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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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New Mexico Register

Volume XXXVII, Issue 7

April 7, 2026

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Notices of Rulemaking and Proposed Rules

PUBLIC LANDS, COMMISSIONER OF

NOTICE OF PUBLIC HEARING

The New Mexico State Land Office (“NMSLO”) will hold a public hearing on May 27-28, 2026, at 9 a.m., and continuing thereafter as necessary, in Morgan Hall, Room 101, 310 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing will include a virtual/telephonic participation option, details of which will be provided on NMSLO’s website (<http://www.nmstatelands.org>) at least 30 days prior to the public hearing. Any change to the location or time of the hearing will be posted with a final agenda on the NMSLO website at least 72 hours prior to the date and times specified above.

The purpose of the hearing is to consider amending State Land Office Rule 19.2.100.23 NMAC to ensure sufficient financial assurance is in place for state oil and gas leases. NMSLO’s authority to manage state trust lands is found in Article 13 of the New Mexico Constitution and in NMSA 1978, Section 19-1-1. The legal authority to promulgate this rule is found in NMSA 1978, Section 19-1-2.

The proposed rule is available on the NMSLO website (<http://nmstatelands.org>) and the Sunshine Portal (<http://www.sunshineportalnm.com>) and at the NMSLO building located at 310 Old Santa Fe Trail, Santa Fe, New Mexico. To request a hard copy, please contact Francesca Di Palma at (505) 827-5761 or make a request by email at INFO@nmslo.gov.

Written comments may be submitted by mail to Francesca Di Palma, New Mexico State Land Office, Attention: Financial Assurance Rulemaking, or by email to INFO@nmslo.gov. Written comments (including comments submitted by email) will be accepted through 11:59 p.m. on May 26, 2026.

Individuals with disabilities who

require this information in an alternative format or need any form of auxiliary aid (such as a sign language interpreter) to attend or participate in any aspect of the proposed rulemaking process or the public rule hearing are asked to contact Selena Romero at least 10 days prior to the hearing by phone at (505) 827-5790 or by email at sromero@nmslo.gov.

SUPERINTENDENT OF INSURANCE, OFFICE OF

Notice of Expanded Comment Period for Certain Sections of 13.10.27 NMAC, UNIFORM DEFINITIONS AND STANDARDIZED METHOLOGIES FOR CALCULATING MEDICAL LOSS RATIO

The Office of Superintendent of Insurance (OSI) held a hearing and received public comment on proposed new rule 13.10.27 NMAC, on January 13, 2026. After reviewing all comments submitted during the public comment period, at the hearing, and during the response comment period, the Superintendent of Insurance (Superintendent) finds it necessary to extend the comment period to receive additional comments on certain sections of 13.10.27 NMAC. The Superintendent has identified sections requiring additional comment in her *Partial Final Order and Notice of Extension of Comment Period for Certain Sections of Proposed New Rule 13.10.37 (Partial Final Order)*, issued on March 19, 2026. The *Partial Final Order* is available on the OSI eDocket in Docket No. 2025-0171, or on the Sunshine Portal. You may also request a copy of the *Partial Final Order* from gloria.regensberg@osi.nm.gov or by phone at: 505-500-9079.

Pursuant to Section 14-4-5.3 NMSA 1978, and Subsection D of 13.1.4.11 NMAC, the expanded comment

period will begin on April 7, 2026, and will go through April 22, 2026, at 4:00 p.m. Written comments shall be filed electronically through the OSI eDocket. **Docket No. 2025-0171**, and the title below, must be indicated on all written comments submitted to OSI: **IN THE MATTER OF REPEAL OF 13.10.27 NMAC, UNIFORM DEFINITIONS AND STANDARDIZED METHOLOGIES FOR CALCULATING MEDICAL LOSS RATIO.**

To file written comments on the OSI eDocket please send written comments to the following email address: osi-docketfiling@state.nm.us. Please send written comments by at least 3:30p.m. to ensure that they will be filed by the 4:00p.m. deadline. The internet link to the eDocket is: <https://edocket.osi.state.nm.us/home>

In order to get access to the eDocket, you must register, if you are not already registered. Click on the Login/Register tab in the upper right corner of the OSI eDocket screen to login or register.

Written comments may be sent via U. S. Mail to:

**OSI Records and Docketing
NM Office of Superintendent of
Insurance
P.O. Box 1689, Santa Fe, NM
87504-1689**

Written comments must be received by OSI and stamped as accepted between the hours of 8:00a.m. and 4:00p.m. Monday through Friday except on state holidays. The Superintendent will consider all timely submitted written comments requested by this Notice and in the Partial Final Order.

There will be no additional hearing scheduled that is associated with this expanded comment period. This notice will be published in the New Mexico Register and provided to the

public pursuant to Subsection E of 14-4-2 NMSA 1978 and Subsection D of 13.1.4.11 NMAC on April 7, 2026.

**End of Notices of
Rulemaking and
Proposed Rules**

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.

GAME AND FISH DEPARTMENT

This is an amendment to 19.30.9 NMAC, sections 1, 3, 7, 8 & 9 effective 4/7/2026.

19.30.9.1 ISSUING
AGENCY: New Mexico Department of [~~Game and Fish~~] Wildlife.
[19.30.9.1 NMAC - Rp, 19.30.9.1 NMAC, 4/1/20; A, 4/7/2026]

19.30.9.3 STATUTORY
AUTHORITY: Sections 17-1-14, 17-3-5, 17-3-7, and 17-3-12 NMSA 1978 provide that the New Mexico state [~~game~~] wildlife commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17, NMSA 1978 and all other acts pertaining to protected species.
[19.30.9.3 NMAC - Rp, 19.30.9.3 NMAC, 4/1/2020; A, 4/7/2026]

19.30.9.7 DEFINITIONS:
A. “Vendor” shall mean any owner(s) of a private or public business concern authorized by the New Mexico department of [~~game and fish~~] wildlife to sell license documents.

B. “Carcass tag” shall mean any tag form provided to the vendor by the Department of [~~Game and Fish~~] Wildlife that authorizes a person to legally possess big-game species or turkey killed in New Mexico.

C. “Financial obligation” shall mean any dollar value owed to the Department, including penalty fees for unreturned carcass tags and payments for cash sales.

D. “License year” shall mean the period of April 1 through March 31.

E. “Hearing officer” shall mean the official designated by the department for the purpose of conducting revocation hearings and providing recommendations to the state [~~game~~] wildlife commission, relating to the suspension of hunting and fishing license vendors.
[19.30.9.7 NMAC - Rp, 19.30.9.7 NMAC, 4/1/2020; A, 4/7/2026]

19.30.9.8 LICENSE VENDORS:
A. Financial Obligations to the Department of [~~Game and Fish~~] Wildlife:

(1) The department will consign carcass tags to each vendor prior to the beginning of each license year, and will conduct an audit at the end of the license year to account for all carcass tags not issued to customers. All carcass tags designated unusable in any month during the license year must be returned to the department no later than the 10th day of the next month, and all blank, unused carcass tags must be returned to the department at the end of the license year no later than May 10.

