

This rule was filed as: 18 NMAC 21.4.

**TITLE 18           TRANSPORTATION AND HIGHWAYS**  
**CHAPTER 21       TRAFFIC CONTROL SIGNAGE**  
**PART 4            TOURIST ORIENTED DIRECTIONAL SIGNS (TODS)**

18.21.4.1           ISSUING AGENCY: New Mexico State Highway and Transportation Department  
Post Office Box 1149 Santa Fe, New Mexico 87504-1149           (505) 827-5525  
[12/31/98; 18.21.4.1 NMAC – Rn, 18 NMAC 21.4.1, Recompiled 11/16/01]

18.21.4.2           SCOPE: All state agencies and general public.  
[12/31/98; 18.21.4.2 NMAC – Rn, 18 NMAC 21.4.2, Recompiled 11/16/01]

18.21.4.3           STATUTORY AUTHORITY: Regulations for signs giving specific information in the interest of the traveling public are authorized under Sections 66-7-101, 66-7-102, 66-7-108, 67-8-9, 67-8-10, 67-12-4, 67-12-5, and 67-14-1 et seq., NMSA 1978 Comp., Section 2-I of the Manual on Uniform Traffic Control Devices; and approved by the New Mexico State Highway Commission on October 15, 1992. All rules and regulations set forth herein are subject to revision by the New Mexico State Highway and Transportation Department with the approval of the New Mexico Highway Commission.  
[12/31/98; 18.21.4.3 NMAC – Rn, 18 NMAC 21.4.3, Recompiled 11/16/01]

18.21.4.4           DURATION: Permanent.  
[12/31/98; 18.21.4.4 NMAC – Rn, 18 NMAC 21.4.4, Recompiled 11/16/01]

18.21.4.5           EFFECTIVE DATE: December 31, 1998, unless another date is cited at the end of a section or paragraph.  
[12/31/98; 18.21.4.5 NMAC – Rn, 18 NMAC 21.4.5, Recompiled 11/16/01]

18.21.4.6           OBJECTIVE: Tourist Oriented Directional Signs (TODS) provide the business identification and directional information for businesses (including seasonal agricultural products), services, and activities the major portion of whose income or visitors are derived during the normal business season from motorists not residing in the immediate area of the business or activity. They are intended for use only on rural conventional roads and shall not be used at interchanges, expressways, freeways or all roadways with any form of access control. They may be used in conjunction with motorist service signs. If tourist oriented directional signs (TODS) and specific service (LOGO) signs (SHTD Rule 88-2(L)) are installed at the same intersection, the LOGO signs shall be incorporated in the TODS signing scheme.  
[12/31/98; 18.21.4.6 NMAC – Rn, 18 NMAC 21.4.6, Recompiled 11/16/01]

18.21.4.7           DEFINITIONS:

A.       "Business Sign" means a sign showing the name and/or brand and/or trademark, and/or directional arrow and/or distance to a qualified TODS business. Business signs may be erected individually or as a component of a sign assembly as determined by location.

B.       "Department" means the New Mexico State Highway and Transportation Department.

C.       "Interstate System" means every state highway that is part of a national interstate and defense highways established pursuant to Section 103(b), Title 23, United States Code.

D.       "Logo" means an officially sanctioned sign of the Logo Signing Program.

E.       "Logo Sign" means an officially sanctioned sign of the Logo Signing Program.

F.       "Signing Priority" means all other type of signing shall have a priority over TODS signing.

G.       "Tourist Oriented Directional Signs or TODS" means officially sanctioned signing that is located within the right-of-way of routes (except Interstate) under the jurisdiction of the Department and provides business identification and directional information for businesses, services and activities, the major portion of whose income from visitors are derived during the normal business season from motorists not residing in the immediate area of the business or activity.

H.       "Trailblazer" means a route marker assembly used to indicate the direction to the nearest or most convenient point of access to a qualified TODS business.

I. "TODS Intersection" means a juncture of a highway and a public roadway that provides access to a qualified TODS business.

J. "Intersection TOD Sign" means a sign assembly installed within the highway right-of-way at or near a TODS intersection and is used to indicate the name, direction and distance to a qualified TODS business.

K. "Advance Intersection TOD Sign" means a sign assembly installed within the highway right-of-way at least one-half mile in advance of a TODS intersection and is used to indicate the name, direction and distance to a qualified TODS business.

