiner shall be afforded a prior opportunity to examine the complete document that contains that designated portion;

(3) Rebuttal evidence intended to explain, counteract, repel, or disprove evidence submitted by another party or by staff shall be presented at least five (5) calendar days prior to the hearing.

C. Stipulation as to facts:

(1) The parties may, by stipulation in writing filed or entered in the record, agree upon the facts or any portion thereof;

(2) Stipulations shall be binding upon the participating parties and may be regarded and used as evidence in the final decision;

(3) The hearing examiner may, however, require proof or evidence of the facts to which the parties have stipulated. [18.9.1.5 NMAC - N, 7/1/2024]

18.9.1.16 CONFERENCE AND HEARING FORMAT:

A. In-person or electronic: The hearing examiner may conduct a conference or hearing in-person or electronically by telephone or videoconference.

B. Continuance or reconvening in an alternative format: If at any point in the proceedings the hearing examiner determines that the scheduled format is not sufficient to develop an adequate record, to address credibility issues, or to otherwise ensure a full and fair hearing process, then the proceedings may be continued, or recessed and reconvened in an alternative format. Consideration

must be given to any public hearing notice requirements. [18.9.1.16 NMAC - N, 7/1/2024]

18.9.1.17 HEARING PROCESS:

A. Opening: The hearing examiner will provide an overview of the hearing process to the participants. Any commenters are provided an opportunity to enter an oral or written statement for the record, but comments shall not be considered or entered as evidence. The parties may offer a brief position statement.

B. Order of presentment: Sworn testimony and evidence will ordinarily be received and admitted to the record in the order prescribed in this section unless otherwise directed by the hearing examiner.

(1) **Challenged applications:**
(a) staff assessment;
(b) applicant;
(c) intervenors; and
(d) rebuttal by staff or applicant.

(2) **Staff petition for sanctions or penalties:**
(a) staff;
(b) respondent;
(c) rebuttal by staff.

(3) **Petition for reinstatement:**
(a) petitioner;
(b) staff; and
(c) rebuttal by petitioner.

B. Examination of witnesses:

(1) **Direct examination:** Except for witnesses appearing in response to subpoena who are subject to direct examination, each witness must be called forward and sworn in prior to authenticating their pre-filed written testimony as

their direct examination, and then such witness must be immediately passed for cross-examination.

(2) Cross examination: Each witness is subject to cross-examination by the parties.

(3) Re-direct: Following cross examination, each party must be provided an opportunity to re-direct their witness, with questions limited to addressing only the issues raised on cross-examination.

(4) Hearing examiner inquiries: The hearing examiner may question witnesses to obtain clarification or to ensure a full record is created.

C. Preponderance of evidence standard: Unless another standard is specifically provided in law, after the testimony and evidence is presented and provided appropriate consideration, the fact finder must be convinced that the alleged fact or event was 'more likely than not' to have existed or occurred.

D. Motion and response:
(1) Motions may be made at any time during the course of a proceeding. However, if the grounds for a motion are known to the movant prior to public hearing, the motion shall be filed prior to public hearing, except upon good cause shown. Proposed orders need not be submitted with motions unless the hearing examiner directs otherwise.

(2) Motions must clearly state the relief sought, the grounds therefor, whether the motion is opposed, and if so, by whom.

(3) All motions not specifically acted upon shall be deemed disposed of consistent with the final order.

(4) Response. Failure to make a timely response shall be deemed a waiver of the right to respond. Unless the hearing examiner authorizes additional time to respond, a response is timely if filed within five calendar days of service of the motion.

[18.9.1.17 NMAC - N, 7/1/2024]

18.9.1.18 POST-HEARING:

A. Record of proceedings, evidence and testimony: A full and complete record of all proceedings shall be made electronically by recording and taken and transcribed by a certified court reporter. The transcribed record and entered exhibits shall be filed in the docket upon receipt by the hearing examiner.

B. Corrections: Suggested corrections to the transcript or record must be filed within 10 calendar days after the transcript is filed, except for good cause shown. Failure to timely file suggested corrections without good cause constitutes a waiver of objections to the transcript. The hearing examiner shall, with or without public hearing, determine what changes, if any, shall be adopted.

C. Briefs: At the discretion and direction of the hearing examiner, the parties may file proposed findings of fact and conclusions of law, briefs of arguments and response briefs, or to submit written memoranda on specific points of law. Citations to the transcript shall use the form "Tr." followed by the transcript page number. If a transcript is made by electronic recording, citation to the transcript shall use time markers.

