

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 14 RAILROADS
PART 4 GRADE CROSSINGS ON LAND AND RAILROAD TRACKS CONTROLLED BY THE
DEPARTMENT OF TRANSPORTATION

18.14.4.1 ISSUING AGENCY: New Mexico Department of Transportation.
[18.14.4.1 NMAC - N, 12/1/2010]

18.14.4.2 SCOPE: All government, private and public entities.
[18.14.4.2 NMAC - N, 12/1/2010]

18.14.4.3 STATUTORY AUTHORITY: Section 67-3-11, 67-3-12, 63-3-35, 63-3-36, 63-3-37, 63-3-38,
and 67-3-67 through 67-3-70 NMSA 1978.
[18.14.4.3 NMAC - N, 12/1/2010]

18.14.4.4 DURATION: Permanent.
[18.14.4.4 NMAC - N, 12/1/2010]

18.14.4.5 EFFECTIVE DATE: December 1, 2010, unless a later date is cited at the end of a section.
[18.14.4.5 NMAC - N, 12/1/2010]

18.14.4.6 OBJECTIVE: To create procedures and standards for any new and all existing grade crossings on
land and railroad tracks controlled by the department of transportation.
[18.14.4.6 NMAC - N, 12/1/2010]

18.14.4.7 DEFINITIONS:

A. “Active traffic control device” means those traffic control devices activated by the approach or
presence of a train, such as flashing light signals, automatic gates and similar devices, all of which display to
motorists positive warning of the approach or presence of a train.

B. “Agreement” means a contract between the department as the owner of the railroad and the party
or parties who own, use, or have responsibility for a road that cross the rail line that describes responsibility for the
grade crossing construction, repair, maintenance, inspection, and liability for the crossing and other items as may be
appropriate at the grade crossing and adjacent traffic control signs. An agreement shall be negotiated between the
department and the party or parties when approval for the construction or modification to the crossing has been
given by the department secretary. A template agreement will be made available to any party requesting such
document, but the final terms of the agreement will be subject to negotiation by the parties thereto.

C. “Applicant” means an individual or company or local government or any other entity that submits
a request in writing to the department rail manager for a new crossing, modification to an existing crossing, a change
in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a
crossing, and who or which must be an adjacent property owner, the property owner’s authorized representative or a
governmental agency that maintains the road approaches to a crossing.

D. “Crossing” means a general area where a highway and the department's railroad right-of-way
cross at the same level, within which are included the railroad tracks, highway or other roadway either publicly or
privately owned or pedestrian crossing and any traffic control devices for highway traffic traversing that area. The
crossing shall include the area of department owned railroad property from the property boundary on one side of the
track to the property boundary on the other side.

E. “Department” means the New Mexico department of transportation.

F. “Diagnostic study” means a study of a highway railroad grade crossing and any adjacent factors
that will have an impact upon the operation at the grade crossing. This study shall be initiated by the department rail
manager and shall be conducted by a diagnostic team constituted by the rail manager. Any reports submitted shall be
stamped and signed by a registered engineer licensed in the state of New Mexico. A diagnostic study of a crossing
shall be based on criteria and standards identified in the reference documents in subsection B of 18.14.4.8 NMAC.

G. “Diagnostic team” means a group of knowledgeable representatives of the parties of interest in a
railroad highway crossing or a group of crossings. A diagnostic team composition will be determined by the
department rail manager and shall have the following members:

- (1) a railroad engineering professional (preferably an experienced professional engineer);