(2) A fee of \$100 per missing carcass tag shall be levied upon the license vendor for failure to return any carcass tag designated unusable or any blank, unused carcass tag as required.

(3) Each vendor accepting cash payments, must submit payment for cash sales to the department every two weeks or when the total amount due (including license and vendor fees) reaches \$5,000, whichever comes first.

(4) If a vendor is more than five days delinquent in its payment for cash sales, the privilege to accept cash for department licenses and permits shall be immediately suspended, and the

department shall only reactivate the vendor’s full license sale privilege once payment is received in full.

(5) A vendor that is delinquent more than three times in a license year shall be evaluated by the director, who shall determine whether to suspend, restrict or place conditions on the vendor’s privileges pursuant to Subsection C of 19.30.9.8 NMAC.

(6) Any vendor that has their privileges suspended, restricted, or conditioned may request a hearing before a hearing officer to appeal the director’s determination. Any vendor that does not request a hearing agrees to pay to the department the appropriate amount as specified in Paragraphs (1) – (3) of Subsection A of 19.30.9.8 NMAC within [~~ten(10)~~] 10 working days and to comply with the director’s determination. If a vendor requests a hearing as provided by this rule, the department, within 20 days of receipt of such request, shall notify the vendor of the time and place of the hearing and the name or names of the person or persons who shall conduct the hearing for the commission. The hearing shall be held not more than 90 or less than 30 days from the date of service of such notice unless a continuance is granted to either party by the hearing officer.

(7) In the case of unusual mitigating or extraordinary circumstances, the state [~~game~~] wildlife commission may determine, and the hearing officer may recommend, financial obligation in an amount other than the amounts described in Paragraphs (1) – (3) of Subsection A of 19.30.9.8 NMAC. The decision of the state [~~game~~] wildlife commission shall be final.

(8) Vendors, whether active or inactive, shall meet

all financial obligations due to the department. Costs to collect overdue financial obligations may be added to the total obligation.

B. Vendor eligibility, application and procedures:

- (1) Each vendor must sign a current license vendor agreement with the department on a form approved by the department annually.
- (2) Each vendor shall participate in the department's web-based sales system and follow the procedures set forth in the most current New Mexico department of [~~game and fish~~] wildlife license vendor manual and vendor agreement.
- (3) Each new vendor, or any vendor who has been inactive for one year or more, shall submit a vendor application form, a current credit score (provided by a credit reporting company), and shall be subject to a background check conducted by the department.
- (4) A vendor applicant's ability to meet the financial obligations herein shall be evaluated and their privileges may be subject to restrictions or conditions pursuant to Subsection C of 19.30.9.8 NMAC.
- (5) A vendor applicant who has a felony conviction may be subject to restrictions or conditions placed on their vendor privileges pursuant to Subsection C of 19.30.9.8 NMAC.
- (6) A vendor applicant who has their hunting, fishing or trapping license privileges currently revoked or suspended or who has an outstanding civil assessment owed to the department shall be ineligible to be a vendor.
- (7) A vendor applicant who wishes to challenge any eligibility determination under this rule, may appeal to the director whose determination will be final and not subject to further appeal.

C. Director's authority: The director may suspend, restrict or place conditions, including requiring a surety bond, on a license vendor's privileges if the vendor is found to be in violation of their vendor agreement or delinquent in their financial obligation to the department. If such a determination is made, a notice of the suspension, restriction(s), or condition(s) shall be sent to the vendor within 10 days of the director's determination. A vendor may request a hearing pursuant to this rule to challenge the determination.

D. Vendor fee payments:

- (1) The department will pay the vendor fees earned by the vendor for the previous month license sales, no later the 10th business day of the next month, to the vendor,
- (2) The vendor shall be required to be registered in the state of New Mexico's central accounting system.

[19.30.9.8 NMAC - Rp, 19.30.9.8 NMAC, 4/1/2020; A, 4/7/2026]

19.30.9.9 ESTABLISHING CERTAIN LICENSES, PERMITS, CERTIFICATES AND FEES:

Type	Further description	Fee
License vendor fee	Per transaction vendor fee	\$2.00
	Additional carcass tag issuance fee (per tag)	\$1.00
Certificate of application	NM resident draw application fee	\$7.00
	Non-resident draw application fee	\$13.00
Wildlife conservation stamp	Share with wildlife	\$10.00
Duplicate license		\$6.00
Landowner authorization certificate		\$9.00
Migratory bird permit	Harvest information program (HIP)	\$0.00
Big game depredation damage stamp	NM resident	\$3.00
	Non-resident	\$10.00
Public land user stamp	Habitat stamp	\$5.00
Bait dealers		\$21.00
Commercial fishing		\$25.00
Importation fish	Annual application processing fee	\$25.00
	Additional stocking and shipment fee	\$6.00

Retention		\$1.25
Transportation		\$0.00
Triploid grass carp		\$25.00
Airborne hunting		\$10.00
Class A lake aquaculture/recirculating water system	Up to 75 fish or 750 gallons	\$20.00
	76 to 150 fish or 751 to 1500 gallons	\$40.00
	Over 150 fish or over 1500 gallons	\$100.00
Call pen		\$15.00
Class A lake		\$101.00
Class A lake	Additional lake	\$26.00
Class A park		\$501.00
Commercial collecting	Reptiles and amphibians	\$50.00
Educational use of wildlife	Application, renewal or amendment	\$15.00
Falconry	Application or renewal for 3 years	\$25.00
Field trial/importation		\$15.00
Game bird propagation		\$10.00
Protected mammal		\$10.00
Scientific use of wildlife	Application	\$15.00
	Renewal or amendment	\$15.00
Shooting preserve		\$200.00
Zoo	No fee	\$0.00
Importation non-domesticated animals per calendar year (1/1 to 12/31) except protected ungulates, game birds, fish or other	Class 1 importation of 1 to 5 animals	\$25.00
	Class 2 importation of 6 to 99 animals	\$75.00
	Class 3 importation of greater than 100 animals	\$300.00
Importation other	One time import (i.e., temporary importation, exhibition, game birds, restoration/recovery, etc.)	\$20.00
Importation protected ungulate	Initial application/source & up to 2 animals (valid 6 months)	\$500.00
	For additional animals, not to exceed 30 ungulates from the same source property/owner (if no acquisitions to source herd during 6 month period of validity)	\$50.00 per animal
	For greater than 30 ungulates from the same source property/owner (if no acquisitions to source herd during 6 months period of validity).	\$5.00 per animal

[19.30.9.9 NMAC - Rp, 19.30.9.9 NMAC, 4/1/2020; A, 4/7/2026]

**HOMELAND SECURITY
AND EMERGENCY
MANAGEMENT,
DEPARTMENT OF
STATE FIRE MARSHAL**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE
MARSHAL
PART 14 FIREFIGHTERS'
SURVIVORS' SUPPLEMENTAL
DEATH BENEFITS**