D. Recommended decision: The hearing examiner shall file and serve a proposed recommended decision with clear findings of fact based solely on the record and conclusions of law. Citations to the recommended decision shall use the form "RD" followed by the page number.

E. Exceptions and response: Parties may file exceptions to the recommended decision's findings of fact or conclusions of law within 15 calendar days of issuance. Unless otherwise allowed by the hearing examiner, exceptions are limited to 10 pages. No response to an exception is permitted unless directed by the hearing examiner. The hearing examiner shall consider any exceptions and directed responses and shall file either an amended

recommended decision or an order that the recommended decision is unchanged.

[18.9.1.18 NMAC - N, 7/1/2024]

18.9.1.19 DECISION AND APPEAL:

A. Final Decision: The secretary (or designee) shall review the record and file a decision to adopt a recommended decision in whole or in part, with specific reference to the parts adopted and rejected. The decision of the secretary (or designee) shall constitute a final decision unless a motion for reconsideration is granted.

B. Motion to Reconsider: Any party may file a motion for reconsideration within 10 calendar days of the filing of a by the secretary (or designee).

(1) such motion must clearly and concisely identify the basis for any alleged factual or legal omissions or errors;

(2) an untimely motion is deemed denied; and

(3) if within five calendar days the secretary (or designee) files a grant of the motion to reconsider, then the time to appeal is stayed pending the revision or reissuance of a final decision.

D. Appeal: An aggrieved party may appeal a final decision as provided by law.

[18.9.1.19 NMAC - N, 7/1/2024]

HISTORY of 18.9.1 NMAC: [RESERVED]

TRANSPORTATION, DEPARTMENT OF

**TITLE 18
TRANSPORTATION AND HIGHWAYS
CHAPTER 14 RAILROADS
PART 2 RAILROAD SAFETY**

18.14.2.1 ISSUING AGENCY: New Mexico Department of Transportation.

[18.14.2.1 NMAC - Rp, 18.14.2.1

NMAC, 7/1/2024]

18.14.2.2 SCOPE: Except as provided herein, this rule applies to all railroad companies and other common carriers, as provided in Paragraph (3) of Subsection A of Section 63-7-1.1 NMSA 1978 and to all rail safety activities as to which the department has authority pursuant to federal railroad safety laws and orders. [18.14.2.2 NMAC - Rp, 18.14.2.2 NMAC, 7/1/2024]

18.14.2.3 STATUTORY AUTHORITY: Sections 63-3-36, 67-3-6.1, 67-3-11 NMSA, and 2023 N.M. Laws, Chapter 100, Section 81. [18.14.2.3 NMAC - Rp, 18.14.2.3 NMAC, 7/1/2024]

18.14.2.4 DURATION: Permanent. [18.14.2.4 NMAC - Rp, 18.14.2.4 NMAC, 7/1/2024]

18.14.2.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section. [18.14.2.5 NMAC - Rp, 18.14.2.5 NMAC, 7/1/2024]

18.14.2.6 OBJECTIVE: The purpose of this rule is to establish safety requirements for railroad companies and other common carriers operating in New Mexico and to establish basic procedures for use when public grade crossings are sought to be opened or closed. [18.14.2.6 NMAC - Rp, 18.14.2.6 NMAC, 7/1/2024]

18.14.2.7 DEFINITIONS: In addition to the definitions set out in 49 CFR Parts 200 to 268 and in the American railway engineering and maintenance-of-way association (AREMA) clearances manual, as used in this rule:

A. Commission means the New Mexico public regulation commission.

B. Private grade crossing means any railroad crossing of a roadway which is not a public grade crossing, including any at-grade crossing where the highway, road or

street is privately owned.

C. Public grade crossing means a location within the state, other than a location where one or more railroad tracks cross one or more railroad tracks at-grade, where a public highway, public road, or public street, including any associated public sidewalks and public pathways, crosses one or more railroad tracks at-grade. The term includes a crossing only if any public authorities maintain the roadway on all sides of the crossing.

[18.14.2.7 NMAC - Rp, 18.14.2.7 NMAC, 7/1/2024]

18.14.2.8 REFERENCES TO OTHER DOCUMENTS:

Whenever this rule refers to a federal or state statute, rule, or regulation, or to a technical or other document, the reference, unless specifically stated to the contrary, is continuous and is intended to refer to the most current version of the document.