- (2) a railroad signal professional (or consultant);
 - (3) a highway engineer from the department as designated by the district engineer for the department district where the highway-railroad grade crossing is located;
 - (4) a person from an appropriate local government who deals with roadways at the crossing if a local government does maintenance of the road that crosses the department owned tracks;
 - (5) the rail manager or their designated staff member;
 - (6) an appropriate regulatory or law enforcement professional from the local government where the crossing is located;
 - (7) an individual or individuals from any railroad or railroads that operate trains on the department owned track that is being examined;
 - (8) any additional personnel that may be needed depending on the individual circumstances at a crossing location as determined by the department rail manager.
 - H.** “**FHWA**” means the United States department of transportation federal highway administration.
 - I.** “**FRA**” means the United States department of transportation federal railroad administration.
 - J.** “**Highway, road or roadway**” means a general term denoting a public or private way for purpose of vehicular and other modes of travel. The names usually apply to the entire area within the right of way limits.
 - K.** “**License**” means permission to a revocable non-possessory interest in land which the department grants for specific purposes without being subject to an action and trespass.
 - L.** “**Local government**” means a municipality or county or agency or local authority that has jurisdiction for or control of the road or roadway that crosses or is proposed to cross land and railroad tracks controlled by the department. Local governments shall include Indian tribes or tribal governments as defined in federal law at 25 USC 450b(e) and other sections.
 - M.** “**MUTCD**” means the most current version of the federal highway administration manual on uniform traffic control devices.
 - N.** “**NMDOT**” means the New Mexico department of transportation.
 - O.** “**NMDOT grade crossings**” means crossings of railroad tracks that are owned by the department or the state transportation commission.
 - P.** “**Passive warning traffic control device**” means those types of traffic control devices, including signs, markings and other devices, located at or in advance of grade crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train.
 - Q.** “**Permit**” means a temporary short or long term document approved by an applicant and the department with terms and conditions (i.e. contract, license or agreements), giving permission to enter department railroad property for a specific purpose and limited period of time to construct or maintain a crossing and for the crossing itself.
 - R.** “**Private crossing**” means a crossing that is not on a public road and was opened by a private railroad or the department under the terms and conditions of an agreement with the department or a private railroad. At private crossings, the roadway is privately owned, as might be found on a farm or within an industrial complex, where the road is not intended for public use and is not maintained by a public entity.
 - S.** “**Public crossing**” means a crossing where a public entity maintains the approach roads to the railroad grade crossing on both sides of the railroad track within the department owned railroad property.
 - T.** “**Rail manager**” means the department rail section manager.
 - U.** “**Second party**” means an individual or company or local government or any other entity that enters into an agreement with the department for a highway-railroad grade crossing of department owned railroad track.
 - V.** “**Secretary**” means the New Mexico department of transportation secretary.
- [18.14.4.7 NMAC - N, 12/1/2010]

18.14.4.8 REFERENCES:

- A.** The reference documents listed in Subsection B of 18.14.4.8 NMAC are supplementary and will be used by the department to evaluate requests for a new crossing or modification to an existing crossing or a request for a change in designation from a private crossing to a public crossing or the closing of a crossing or the grade separation of a crossing or in any diagnostic study of a crossing that is conducted. The most recent edition of each technical reference shall be used.
- B.** Technical reference documents.
 - (1) FHWA, railroad-highway grade crossing handbook.
 - (2) FHWA, MUTCD.

(3) Institute of transportation engineers, *geometric design criteria for highway-rail intersections (grade crossings)*.

(4) Institute of transportation engineers, *traffic engineering handbook*.

(5) The department railroads and utilities manual, most current version.

(6) Any applicable department engineering standards.

[18.14.4.8 NMAC - N, 12/1/2010]

18.14.4.9 CROSSING REQUEST PROCESS:

A. Crossing request general requirements.

(1) Requests for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing shall be made by any adjacent property owner, the property owner's authorized representative or a local government representative that maintains the road approaches to a crossing.

(2) All requests for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing shall be submitted in writing to the rail manager with proof of ownership of the adjacent property that the crossing will serve. The request shall also contain a description of the crossing that includes a to-scale engineering drawing of the location where the crossing will be constructed or modified at the railroad tracks and the approach roads to the crossing and any other features in the area and will acknowledge that the requestor accepts all liability for the crossing and will pay all maintenance costs for the crossing.

(3) Any request by an applicant for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing may be refused by the department if necessary and relevant information is missing. If the request is refused, the department shall notify the applicant within ten (10) working days of receipt of the request and shall indicate the reason or reasons for refusal.

(4) Each applicant understands and agrees as a condition of issuance of any agreement, that if the department determines that any violation of the agreement has or may result in the creation of any safety or traffic hazard, the department may immediately take such action as the department deems necessary to correct, prevent, eliminate or mitigate such hazard, without the need for the completion of any review process.

(5) The review process shall begin with the acceptance of a request by the department rail manager.

(6) From the date of acceptance of a written request for modifications to an existing crossing or construction of a new crossing or the grade separation or elimination of a crossing by the rail manager the process time for any request will normally take ninety (90) days. The process may be extended by the department when further action is required by the department. Transmittal of a completed agreement, approved by the department secretary or transmittal of a denied request constitutes action on the request.

(7) Upon receipt and review of a written request for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing the rail manager shall form a diagnostic team who will then conduct a diagnostic study of the proposed action. A report of the diagnostic study will then be prepared and submitted to the secretary with a recommendation by the rail manager as to whether the request should be approved or denied.

(8) The secretary shall approve or deny any and all crossing requests or proposals regarding crossings on any department owned railroad property.

(9) If the secretary approves a request from an applicant, an agreement shall be prepared by the rail manager and transmitted to the applicant who will become the second party to the agreement. If the applicant does not agree to all terms and conditions of the agreement, the agreement shall not be executed.