10.25.14.1 ISSUING

AGENCY: State Fire Marshal.
[10.25.14.1 NMAC – N, 4/7/2026]

10.25.14.2 SCOPE: This part applies to applicants for firefighters' survivors' supplemental death benefits who make applications to the firefighters' survivors supplemental death benefits committee.
[10.25.14.2 NMAC – N, 4/7/2026]

10.25.14.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to, Sections 10-11B-5 and 59A-52-1.1 NMSA 1978.
[10.25.14.3 NMAC – N, 4/7/2026]

10.25.14.4 DURATION:

Permanent.
[10.25.14.4 NMAC – N, 4/7/2026]

10.25.14.5 EFFECTIVE

DATE: April 7, 2026, unless a later date is cited at the end of a section.
[10.25.14.5 NMAC – N, 4/7/2026]

10.25.14.6 OBJECTIVE: The purpose of this rule is to establish the criteria by which the firefighters' survivors supplemental death benefits committee determines whether an eligible individual has been killed in the line of duty; to establish eligibility criteria; and to develop the application procedure.
[10.25.14.6 NMAC – N, 4/7/2026]

10.25.14.7 DEFINITIONS:

A. "Adopted" means in reference to a child, includes cases in which persons are treated as adopted as well as those of legal adoption.

B. "Authorized commuting" means travel between a firefighter's residence and their place of duty or a designated duty-related location, in a vehicle and at a time approved by the employing entity, for the purpose of reporting for or returning from duty, training, or emergency response. Authorized commuting includes use of a department vehicle, a personal vehicle, or a rental vehicle when expressly or implicitly authorized by the employing entity. Commuting may also include travel to or from a scene of an emergency or assignment when the firefighter is responding directly at the request of the department. Evidence of authorization may include call records, dispatch logs, written departmental policies, or witness testimony.

C. "Child" means natural children, stepchildren, adopted children, posthumous children and acknowledged illegitimate children.

D. "Council" means the fire services council.

E. "Employing entity" means an officially-recognized fire department, including a volunteer fire department, of a county, tribal, municipal or other local government that is certified by the state fire marshal and qualified to receive funds from the fire protection fund, but does not include emergency management services that are not part of a certified fire department.

F. "Firefighter" means an individual who is an employee (or, for volunteer fire departments, a volunteer member) of an employing entity and is engaged in the provision of firefighting and other emergency services for that employing entity, or is a formal participant in a firefighter training academy.

G. "Firefighters' survivors supplemental death benefits review committee" means the committee established in Section 10-11B-5 NMSA 1978 and which is comprised of the fire services council and the attorney general or the attorney general's designee.

H. "Fund" means the firefighters' survivors fund created in Section 10-11B-4 NMSA 1978.

I. "Gross negligence" means great, heedless, wanton, indifferent, or reckless departure from reasonable care, prudence, diligence, or safe practice in the presence of serious risks that are known and obvious.

J. "Natural child" means a biological child of the firefighter, and the firefighter is alive at the time of his birth.

K. "Spouse" means an individual with whom the firefighter lawfully entered into marriage and includes a spouse living apart from the firefighter, other than pursuant to divorce, as of the date of the firefighter's death.

L. "Local assistance state team program ("LAST") representative" means the individual assigned to coordinate with the national fallen firefighters' association and the U.S. department of justice to assist with the federal public safety officer's benefits process.
[10.25.14.7 NMAC – N, 4/7/2026]

10.25.14.8 LINE OF DUTY DEATH:

A. Subject to the exceptions in 10.25.14.11 NMAC, in order for a survivor or survivors to qualify for supplemental benefits from the fund, a firefighters' death must have been the result of a personal injury sustained in the line of duty. An injury causing death is considered to have occurred in the line of duty if:

(1) it was the result of the firefighter's authorized activities while on duty, as determined by the department Fire Chief, or authorized designee, and validated by the department human resources director, or in department-authorized training,

(2) it occurred while the firefighter was responding to an emergency or request for assistance,

(3) it occurred during authorized commuting to or from duty in an authorized department or personal vehicle, including rental vehicles, or

(4) there is convincing evidence that the firefighter’s status as a firefighter was a substantial contributing factor to the injury causing death.
[10.25.14.8 NMAC – N, 4/7/2026]

10.25.14.9 ELIGIBLE SURVIVORS AND ORDER OF BENEFICIARY:

A. A survivor of a firefighter whose death occurred in the line of duty as described in 10.25.14.8 NMAC is eligible for the payment of assistance from the fund if the survivor is:

- (1) the surviving spouse of the firefighter;
- (2) a surviving child of the firefighter, if there is no surviving spouse; or
- (3) a surviving parent of the firefighter, if there is no surviving spouse or child.

B. The order of beneficiary and share of benefit is as follows:

- (1) Surviving Spouse, regardless of whether there are children or not: one hundred percent of benefit.
- (2) No surviving spouse, but eligible children: one hundred percent, divided pro rata (equally) among children.
- (3) No surviving spouse or children: one hundred percent to surviving parents in equal shares.
[10.25.14.9 NMAC – N, 4/7/2026]

10.25.14.10 PRESUMPTION OF ELIGIBILITY FOR CERTAIN CONDITIONS:

The death of a firefighter due to a heart attack, stroke, or vascular rupture shall be presumed to be a death from a personal injury sustained in the line of duty for the purposes of survivor’s benefits if:

- A. the firefighter engaged in stressful or strenuous physical activity as part of an emergency response or training exercise, and
- B. the condition began during the physical activity, while the firefighter remained on duty after the

physical activity, or within 24 hours of the physical activity.
[10.25.14.10 NMAC – N, 4/7/2026]

10.25.14.11 EXCEPTION FOR DEATH RESULTING FROM GROSS NEGLIGENCE OR CRIMINAL ACTS:

Death resulting from performance of duties in a grossly negligent or criminal manner is not considered a line of duty death. Performance of duties in a grossly negligent manner at the time of death means gross negligence, as of or near the date of the injury causing death, in the course of authorized commuting or performance of line of duty activity or a line of duty action, where such negligence is a substantial contributing factor in causing such death.
[10.25.14.11 NMAC – N, 4/7/2026]

10.25.14.12 PROCEDURE FOR CONSIDERATION AND DETERMINATION OF CLAIM:

A. Notification to state fire marshal. The firefighter’s employing entity shall furnish to the state fire marshal proof of a death in writing no later than 30 calendar days after the death of the firefighter. The employing entity shall furnish the evidence and information required under this subsection regardless of whether the employing entity believes the individual’s death satisfies the eligibility requirements established under 10.25.14.8 NMAC.

B. Notification to LAST representative. The state fire marshal must notify the LAST representative upon receipt of the notification from the employing entity.