[18.14.2.8 NMAC - Rp, 18.14.2.8 NMAC, 7/1/2024]

18.14.2.9 ADOPTION OF MINIMUM SAFETY REQUIREMENTS BY

REFERENCE: The department adopts by reference and requires a railroad company to comply with the safety requirements as set forth in:

A. Code of federal regulations. 49 CFR parts 200 to 268; and 23 CFR Part 655, Subpart F;

B. AREMA clearances manual. All new construction shall comply with Chapter 28, clearances, of the manual for railway engineering (MRE) published by the American railway engineering and maintenance-of-way association (AREMA); available at: www.arena.org.

[18.14.2.9 NMAC - Rp, 18.14.2.9 NMAC, 7/1/2024]

18.14.2.10 RENEWAL OF STATE PARTICIPATION AGREEMENT:

The department may annually renew the agreement between New Mexico and the federal railroad administration for state

participation in the national railroad safety program.

[18.14.2.10 NMAC - Rp, 18.14.2.10 NMAC, 7/1/2024]

18.14.2.11 GOVERNMENTAL AGREEMENTS:

The department may enter into any agreement with another governmental entity, such as the New Mexico department of transportation, in order to cooperatively enhance railroad safety, promote compliance with the federal railroad safety laws, and implement the benefits of the national railroad safety program.

[18.14.2.11 NMAC - Rp, 18.14.2.11 NMAC, 7/1/2024]

18.14.2.12 OPENING AND CLOSING OF PUBLIC GRADE CROSSINGS:

A. Railroad companies are subject to the construction and maintenance requirements set forth in Section 63-3-36 NMSA 1978.

B. The department shall determine whether to open or close a crossing on its own railroad property or on a state highway that crosses a railroad.

C. Any person who believes that an additional public grade crossing is necessary and in the public interest, or that an existing public grade crossing is unnecessary and not in the public interest, may request that the department review the necessity of such a crossing. The department shall consider the request and act to ensure that public grade crossings conform with applicable safety standards.

D. Any railroad company contemplating the closure of an existing public grade crossing of a public highway, city, town or village street at grade, must notify the department at least 60 days prior to any actual closure of such public grade crossing. The department shall promptly notice the pending closure, conduct a review, the department and issue an order prohibiting or permitting the closure.

E. United States department of transportation (USDOT) railroad identifiers shall

be posted at each existing railroad crossing in New Mexico.
[18.14.2.12 NMAC - Rp, 18.14.2.12 NMAC, 7/1/2024]

18.14.2.13 REPORTS OF ACCIDENTS AND INCIDENTS:

A. Whenever a railroad company is required by 49 CFR 225.9 to report an accident/incident promptly to the federal railroad administration, the railroad shall promptly report the same accident/incident information by telephone to the department.

B. A railroad company must immediately report to the New Mexico state police and to the New Mexico environment department as well as to local law enforcement or tribal police whenever it learns of the occurrence of an accident/incident involving a railroad car carrying hazardous material as provided in 49 CFR 172. Each report must state the:

- (1) name of the railroad;
- (2) name, title, and telephone number of the person making the report;
- (3) time, date, and location of the accident/incident;
- (4) circumstances of the accident/incident;
- (5) number of fatalities and injuries involved, if any; and
- (6) specific hazardous commodity, if any, involved in the accident/incident..

C. A railroad company shall furnish to the department a copy of each monthly accident/incident report it files with the federal railroad administration pursuant to 49 CFR 225. The report shall be submitted to the department at the same time it is filed with the federal railroad administration.

D. The furnishing of any report required under Subsections A, B, and C of 18.14.2.12 NMAC will not constitute a waiver of any evidentiary privilege as to such report provided for by federal or state law.

E. The Department will not exercise any authority with

respect to the opening or closing of a private grade crossing.
[18.14.2.13 NMAC - Rp, 18.14.2.13 NMAC, 7/1/2024]

18.14.2.14 MAPS AND PROFILES:

On or before January 15 of each year, a railroad company shall provide the department with a map showing all lines and grade crossings the railroad has in New Mexico and any changes to its lines and grade crossings since the previous filing. In addition, the company shall provide a list of its grade crossings in New Mexico and any changes to its grade crossings since the previous filing. The furnishing of this information may be accomplished electronically, through the provision of appropriate access to the national highway-rail crossing inventory, obtainable from the federal railroad administration.