[12/31/98; 18.21.4.7 NMAC – Rn, 18 NMAC 21.4.7, Recompiled 11/16/01]

18.21.4.8 SIGN, PANEL OR BUSINESS LOCATION: TOD signs shall be used only in rural areas where the business is not visible from the highway. Businesses visible from the road shall not qualify to receive TOD signing. Specifically, a prospective TOD business may be located:

A. in a rural area, inside the limits of an unincorporated or incorporated community with a population of 2000 or less;

B. Outside the limits of an unincorporated or incorporated community with a population between 2000 and 10,000. However, TOD signing may be located within the unincorporated /incorporated limits;

C. The location of other traffic control devices shall at all time take precedence over the location of TODS;

D. Intersection TODS panels should be at least 200 feet from the intersection;

E. Advance TODS panels should be at least 1/2 mile, but not more than 1 mile from the intersection, but will only be permitted in situations where sight distance, intersection maneuvers or other vehicle characteristics require notification;

F. Trailblazer TODS signs should be at least 100 feet from the intersection;

G. Intersection TODS panels should be spaced 200 feet from other intersection TODS panels and at least 200 feet from other traffic control devices;

H. Advance TOD panel should be spaced 800 feet from other advance TODS panels and at least 200 feet from the traffic control devices;

I. Trailblazer TOD signs should be spaced at least 200 feet from other traffic control devices;

J. TOD signs/panels shall not obstruct the drivers critical viewing of other traffic control devices;

K. At intersections where specific services (LOGO) signing is located, prior to TODS, then

(1) The LOGO signs shall be combined with TODS, if within guidelines of sign layout; or

(2) No TOD signing will be permitted at the LOGO intersection unless 8.11.1 [Paragraph (1),

Subsection K., Section 8 of 18.21.4.8 NMAC] above is applicable, or

(3) No LOGO signing will be permitted at an intersection currently signed under TODS unless the LOGO(s) are combined as per above.

L. TODS shall not be permitted at interchanges if an at-grade intersection is replaced with an interchange, the intersection will no longer qualify for TODS and any previously erected TODS shall be removed by the Department.

M. A TODS trailblazer is required if the business is one or more miles from the intersection, and additional trailblazers are mandatory in advance of any turn the motorist is required to execute while enroute to the business;

N. Transverse location of signs should be at least eighteen feet offset from the outside edge of the near driving lane.

[12/31/98; 18.21.4.8 NMAC – Rn, 18 NMAC 21.4.8, Recompiled 11/16/01]

18.21.4.9 GENERAL ELIGIBILITY CRITERIA: It is the intention of TODS to provide information of significant interest to the general traveling public using signs that point out cultural, historical, recreational, educational or entertainment activities or unique commercial activities that are tourist or motorist oriented. In order to qualify for TODS, a business, as a minimum, must:

A. Give written assurance of its conformity with all applicable laws concerning the provisions of non-discrimination with regard to race, religion, sex, color or national origin and shall not breach such assurances;

B. In addition to the aforementioned non-discrimination clause, provide reasonable access and/or accommodation for the physically impaired;

C. Not have illegal signs (billboards) as defined by the Highway Beautification Act of 1965 (23 USC 131); or the Intermodal Surface Transportation Efficiency Act 1991;

D. Be open to the general motoring public, including families (members only or Time Share Investor facilities shall not be qualified for TODS);

E. Derive the major portion of income and/or number of visitors from motorists not residing in the immediate area of the business; and

F. The business/activity shall be conducted in a building or an appropriate area designed for the purpose. However, a building principally used as a residence may be permitted if there is a convenient, separate, and well-marked entrance.

[12/31/98; 18.21.4.9 NMAC – Rn, 18 NMAC 21.4.9, Recompiled 11/16/01]

18.21.4.10 SPECIFIC ELIGIBILITY CRITERIA: This section describes the types of businesses or activities that may qualify for TODS. These criteria are in addition to the requirements found in these regulations. By type, the specific criteria that an individual business or activity must meet to qualify for TODS are:

A. Motorist Service: A service of significant interest to motorist may qualify. The types of services, which may qualify, include, but are not limited to: gas, food, lodging, motor vehicle service or repairs. A business or activity providing motorist service must:

- (1) Be open a minimum of eight (8) hours a day, six (6) days a week, and twelve (12) months a year;
- (2) Have on-site restrooms facilities and drinking water available;
- (3) Have a telephone available for public use; and
- (4) Be located within five (5) miles of the TODS intersection.