C. LAST representative’s responsibilities. The LAST representative will gather information from the respective department pertaining to the details of the death. The individual’s employing entity must furnish to the LAST Representative proof of the death on the National Fallen Firefighters Data Sheet and with additional evidence and information required by the Public Safety Officers Benefit Program (PSOB).

D. If the LAST representative has sufficient evidence that the death qualifies as a line of duty death, he or she shall start the reporting process. Once complete, the LAST Representative shall contact the state fire marshal to request that the firefighters’ survivors supplemental death benefits review committee be convened.

E. The LAST representative will present the facts surrounding the death and respond to any questions the committee may have, at the discretion of the committee chair.

F. The case will be turned over to the firefighters’ survivors supplemental death benefits review committee. The firefighters’ survivors supplemental death benefits review committee shall consider the proof, evidence, and information provided under Subsection A, and any additional information required by the rules adopted in accordance with 10.25.14.12 NMAC to determine, by majority vote of a quorum of members, whether the individual’s death satisfies the eligibility requirements established under 10.25.14 NMAC and justifies the payment of assistance to the individual’s eligible survivors under this chapter.

G. The outcome of the committee’s vote will be placed in written form to the state fire marshal, who will notify the department of finance and administration to initiate payment to the beneficiary (or beneficiaries).
[10.25.14.12 NMAC – N, 4/7/2026]

HISTORY OF 10.25.14 NMAC: [RESERVED]

HOMELAND SECURITY AND EMERGENCY MANAGEMENT, DEPARTMENT OF STATE FIRE MARSHAL

**PART 15 COMPLAINTS
HEARD BY FIRE SERVICES
COUNCIL**

10.25.15.1 ISSUING

AGENCY: State Fire Marshal.
[10.25.15.1 NMAC – N, 4/7/2026]

10.25.15.2 SCOPE: This part governs the filing, consideration and resolution of complaints made to the fire services council.

[10.25.15.2 NMAC – N, 4/7/2026]

10.25.15.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to Sections 59A-52-1.1 NMSA 1978.

[10.25.15.3 NMAC – N, 4/7/2026]

10.25.15.4 DURATION:

Permanent.

[10.25.15.4 NMAC – N, 4/7/2026]

10.25.15.5 EFFECTIVE

DATE: April 7, 2026, unless a later date is cited at the end of a section.

[10.25.15.5 NMAC – N, 4/7/2026]

10.25.15.6 OBJECTIVE: The

purpose of this rule is to establish the process by which individuals can make complaints to the fire services council about the performance of the state fire marshal’s office and the process by which the fire services council will consider and resolve complaints.

[10.25.15.6 NMAC – N, 4/7/2026]

10.25.15.7 DEFINITIONS:

A. “Complaint”

means a written statement concerning the state fire marshal’s office service delivery performance or administration of Chapter 59A, Article 52 NMSA 1978, but does not include any grievance or concern related to personnel or human resources matters.

B. “Council” means

the fire services council.

[10.25.15.7 NMAC – N, 4/7/2026]

**10.25.15.8 COMPLAINT
PROCEDURE:**

A. Initiation of

complaint. A person may initiate

a complaint in writing on a form approved by the council and submit it to the council at the state fire marshal’s office in Santa Fe, New Mexico. The complaint must contain the following:

(1) The name, telephone number (if any), email address (if any) and physical address of the complainant;

(2) The nature of the complaint in a clear and concise manner;

(3) a clear and concise statement of facts which the complainant alleges shows that performance of the state fire marshal’s office is unsatisfactory or otherwise;

(4) if applicable, a statement of any laws, rules, regulations or orders that the complainant believes were violated by the state fire marshal’s office; and

(5) the following statement signed by the complainant: “The factual allegations in the complaint are true and correct to the best of my knowledge and belief,” or an affidavit sworn by the complainant.

B. Responses to complaint and investigation.

(1) Within 10 business days of receipt of a complaint that is filed in substantial compliance with this rule, the council shall provide a copy of the complaint to the state fire marshal’s office.

(2) The state fire marshal’s office shall provide a written response to the complaint within 15 business days of receipt from the council. The state fire marshal’s office may seek an extension of time to answer a complaint.

(3) Unless an extension of time has been granted, if the state fire marshal’s office does not submit a response within 15 business days of receipt of the complaint, the council shall move forward with its review and consideration of the complaint and issue its recommendations, if any.

(4) After receipt of the complaint and the response, the council or its designee

may conduct any follow-up interviews or investigation as may be necessary to formulate its recommendations

C. Recommendation.

(1) Within 90 business days of receipt by the council of the complaint and response, the council shall issue its formal recommendations, approved by a majority of a quorum at an open meeting, to the state fire marshal’s office.

(2) The council shall mail a copy of the formal recommendations to the complainant and the state fire marshal via first class mail and email, if complainant has provided an email address.

(3) The council’s recommendations may include recommendations for relief, dismissal of the complaint, or further proceedings as may be necessary and shall be binding on all parties.

(4) If the state fire marshal objects to the council’s recommendations, the state fire marshal may provide a statement and any supporting documentation explaining its objections and proposing an alternative resolution to the complaint. The objections and proposed alternative resolution must be provided to the council within 15 business days of the date of the council’s recommendations, unless the council believes that circumstances exist that threaten the health, safety or welfare of the public, in which case the state fire marshal must submit its objections within five days. The council shall review any objections and proposed alternatives and either affirm or modify its recommendations within 15 business days.

D. Closure or dismissal of complaint.

(1) Issuance of the council’s recommendations will close the complaint and no further action will be taken by the council unless the recommendations include further proceedings or unless the recommendations directly involve the state fire marshal and his or her performance of their statutory duties, in which case, the council

shall forward the complaint and the council’s recommendations to the secretary of homeland security and emergency management for review and possible action.

(2) The council may dismiss a complaint at any time upon a finding of no jurisdiction or no probable cause. [10.25.15.8 NMAC – N, 4/7/2026]

**HISTORY OF 10.25.15 NMAC:
[RESERVED]**

**HOMELAND SECURITY
AND EMERGENCY
MANAGEMENT,
DEPARTMENT OF
STATE FIRE MARSHAL**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE
MARSHAL
PART 16 APPEALS
OF STATE FIRE MARSHAL
ORDERS OR MODIFICATIONS
TO THE FIRE SERVICES
COUNCIL**

10.25.16.1 ISSUING
AGENCY: State Fire Marshal.
[10.25.16.1 NMAC – N, 4/7/2026]

10.25.16.2 SCOPE: This part governs the filing, consideration and resolution of appeals of orders and modifications of the state fire marshal made to the fire services council. [10.25.16.2 NMAC – N, 4/7/2026]

10.25.16.3 STATUTORY
AUTHORITY: These rules are promulgated pursuant to Sections 59A-52-1.1 NMSA 1978. [10.25.16.3 NMAC – N, 4/7/2026]

10.25.16.4 DURATION:
Permanent.
[10.25.16.4 NMAC – N, 4/7/2026]

10.25.16.5 EFFECTIVE
DATE: April 7, 2026, unless a later date is cited at the end of a section. [10.25.16.5 NMAC – N, 4/7/2026]