[18.14.2.14 NMAC - Rp, 18.14.2.4 NMAC, 7/1/2024]

- 18.14.2.15 [RESERVED]**
- 18.14.2.16 [RESERVED]**
- 18.14.2.17 [RESERVED]**
- 18.14.2.18 [RESERVED]**

HISTORY OF 18.14.2 NMAC:

Pre-NMAC History. The material in this rule was previously filed with the State Records Center:

- SCC 72-4, Order No. 2202, Docket 335, Regulations Governing Clearances on Railroads with Reference to Side and Overhead Structures and Parallel Tracks, filed 10/2/1972
- SCC-85-7, In Re Adoption of Railroad Rules and Regulations, filed 9/18/1985

History of Repealed Material.

- SCC 72-4, Order No. 2202, Docket 335, Regulations Governing Clearances on Railroads with Reference to Side and Overhead Structures and Parallel Tracks, filed 10/2/1972 - Repealed effective 9/30/2011
- SCC-85-7, In Re Adoption of Railroad Rules and Regulations, filed 9/18/85 - Repealed effective 9/30/2011.

18.14.2 NMAC Railroads - Railroad Safety filed 9/16/2011, repealed 7/1/2024

Other History:

18.14.2 NMAC, Railroad Safety filed 9/16/2011 was replaced by 18.14.2 Railroad Safety effective 7/1/2024.

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to sections 11.2.3 NMAC, Section 29, effective 6/25/2024.

11.2.3.29 ENERGY TRANSITION ACT COMPLIANCE

A. The construction of New Mexico facilities that generate electricity for New Mexico retail customers, and that are not located on the customer side of an electricity meter, shall be subject to the requirements of Subsection B of Section 62-13-16 NMSA 1978 if the facilities are built as a result of competitive solicitations.

B. Subject to availability of qualified applicants, the construction of facilities that generate electricity for New Mexico retail customers shall employ apprentices from an apprenticeship program registered with [NMDWS] the department during the construction phase of a project at a minimum level as outlined in Subsection B of 62-13-16 NMSA 1978 for all persons employed for the project.

(1) A "project" for the purposes of this Section means any construction of a facility that generates electricity or transmits electricity for New Mexico retail customers.

(2) The number of apprentices required applies to each occupation or trade performing services during the project.

(3) For projects commencing after January 1, 2020 but before January 1, 2024, apprentices should comprise ten

percent of all persons employed for the project.

(4) For projects commencing after January 1, 2024 but before January 1, 2026, apprentices should comprise seventeen and one-half percent of all persons employed for the project.

(5) For projects commencing after January 1, 2026, apprentices should comprise twenty-five percent of all persons employed for the project.

C. ~~[NMDWS]~~ The department shall be responsible for monitoring the project for the appropriate level of apprentices on the project and ensuring compliance.

(1) Upon receiving a notice to proceed from the Public Regulation Commission (PRC) for construction of such a project, the general contractor shall submit a compliance plan including ~~an outline for how the contractor and~~ a list of subcontractors of any tier that will meet the required number of apprentices ~~[for the project and a list of subcontractors]~~ to the department ~~[NMDWS within 10 days of the award. The list of subcontractors shall be updated quarterly].~~

~~[(2) Once a quarter, the general contractor and all subcontractors of any tier shall provide a report to NMDWS of payroll records for all construction craft employees including name, address, employee classification, hours worked and wage and fringe benefits paid to the employee.~~

~~(3) If it is determined by NMDWS that a contractor or subcontractor is not compliant with these provisions, NMDWS shall issue a notice of non-compliance. The contractor or subcontractor shall have 10 days to become compliant.]~~

(2) Every 90 days from the date of the initial plan, the general contractor shall submit a updated compliance plan.

(3) Contractors shall provide documentation demonstrating compliance within 10 days of a request for records from the department.

(4) Failure of a contractor to comply with the requirement for utilizing the required apprenticeship percentage will result in a referral to the ~~[Public Regulatory Commission]~~ PRC advising the Commission that the project is not in compliance with the provisions of the Energy Transition Act.

D. The department will continue to encourage diversity among apprenticeship program participants, participation by the underrepresented in the industry associated with that apprenticeship program and participation from disadvantaged communities.
[11.2.3.28 NMAC – N, 1/1/2020; A, 6/25/2024]

End of Adopted Rules

2024 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	February 29	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 7
Issue 10	May 9	May 21
Issue 11	May 23	June 11
Issue 12	June 13	June 25
Issue 13	July 8	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 8
Issue 20	October 10	October 22
Issue 21	October 24	November 5
Issue 22	November 7	November 19
Issue 23	November 26	December 10
Issue 24	December 12	December 23

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, 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. The *New Mexico Register* is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941