B. Tourist Attraction: An attraction of significant interest to tourists as a his toric, cultural, religious, scientific or education site, or as a site naturally for outdoor recreation or as a site of natural scenic beauty, may qualify for TODS if it:

- (1) Is open a minimum of six (6) hours a day, five (5) days a week, six (6) months, in continuum, a year;
- (2) Has on-site restroom facilities and drinking water available;
- (3) Is located within fifteen (15) miles of the TODS intersection; and
- (4) Has a telephone available for public use.

C. Agricultural Business Activity: An agricultural enterprise of significant interest to the traveling public may qualify if it:

- (1) Is open a minimum of six (6) hours a day, six (6) days a week, twelve (12) months a year or during the normal seasonal period of not less than three (3) months in continuum;
- (2) Is located within fifteen (15) miles of the TODS intersection;
- (3) Has on-site restroom facilities and drinking water; and
- (4) Has a telephone for public use.

D. Other Commercial Activity: A non-agricultural activity of significant interest to the traveling public may qualify, if it:

- (1) Is open a minimum of eight (8) hours a day, six (6) days a week, twelve (12) months a year or during the normal seasonal period of not less than three (3) months in continuum;
- (2) Has on-site restroom facilities and drinking water available;
- (3) Has a telephone available for public use; and
- (4) Is located within five (5) miles of the TODS intersection.

E. TODS Designs: Tourist oriented directional signs shall be rectangular in shape and:

- (1) Registered LOGOS shall be in accordance to the register color(s) of the LOGOS;
- (2) Shall have a white legend and border on a blue background;
- (3) Major routes in rural districts, intersection and advance TOD sign letters and numerals should be at least six inches (6") in height;
- (4) Non less important rural roads, the legend should be in numerals and letters at least four inches (4") in height;
- (5) Trailblazer TOD sign letters and numerals should be at least four inches (4") in height;
- (6) Lettering should be upper case letters;
- (7) Legends, arrows, borders, symbols, and logos shall be Retroreflective;
- (8) Each TOD sign should not have more than two lines of legend including not more than one symbol, a separate directional arrow, and the distance to the facility shown beneath the arrow;
- (9) Advance TOD signs shall not include the distance to the facility nor directional arrow;
- (10) Advance TODS panels should include the appropriate legend NEXT LEFT, NEXT RIGHT or AHEAD. Where thee is intervening minor roads, the legend LEFT 1/2 MILE or RIGHT 1/2 MILE should be used;

- (11) TOD signs should not exceed the size necessary for two lines of legend without crowding;
- (12) Legends shall not include promotional advertising;
- (13) LOGOS resembling official traffic control devices shall not be permitted;
- (14) Direct and/or indirect reference to the availability of alcoholic beverages shall not be permitted;

and

- (15) The dates/days/hours of operation may be required.

[12/31/98, 18.21.4.10 NMAC – Rn, 18 NMAC 21.4.10, Recompiled 11/16/01]

#### 18.21.4.11 APPLICATION AND APPEAL PROCEDURES:

A. Application Procedures: Applications for tourist oriented directional signing shall be submitted to the appropriate District Highway and Transportation Office.

B. Applications shall be accompanied with a photocopy of the business license or other document that shows the actual registered name of the business and/or DBA that is to be the legend on the TOD sign(s).

C. The application shall include a sketch map.

D. The appropriate District Traffic Engineer shall review/verify TOD applications. Conditions and recommendations regarding approval will be forwarded with the application to the State Maintenance Bureau.

E. TODS permits shall be issued to each eligible applicant, up to the maximum number allowed.

F. If the number of approved applicants for an intersection is greater than the number of spaces available, space shall be allocated as follows:

(1) Year-round operations shall take precedence over seasonal activities, except when the distance computation of the bumping procedure applies.

(2) If paragraph 5.6.1 [Paragraph (1), Subsection F., Section 5 of 18.21.4.5 NMAC] of this sub-regulation does not apply, order of priority shall be the closest, qualified applicant to the intersection that have applied for a TODS permit in order to fill vacant space(s).

(3) Once an activity or site is approved for signing, it may occupy a space as long as it continues to qualify. However, a year-round activity will be able to bump a seasonal activity except when the distance computation of the bumping procedure applies.

G. Bumping Process: Rank current and new applicants - highest score gets bump. Notify business of intent to be bumped by March 1st, using Certified/Return Receipt Mail.

(1) Financial - not paid up to date is an AUTOMATIC BUMP.

(2) Distance - 1 point for each 0.1 mile from the TODS intersection to the location of the business.