(10) In accepting the agreement, the applicant agrees to all terms and conditions of the agreement. Should the applicant choose to appeal a denied request, or the terms and conditions of an agreement, the appeal shall be filed with the rail manager within sixty (60) days of the date the denial notice or the approved agreement is transmitted.

(11) The issue date of the agreement is the date the department secretary signs the agreement.

(12) The granting of an agreement for a crossing conveys no rights, title or interest in department property to the applicant. An agreement for a crossing does not entitle the applicant to control or have any rights or interests in any portion of the design, specifications or operation of the rail line, including those portions of the rail line built pursuant to the terms and conditions of the agreement.

(13) If the department denies a request, the department rail manager shall provide the applicant a copy of the written request marked "denied" along with any attachments and a written explanation for the decision.

(14) Denial of a request for modification to an existing lawful crossing does not constitute a revocation of the existing crossing.

B. Fees: The secretary may establish a reasonable schedule of fees for crossing agreements issued pursuant to 18.14.4.12 NMAC.

C. Appeals of denied requests for crossings.

(1) If the requestor objects to the denial of a crossing request by the department or objects to any of the terms or conditions of the agreement placed therein by the department, a written appeal may be filed with the rail manager within sixty (60) days of the transmittal of notice of denial or transmittal of the approved agreement. The request shall include reasons for the appeal and may include recommendations by the requestor.

(2) The rail manager will review the appeal and provide a recommendation to the secretary regarding the appeal.

(3) Upon review the secretary will approve or deny the appeal recommendation.

[18.14.4.9 NMAC - N, 12/1/2010]

18.14.4.10 STANDARDS TO BE USED FOR ALL CROSSINGS OF DEPARTMENT OWNED RAILROAD PROPERTY:

A. All crossings shall be subject to an agreement between the department and a second party.

B. An agreement between the department and the second party at the crossing shall address the party that is responsible for the maintenance, repair and replacement of the crossing and installation and maintenance, repair and replacement of any traffic control signage at the crossing.

C. The department shall require the second party at the crossing to pay the department for the installation and maintenance, repair and replacement as needed of the traffic controls and signage determined to be necessary based upon a diagnostic study of the crossing and as approved by the secretary. If payment is not provided the department may close the crossing after providing written notice to the second party.

D. The following passive warning traffic control devices will be installed and maintained at all crossings unless the secretary determines that additional passive warning traffic control devices or active traffic control devices are required at a crossing. All passive warning traffic control devices shall be installed as specified in section 8B.04 of the MUTCD and shall include:

(1) a yield sign (an R1-2 sign as shown in figure 8B-1 and sized as shown in table 8B-1 of the MUTCD) shall be the default traffic control device, unless the secretary or a diagnostic study determines that a stop sign (an R1-1 sign as shown in figure 8B-1 and sized as shown in table 8B-1 of the MUTCD) is appropriate and shall be installed in compliance with the provisions of Part 2 of section 2B.10 of the MUTCD and figures 8B-2 and 8B-3 of the MUTCD;

(2) a railroad cross buck sign (an R15-1 sign as shown in figure 8B-1 and sized as of Table 8B-1 of the MUTCD) that complies with the provisions of section 8B.03 of the MUTCD;

(3) a sign indicating the number of tracks at the crossing at the location if two or more tracks are present that complies with the provisions of section 8B.03 of the MUTCD;

(4) reflective striping on the front and back of the signpost but may be omitted from the back sides of crossbuck sign supports installed on one-way streets;

(5) an emergency notification sign as shown in figure 1 below with a telephone number for the railroad dispatcher who dispatches trains using the tracks at the crossing;



**DOT Crossing Number is specific to the location of the crossing
The Mile Post (MP) is specific to the locations of the crossing**

Figure 1

- (6) roadway striping where appropriate;
- (7) advance highway-railroad grade crossing warning signs for each direction of traffic.

E. It shall be the responsibility of the department to ensure that all federal and state laws and regulations, department procedures and industry standards are followed.

F. The rail manager shall conduct inspections of all department-owned crossings on a regular basis at least every two years to evaluate the sufficiency of traffic control devices and signage. The rail manager shall utilize the references in section b of 18.14.4.8 NMAC in conducting the inspection. The rail manager shall make a recommendation regarding any modifications to a crossing to the department secretary. The department secretary shall decide whether modifications to a crossing shall be made.

[18.14.4.10 NMAC - N, 12/1/2010]

18.14.4.11 ADDITIONAL REQUIREMENTS FOR PRIVATE CROSSINGS OF DEPARTMENT OWNED RAILROAD PROPERTY:

A. All liability at a private crossing will lie with the second party named in any existing or future crossing agreement. The department will bear no liability for these crossings.

B. The liability for the use and the responsibility for funding the inspection, maintenance and improvement of a private crossing shall be the responsibility of the second party, as the owner of the road that crosses the department owned railroad property.