10.25.16.6 OBJECTIVE: The purpose of this rule is to establish the process for administrative hearings of appeals of orders and modifications by the state fire marshal or the deputy fire marshal. [10.25.16.6 NMAC – N, 4/7/2026]

10.25.16.7 DEFINITIONS:
A. “Council” means the fire services council.
B. “Order” or **“modification”** means any order of the state fire marshal imposed on a third party pursuant to the statutory authority of the state fire marshal under 1) Section 59A-52 NMSA 1978, or 2) the Fireworks Licensing and Safety Act (Section 60-2C-1 to 11 NMSA 1978) or any modification of such an order. “Order or modification” does not include any personnel or disciplinary action taken by the state fire marshal. [10.25.16.7 NMAC – N, 4/7/2026]

10.25.16.8 APPLICABILITY: Pursuant to Subsection D of Section 59A-52-27.1 NMSA 1978, the council is authorized to hear administrative appeals of state fire marshal or deputy state fire marshal orders and modifications. Any person who is adversely affected by an order or modification issued by the state fire marshal or the deputy state fire marshal may file an appeal seeking review of that order or modification from the council. [10.25.16.8 NMAC – N, 4/7/2026]

10.25.16.9 PROCEDURE:
A. Appeals can be filed via email at or in person at state fire marshal’s office. Appeals filed under this section must be filed within 10 business days of the date the appealing party is served a copy of the state fire marshal’s or deputy state fire marshal’s order or modification and must include:
(1) A copy of the state fire marshal or deputy state fire marshal order or modification being appealed;
(2) a complete statement of facts which led to the filing of the appeal which includes

citations to any statutes or rules that the individual filing the appeal relied on to file the appeal;

(3) a statement of how the individuals filing the appeal have been or will be adversely affected by the state fire marshal or deputy state fire marshal’s order or modification and the relief requested; and
(4) the name and address of the person filing the appeal.

B. Service. The appealing party must provide the state fire marshal’s office and the fire services council a copy of the appeal at the time the appeal is filed.

C. Hearing officer appointment. Upon the receipt of the appeal, the council may appoint a hearing officer to review the appeal and issue any recommendations to the council. The hearing officer can be a council member or another individual, including a licensed attorney, that is chosen and selected by the council. Alternatively, a quorum of the council can conduct the hearing.

D. State fire marshal response. The state fire marshal shall have the opportunity to respond to the contents of the appeal within 15 business days from the date of its receipt of the appeal from the council.

E. Notice of appeal hearing. After receipt of the appeal and any response provided by the state fire marshal’s office, the hearing officer or the presiding officer of the council, if applicable, shall:

(1) Select a hearing date and issue a notice of hearing not less than 10 business days before the date of the hearing; and

(2) ensure that the notice of hearing contains a statement of time, place and location of the appeal hearing.

F. Hearing procedure. At the hearing on any appeal, the hearing officer (or, if the council is hearing the appeal, the presiding officer) shall:

(1) open the hearing by making a concise statement of the hearing’s scope and purpose and announce that a record of the hearing is being made;

(2) allow the parties to introduce themselves for purposes of the record;

(3) allow each party to make an opening statement and present their arguments, evidence, and witnesses, if any, to the hearing officer; and

(4) after opening statements and evidence has been presented by the parties, the hearing officer shall allow the parties to make closing statements.

G. Hearing officer report. The hearing officer will make their report to the council within five business days from the date of the hearing. The report shall contain the hearing officer’s findings of fact and conclusions of law and recommendations for the council.

H. Council final decision and order. The council shall issue its final decision and order within 15 days from the date of the hearing. The final decision and order must contain the council’s finding of fact and conclusions of law and must be signed by the council chair.

I. If the state fire marshal objects to the council’s recommendations, the state fire marshal may provide a statement and any supporting documentation explaining its objections and proposing an alternative resolution to the final decision or order. The objections and proposed alternative resolution must be provided to the council within 15 business days of the date of the council’s recommendations, unless the council believes that circumstances exist that threaten the health, safety or welfare of the public, in which case the state fire marshal must submit its objections within five days. The council shall review any objections and proposed alternatives and either affirm or modify its recommendations within 15 business days.

J. Service of final decision and order. A copy of the final decision and order must be provided to the parties within seven days from date of the issuance of the order.
[10.25.16.9 NMAC – N, 4/7/2026]

**HISTORY OF 10.25.16 NMAC:
[RESERVED]**

**PUBLIC REGULATION
COMMISSION**

The New Mexico Public Regulation Commission approved, on 2/12/2026, the repeal of its Rule 18.60.4 NMAC - Pipeline Safety Enforcement Procedures (filed 6/27/2006), and replaced it with Rule 18.60.4 NMAC - Pipeline Safety Enforcement Procedures, effective 4/7/2026.

The New Mexico Public Regulation Commission approved, on 2/12/2026, the repeal of its Rule 18.60.5 NMAC - Pipeline Safety Excavation Damage Prevention (filed 1/14/2019), and replaced it with Rule 18.60.5 NMAC - Pipeline Safety Excavation Damage Prevention (effective 4/7/2026).

**PUBLIC REGULATION
COMMISSION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 60 PIPELINE
CONSTRUCTION AND
MAINTENANCE
PART 4 PIPELINE
SAFETY ENFORCEMENT
PROCEDURES**

**18.60.4.1 ISSUING
AGENCY:** New Mexico public regulation commission.
[18.60.4.1 NMAC - Rp, 18.60.4.1 NMAC 4/7/2026]

18.60.4.2 SCOPE: This rule applies to all owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.
[18.60.4.2 NMAC - Rp, 18.60.4.1 NMAC 4/7/2026]

**18.60.4.3 STATUTORY
AUTHORITY:** Sections 62-14-9, 62-14-9.1, 62-14-10, 62-19-21, and 70-3-13 NMSA 1978.
[18.60.4.3 NMAC - Rp, 18.60.4.1 NMAC 4/7/2026]

18.60.4.4 DURATION:
Permanent.
[18.60.4.4 NMAC - Rp, 18.60.4.1 NMAC 4/7/2026]

**18.60.4.5 EFFECTIVE
DATE:** April 7, 2026 unless a later date is cited at the end of a section.
[18.60.4.5 NMAC - Rp, 18.60.4.1 NMAC 4/7/2026]

18.60.4.6 OBJECTIVE: The purpose of this rule is to prescribe procedures to administer and enforce Chapter 62, Article 14 NMSA 1978, and the Pipeline Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978.
[18.60.4.6 NMAC - Rp, 18.60.4.1 NMAC 4/7/2026]

18.60.4.7 DEFINITIONS:

A. Definitions
beginning with “A”: [RESERVED]

B. Definitions
beginning with “B”: “bureau” means the pipeline safety bureau of the New Mexico public regulation commission.