(3) Waiver - 30 points each.

H. Appeal Procedure: Any order of the Department denying an application under these rules, or for removal of a business sign pursuant to section 5.7 may be appealed by the applicant or permittees to the appropriate District Office. The District shall notify applicants or permittees promptly on any application denial or decision to remove a sign.

[12/31/98; 18.21.4.11 NMAC – Rn, 18 NMAC 21.4.11, Recompiled 11/16/01]

#### 18.21.4.12 FURNISH, ERECTION, MAINTENANCE AND REMOVAL:

A. The applicant shall furnish, erect, maintain and remove TOD signs at locations specified by the Department. All of the above responsibilities shall be done in accordance with the New Mexico Highway and Transportation Department Standard Specifications for Highway and Bridge Construction. Upon approval of the application, the Department will notify the applicant for coordination of the installation.

B. All TOD signs shall be manufactured and installed by a contractor approved by the Department.

C. The applicant shall assume any liabilities that may arise from the TODS installation.

D. The applicant shall remove or appropriately cover a TOD sign of a seasonal business when the business is closed during the off-season period.

E. TOD signs shall be removed if the business no longer qualifies for TODS.

F. All required trailblazing signs shall be installed prior to the installation of either intersection or advance TOD signs.

G. The Department shall determine when a TOD sign is no longer serviceable and needs to be replaced. Replacement TOD signs may be subject to fees - see FEE Section of these regulations. Payment of all fees assessed shall be remitted in full within thirty (30) days from the date of notification.

H. The applicant may request additional services in connection with the modification of TOD signs. This requested service is subject to fees and pre-payment of the fee shall be mandatory - see FEE Section of these regulations.

I. The Department will provide normal maintenance of/to TOD signs:

(1) If a TOD sign is modified or replaced at the request of the business, the business shall be required to pay for modifications and/or replacement. Department approval shall be required prior to any modifications.

(2) The Department shall not be responsible for damages to TOD signs caused by acts of vandalism or natural causes requiring repair or replacement of business signs. Applicants in such event shall pay incurred fees for services and cost of TOD sign replacement.

[12/31/98; 18.21.4.12 NMAC – Rn, 18 NMAC 21.4.12, Recompiled 11/16/01]

18.21.4.13 FEES: Rental fees are based on a continuous twelve (12) month year commencing on April 1 and ending on March 31. The first year's rental fee may be prorated on a monthly basis, but subsequent annual rental fees shall be for the entire twelve (12) month period even if the TODS business is seasonal. The advertiser shall be notified when the motorist information panel is erected and the TODS installed and the rental fee is then due. Rental fees shall be reviewed periodically to determine their relationship to the cost of operation of this program. Rental fees not received within thirty (30) days of notification to the applicant by the Department shall subject applicants permit to revocation and removal of its sign without any previously paid fees being refunded. The fees are:

A. Application \$75/per sign 1 time charge

B. Annual Rental \$120.00 per year

C. Signs N/A Provided by applicant

D. Service Provided by applicant

E. TrailBlazers Provided by applicant

[12/31/98; 18.21.4.13 NMAC – Rn, 18 NMAC 21.4.13, Recompiled 11/16/01]

18.21.4.14 RETENTION AND REFUNDING FEE:

A. If an application for a permit is, for any reason not granted, all fees rendered with the application shall be refunded. If the permit is revoked due to non-conformance with any of the specified sections, or if the rental fee is not timely tendered, the Department shall not refund any fees.

B. If an application is approved and a contract has been awarded for the erection of the sign, no part of the fees shall be refunded. If the business sign is subsequently removed by a taking of eminent domain of the business being advertised, a proportional refund of the pre-paid rental fee may be made. However, in case of any removal, the rental fee for any months or major portion (16 days or more) of a month remaining to the pre-paid rental of the business sign may be refunded. There shall be no refund of rental fees for any business sign temporarily or covered.

[12/31/98; 18.21.4.14 NMAC – Rn, 18 NMAC 21.4.14, Recompiled 11/16/01]

18.21.4.15 MISCELLANEOUS: The Department shall adopt all necessary forms, accounting methods and other procedures to carry out the full intent of these regulations.

[12/31/98; 18.21.4.15 NMAC – Rn, 18 NMAC 21.4.15, Recompiled 11/16/01]

HISTORY OF 18.21.4 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records and Archives under: SHTD Rule 92-1, Tourist Oriented Directional signs, filed November 2, 1992.

History of repealed Material: [RESERVED]