C. If the department can not locate or acquire a valid agreement that has been issued to allow a private crossing of the department owned railroad property, and the department is unable to execute an agreement with an applicant for the crossing, the department shall initiate a process to consider closing the crossing utilizing the procedures included in 18.14.4.13 NMAC.

D. The department shall have the right to terminate an agreement in the event that the department determines any of the following:

- (1) the crossing is being used for a purpose or in a manner not set forth in the agreement; or
- (2) there is a significant change in the volume or nature of road traffic at the crossing; or
- (3) the second party has in any way breached the terms or conditions of any applicable agreement.

[18.14.4.11 NMAC - N, 12/1/2010]

18.14.4.12 FOR REQUESTS THAT A DESIGNATION OF A PRIVATE CROSSING BE CHANGED TO A PUBLIC CROSSING:

A. A local government or regional transit district may request that a private crossing be changed to a public crossing by submitting a written request to the rail manager. The request shall include the reasons for such redesignation, the supporting documents referenced in Paragraph (2) of Subsection (A) of 18.14.4.9 NMAC, and a resolution from the governing body of the local government or regional transit district committing to maintain the approach roads to the grade crossing. The process referenced in 18.14.4.9 NMAC shall be used by the department in considering the redesignation request.

B. The rail manager shall make a recommendation to the secretary regarding the request to redesignate a private crossing to a public crossing. The secretary shall decide whether such redesignation shall be made. Upon approval by the secretary of the redesignation, an agreement between the department and the second party that will assume responsibility for the redesignated crossing shall be executed regarding the responsibilities of the second party.

C. The rail manager shall submit all changes in crossing designation to the FRA to update the FRA crossing inventory.

[18.14.4.12 NMAC - N, 12/1/2010]

18.14.4.13 CONSIDERATION OF CLOSING AN EXISTING CROSSING: CONSIDERATION OF CLOSING AN EXISTING CROSSING:

A. If the department seeks the closure of an existing crossing or if the rail manager receives a proposal to close an existing crossing that is determined to merit consideration based on the rail manager's review of the proposal, the department shall provide public notice of the proposed closure:

(1) the department shall inform the local government in which the crossing is located of the proposed closure;

(2) the department shall post signs at the crossing notifying the public that the crossing is under consideration for closure and requesting public comment;

(3) the department shall publish a notice in a newspaper of general circulation in the community in which the crossing is located inviting public comment.

B. The rail manager shall evaluate the impacts of closing the crossing and the options to closure. In preparing a recommendation to the secretary regarding a proposed closing of an existing crossing, the rail manager shall utilize the criteria contained in the references cited in 18.14.4.8 NMAC, the results of the diagnostic study and consider any public comments received. The rail manager shall provide a recommendation and a summary of any public comments received to the secretary.

C. The approval of the secretary or their designee is required in order to close an existing crossing.

[18.14.4.13 NMAC - N, 12/1/2010]

18.14.4.14 CONSIDERATION OF OPENING A NEW CROSSING:

A. If the department seeks the opening of a new crossing or if the rail manager receives a proposal to open a new crossing that is determined to have merit based on the rail manager's review of the proposal, the department shall provide public notice of the proposed new crossing.

(1) The department shall inform the local government in which the crossing is located of the proposed new crossing.

(2) The department shall post signs at the site of the proposed crossing notifying the public that a new crossing is under consideration at this site and requesting public comment.

(3) The department shall publish a notice in a newspaper of general circulation in the community in which the crossing is located inviting public comment.

B. The rail manager shall evaluate the impacts of opening the new crossing in preparing a recommendation to the secretary regarding a proposed new crossing, the rail manager shall utilize the criteria contained in the references cited in 18.14.4.8 NMAC, the results of the diagnostic study and consider any public comments received. The rail manager shall provide a recommendation and a summary of any public comments received to the secretary.

C. The approval of the secretary or their designee is required in order to open a new crossing.

[18.14.4.14 NMAC - N, 12/1/2010]

18.14.4.15 CONSIDERATION OF REQUESTS FOR GRADE SEPARATION OF A CROSSING:

A. The rail manager in preparing their recommendation to the secretary regarding a request for grade separation of a crossing shall utilize:

- (1) the criteria contained in the references cited in 18.14.4.8 NMAC;
- (2) the results of the diagnostic study of the grade crossing;
- (3) the cost of the project;
- (4) the availability of funding for the project;
- (5) the impact on the community in which the crossing is located.

B. The approval of the secretary or their designee is required in order to grade separate an existing crossing.

[18.14.4.15 NMAC - N, 12/1/2010]

HISTORY OF 18.14.4 NMAC: [RESERVED]