C. Definitions
beginning with “C”: [RESERVED]

D. Definitions
beginning with “D”: [RESERVED]

E. Definitions
beginning with “E”: [RESERVED]

F. Definitions
beginning with “F”: [RESERVED]

G. Definitions
beginning with “G”: [RESERVED]

H. Definitions
beginning with “H”: [RESERVED]

I. Definitions
beginning with “I”: [RESERVED]

J. Definitions
beginning with “J”: [RESERVED]

K. Definitions
beginning with “K”: [RESERVED]

L. Definitions
beginning with “L”: [RESERVED]

M. Definitions
beginning with “M”: [RESERVED]

N. Definitions
beginning with “N”: [RESERVED]

O. Definitions
beginning with “O”: [RESERVED]

P. Definitions
beginning with “P”: [RESERVED]

Q. Definitions
beginning with “Q”:
 [RESERVED]

R. Definitions
beginning with “R”: “respondent” means an owner or operator of gas or hazardous liquid pipelines or underground facilities, an excavator, or a one-call notification system.

S. Definitions
beginning with “S”: “staff” means employees of the pipeline safety bureau of the New Mexico public regulation commission.

T. Definitions
beginning with “T”: [RESERVED]

U. Definitions
beginning with “U”: [RESERVED]

V. Definitions
beginning with “V”: [RESERVED]

W. Definitions
beginning with “W”:
 [RESERVED]

X. Definitions
beginning with “X”: [RESERVED]

Y. Definitions
beginning with “Y”: [RESERVED]

Z. Definitions
beginning with “Z”: [RESERVED]
 [18.60.4.7 NMAC - Rp, 18.60.2.7 NMAC, 4/7/2026]

18.60.4.8 INSPECTIONS AND INVESTIGATIONS:

A. Pipelines:

(1) Staff is authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, those written procedures, plans, records, and pipeline facilities of an owner or operator relevant to determining whether the owner or operator is in compliance with applicable laws.

(2) Staff may conduct an inspection pursuant to:

(a) scheduling by staff;

(b) a written complaint received from a member of the public;

(c) information obtained from a previous inspection;

(d) an accident or incident; or

(e) whenever the commission or the director deems it appropriate.

(3) If, after an inspection, staff believes that further information is needed to determine appropriate action, staff may request specific information from the owner or operator. The owner or operator shall answer the request within 30 days of its receipt, unless staff determines extenuating circumstances require a shorter response period.

(4) The commission may, subject to applicable laws, require testing of portions of facilities that have been involved in, or affected by, an incident or accident. The commission shall make every effort to negotiate with the owner or operator of the facility a mutually acceptable testing protocol.

(5) When the information obtained from an inspection, investigation, or from other appropriate sources indicates that further corrective action is warranted, the bureau chief shall issue a notice of probable violation or notice of intent to issue a hazardous facility order, as appropriate.

B. Excavation: A one-call notification system, underground facility operator or owner, excavator, or project owner, as appropriate, shall, upon reasonable notice and presentation of identification, grant staff access to:

(1) an excavation site for the purpose of previewing, observing, or examining an excavation activity;

(2) all records pertaining to an excavation activity that are in the possession of the one-call notification system, underground facility operator or owner, excavator, or project owner.
 [18.60.4.8 NMAC - Rp, 18.60.2.8 NMAC, 4/7/2026]

18.60.4.9 SERVICE OF PROCESS: Whenever this rule

requires notice or other process to be served on a respondent, the notice or other process shall be served at the last known email or physical address(es) of the respondent.
 [18.60.4.9 NMAC - Rp, 18.60.2.9 NMAC, 4/7/2026]

18.60.4.10 NOTICE OF PROBABLE VIOLATION:

A. Except as otherwise provided in Section 70-3-19 NMSA 1978, the bureau chief shall begin an enforcement proceeding by instructing staff to serve a notice of probable violation on the respondent.

B. The bureau chief may instruct staff to also serve a notice of probable violation of applicable laws to the respondent or the respondent’s agent at an excavation site. In such case, the bureau chief shall also serve the notice of probable violation by electronic mail or regular mail on the respondent as prescribed in 18.60.4.9 NMAC.

C. The bureau chief shall develop enforcement guidelines to determine administrative or civil penalties or other sanctions in accordance with all relevant and applicable laws.

D. A notice of probable violation shall include a statement of those provisions of applicable laws that the respondent is alleged to have violated, a statement of the evidence upon which the allegations are based, a summary of administrative or civil penalties or other sanctions, a statement that the respondent may request a settlement conference within 30 days of receipt of the notice of probable violation, and instructions regarding how the respondent may request a settlement conference.

A respondent shall respond to the allegations in writing within 30 days of receipt of the notice of probable violation. The bureau chief may, in their discretion and in accordance with applicable laws, grant or deny a request for a settlement conference.

E. If, in their discretion, the bureau chief determines that a settlement conference would be useful, the

notice of probable violation shall also contain a date, time and location for a settlement conference, and a statement that if the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation.

F. The bureau chief may instruct staff to amend a notice of probable violation at any time prior to issuance of a final order.

[18.60.4.10 NMAC - Rp, 18.60.2.10 NMAC, 4/7/2026]

18.60.4.11 ATTORNEY REPRESENTATION: In settlement conferences, commission hearings conducted pursuant to this rule, and arbitrations and mediations conducted pursuant to 18.60.5 NMAC, respondents shall be represented as provided in this section.

A. An individual or sole proprietorship shall appear in person on his or her own behalf or may be represented by an attorney.

B. A partnership with fewer than 10 partners, whether limited or general, who are all natural persons, may appear and be represented by an attorney or by a general partner or manager who has been authorized by the general partnership to do so.

C. A limited liability company with fewer than 10 members, who are all natural persons, may appear and be represented by an attorney or by a manager or member who has been authorized by the limited liability company to do so.

D. A corporation whose voting shares are held by a single shareholder or closely knit group of shareholders who are all natural persons active in the operation of the business may appear and be represented by an attorney or by an officer or manager who has been authorized by the corporation to do so.

E. All other persons shall be represented by an attorney. [18.60.4.11 NMAC - Rp, 18.60.4.11 NMAC 4/7/2026]

18.60.4.12 SETTLEMENT CONFERENCES:

A. The bureau chief, or their designee, may conduct a settlement conference with the respondent at the date, time and in the manner set forth in the notice of probable violation, or at such other time agreed to by the bureau chief or their designee and the respondent. At the settlement conference, the bureau chief or designee shall explore with the respondent the facts of the probable violation and the possibility of reaching an agreed upon resolution, which may include dismissal or a voluntary settlement agreement with administrative or civil penalties or other sanctions.

B. Voluntary dismissal: If the bureau chief and respondent agree to dismiss the notice of probable violation, the director shall issue a letter dismissing the probable violation which shall resolve the matter.

C. Voluntary settlement agreement: If the bureau chief and respondent agree to settle, the bureau chief and respondent shall enter into and sign a written settlement agreement which shall resolve the matter. The written settlement agreement shall include any administrative or civil penalties or other sanctions and the respondent's knowing waiver of his right to a formal hearing. The written settlement agreement, signed by the parties, shall be filed with the commission.

D. Failure to settle: If the respondent appears at the settlement conference but does not agree to terms and conditions that are satisfactory to the bureau chief, the bureau chief shall request a hearing before the commission pursuant to 18.60.4.16 NMAC or file a petition in district court for injunctive action subject to 70-3-19 NMSA 1978.

E. Failure to appear. If the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation. Within 10 days, the bureau chief may serve on respondent a determination of

violation. The determination shall include notice of the respondent's right to appeal pursuant to 18.60.4.16 NMAC.

F. Alternative procedures: The bureau chief may instruct staff to request a hearing before the commission or file a petition in district court for injunctive action without offering to hold a settlement conference.

G. Approval by the commission: If the commission has not acted within 45 days of the filed agreement, the agreement is deemed approved, unless the commission determines there is good cause to extend the period in which it may act upon the agreement.

[18.60.4.12 NMAC - Rp, 18.60.2.12 NMAC, 4/7/2026]

18.60.4.13 DISPOSITIONAL HEARINGS: [RESERVED]

18.60.4.14 ALTERNATIVE DISPUTE RESOLUTION:

A. The commission encourages owners and operators of underground facilities, project owners, project engineers, and excavators to privately negotiate and settle disputes arising from excavation damage to underground facilities and construction or design expenses related to improper underground facility location.

B. In the event the parties are unable to resolve such disputes privately, any owner or operator of underground facilities, project owner, project engineer, or excavator may request mediation or arbitration from the commission.

C. Staff, and their attorneys, may participate in mediation or arbitration proceedings.

D. In mediation and arbitration proceedings, persons shall be represented in accordance with the requirements of 18.60.4.11 NMAC. [18.60.4.14 NMAC - N, 4/7/2026]

18.60.4.15 STIPULATION: [RESERVED]

18.60.4.16 MEDIATION OF EXCAVATION DAMAGE DISPUTES:

A. Designation of mediator. If any of the parties request mediation, the commission shall designate a mediator. The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual acceptable to the parties, including the bureau chief or designee. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator’s services. The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time the mediator is assigned by the commission and all parties agree that the mediator may serve. The mediator shall not, subsequent to serving as a mediator in an excavation damage dispute, participate in any subsequent proceeding in the same cause as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

B. Duties of mediator: The mediator shall notify the parties by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties to send the mediator, but not other parties, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff’s investigation of the damage. In addition, the mediator may require counsel to have their clients present at the mediation conference or accessible by telephone. The mediation conference shall be held within 20 days of the date of the notice unless the mediator determines good cause is shown for an extension. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator

shall assist the parties in preparing a written agreement to reflect that resolution. The written settlement agreement, signed by the parties, shall be filed with the commission. If the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file an action for civil liability for damages in district court.

C. Inadmissibility of settlement offers: Offers of settlement and statements in furtherance of settlement made in the course of mediation are privileged and, except by agreement among all parties, shall not be admissible as evidence in any formal hearing before the commission nor disclosed by the mediator voluntarily or through discovery or compulsory process.

D. Approval by the commission: If the commission has not acted within 45 days of the filed agreement, the agreement is deemed approved, unless the commission determines there is good cause to extend the period in which it may act upon the agreement.

[18.60.4.16 NMAC - N, 4/7/2026]

18.60.4.17 BINDING ARBITRATION OF EXCAVATION DAMAGE DISPUTES:

A. Request for arbitration: Any party to a dispute arising from excavation damage to underground facilities may request binding arbitration of the dispute. The request shall be in writing to the commission and shall include a concise statement of the grounds for the dispute, the remedy sought, and an acknowledgment that the requesting party agrees to be bound by the decision of the arbitrator. The commission shall forward the request for arbitration to all other parties and require that they submit a written response within 10 days of receipt of the commission’s letter forwarding the request.

(1) If the other parties agree to arbitration of the dispute, they shall include in their response to the commission a concise statement of their position with regard

to the merits of the dispute and an acknowledgment that they agree to be bound by the decision of the arbitrator.

(2) If the other parties will not agree to arbitration, they shall so state in their response.

(3) If the other parties either fail to respond to a request for arbitration or do not agree to arbitration, the requesting party retains the right to proceed with an action for civil liability for damages in district court.

B. Designation of arbitrator: If all parties agree to arbitration, the commission shall designate an arbitrator. The arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the dispute. The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission’s designation and all parties agree that the arbitrator may serve. The parties shall be required to indicate their consent in writing to the designated arbitrator within ten days of the date of the commission’s letter of designation. If the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the arbitrator’s services. Any employee of the commission designated to arbitrate a dispute under these provisions shall not participate in any subsequent proceeding in the same cause regarding excavation damage to underground facilities as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

C. Duties of arbitrator:
(1) The arbitrator shall render a decision in the arbitration proceeding within 60 days of the date the parties approved

the arbitrator, unless good cause exists to extend the time.

(2) The arbitrator shall fix a time and place for an arbitration and shall serve notice of arbitration on all parties at least 10 days in advance of the arbitration. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. The parties may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall decide the relevancy and materiality of the evidence offered. The arbitrator shall give consideration to but shall not be bound by the New Mexico rules of evidence. No stenographic or electronic record will be made of the testimony at the hearing unless requested by a party, who shall bear the cost of the record.

(3) The arbitrator shall permit discovery only if it will not unduly complicate, burden, or impede the expeditious and informal nature of the proceeding.

(4) At the close of or soon after the hearing, the arbitrator will issue a brief written decision, which need not contain findings of fact and conclusions of law, and shall be filed with the commission. The arbitrator's decision will be binding on the parties, but will not be deemed a decision of the commission and shall have no precedential effect.

D. Inadmissibility of settlement offers: Unless agreed to by all the parties, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them.

E. Approval by the commission: If the commission has not acted within 45 days of the filed written decision, the arbitrator's decision is deemed approved, unless the commission determines there is good cause to extend the period in which it may act upon the decision. [18.60.4.17 NMAC - N, 4/7/2026]

18.60.4.18 HEARINGS BEFORE THE COMMISSION:

A. Request for hearing:

(1) **By the bureau chief:** At any time after a notice of probable violation has been served on the respondent, the bureau chief may request a hearing before the commission.

(2) **By the respondent:** A respondent may appeal a determination made by the bureau chief pursuant to Subsection D of 18.60.4.12 NMAC or by filing a request for hearing before the commission. The respondent shall file the appeal with the docket filing unit of the commission within 30 days of the date the bureau chief's determination is mailed to the respondent. The appeal shall be in writing and signed by the respondent and shall set forth the factual basis for the appeal and the nature of the relief requested. An appeal may request a stay of the director's determination pending a decision of the commission.

B. Notice of hearing:
(1) The commission shall:

(a) fix a time and location for a public hearing on the alleged violations; and

(b) serve notice of the hearing upon the respondent by mail as prescribed by 18.60.4.9 NMAC not less than 10 days prior to the date of the hearing with copies of the notice of probable violation, staff's inspection reports, and any third party complaints or damage reports.

(2) The notice shall state in boldface type that failure to appear at the hearing may result in a default judgment and the imposition of administrative or civil penalties or other sanctions.

C. Hearing procedures: The commission may appoint a hearing examiner or may hear the matter itself. The commission or hearing examiner shall conduct the hearing in accordance with the commission rules of procedure, 1.2.2 NMAC. If a hearing examiner conducts the hearing, the hearing examiner shall submit to the commission a recommended decision with findings of fact and conclusions of law. [18.60.4.18 NMAC - Rp, 18.60.4.14 NMAC, 4/7/2026]

18.60.4.19 FINAL ORDER: After a hearing before the commission pursuant to 18.60.4.16 NMAC, and the consideration of any exceptions pursuant to the commission rules of procedure 1.2.2 NMAC, the commission shall issue a final order that may include:

A. findings of fact and conclusions of law;

B. the amount of the penalty and the procedure for its payment, if a civil or administrative penalty is assessed; and

C. a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished.

[18.60.4.19 NMAC - Rp, 18.60.4.16 NMAC, 4/7/2026]

18.60.4.20 PAYMENT OF PENALTY:

A. A respondent shall pay an administrative or civil penalty agreed to in a voluntary settlement agreement, the bureau chief's notice of probable violation letter, assessed in a bureau chief's final or default disposition pursuant to 18.60.4.13 NMAC, or by commission final order via certified check or money order made payable to the New Mexico public regulation commission and shall submit the payment to the address provided by the commission.

B. If a respondent fails to pay the full amount of an administrative or civil penalty within 20 days of receipt of a director's disposition or commission final order, or other time frame specified in the

disposition or order, the commission or director may file an action in district court to collect the assessed penalty.

[18.60.4.20 NMAC - Rp, 18.60.4.17 NMAC, 4/7/2026]

18.60.4.21 REFERRAL FOR PROSECUTION:

If an employee of the pipeline safety bureau of the commission becomes aware of any actual or possible activity subject to criminal penalties under Section 70-3-19 NMSA 1978, the employee shall report such actual or possible activity to the office of the attorney general for the state of New Mexico. [18.60.4.19 NMAC - Rp, 18.60.4.18 NMAC, 4/7/2026]

History of 18.60.4 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the Commission of Public Records-State Records Center and Archives. SCC 69-29, Order No. 2966, Cause No.516, filed 9/24/1969. SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3/1/1971. SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1/12/1972. SCC 77-2, Order No. 3096-C, Docket No.750, filed 3/4/1977. SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6/27/1979. SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11/26/1984.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other

Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5/1/1996) repealed 7/1/2003. 18.60.4 NMAC, Pipeline Safety Enforcement Procedures filed 6/27/2006, Repealed effective 4/7/2026.

Other History:

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11/26/1984, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6/5/1996. 18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5/1/1996), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7/1/2003. Those applicable portions of 18.60.2 NMAC, Pipeline Safety (filed 6/16/2003) replaced by 18.60.4 NMAC, Pipeline Safety Enforcement Procedures, effective 7/17/2006. 18.60.4 NMAC, Pipeline Safety Enforcement Procedures filed 6/27/2006, Replaced by 18.60.4 NMAC, Pipeline Safety Enforcement Procedures effective 4/7/2026.

PUBLIC REGULATION COMMISSION

**TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 60 PIPELINE CONSTRUCTION AND MAINTENANCE
PART 5 PIPELINE SAFETY EXCAVATION DAMAGE PREVENTION**

18.60.5.1 ISSUING

AGENCY: New Mexico public regulation commission. [18.60.5.1 NMAC - Rp, 18.60.5.1 NMAC 4/7/2026]

18.60.5.2 SCOPE: This rule applies to all one-call notification systems, excavators, and owners and operators of pipelines and other underground facilities in New Mexico with the exemption of those preempted by federal law. [18.60.5.2 NMAC - Rp, 18.60.5.2 NMAC, 4/7/2026]

18.60.5.3 STATUTORY AUTHORITY: Sections 62-14-7.1, 62-14-10, 62-19-21, 70-3-4, and 70-3-13 NMSA 1978. [18.60.5.3 NMAC - Rp, 18.60.5.3 NMAC, 4/7/2026]

18.60.5.4 DURATION: Permanent. [18.60.5.4 NMAC - Rp, 18.60.5.4 NMAC, 4/7/2026]

18.60.5.5 EFFECTIVE DATE: April 7, 2026, unless a later date is cited at the end of a section. [18.60.5.5 NMAC - Rp, 18.60.5.5 NMAC, 4/7/2026]

18.60.5.6 OBJECTIVE: The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing damage to underground utilities and for dealing with damage when it occurs during excavation activities. [18.60.5.6 NMAC - Rp, 18.60.5.6 NMAC, 4/7/2026]

18.60.5.7 DEFINITIONS:

A. Definitions beginning with "A": "access information" means a telephone number, a facsimile number, an email address, and, if available a website address.

B. Definitions beginning with "B": "bid locate" means the marking of underground facilities at the request of a project owner or project engineer for the purpose of providing information to persons bidding on a project.

C. Definitions beginning with "C": [RESERVED]

D. Definitions beginning with "D": "design locate" means the marking of underground

facilities at the request of a project owner or project engineer for the purpose of providing information to persons designing a project.

E. Definitions

beginning with “E”:

(1) **“effective date”** shall begin at 12:01 A.M. after two full working days, excluding the day advance notice is provided;

(2)

“emergency excavation” refers to the definition provided in Subsection E of Section 62-14-2 NMSA 1978;

(3)

“emergency locate” means the marking of underground facilities at the request of a person for an underground facility owner as soon as practical, ideally within two hours for the purpose of an emergency excavation;

(4)

“excavate” means to the definition provided in Subsection F of Section 62-14-2 NMSA 1978;

(5)

“excavator” means to the definition provided in Subsection G of Section 62-14-2 NMSA 1978; and

(6)

“excavation locate” means the marking of underground facilities for the purpose of providing information at the request of an excavator planning to commence excavation for the excavator’s project.

F. Definitions

beginning with “F”: [RESERVED]

G. Definitions

beginning with “G”: [RESERVED]

H. Definitions

beginning with “H”: **“holiday”** means the day New Mexico state government observes New Year’s Day, Martin Luther King Jr. Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Indigenous Peoples’ Day, Veterans Day, Thanksgiving Day, Presidents’ Day, and Christmas Day.

I. Definitions

beginning with “I”: [RESERVED]

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”: **“locates”**

means the marking of underground facilities including bid, design, emergency, excavation, road maintenance, standard, and wide area locates.

M. Definitions

beginning with “M”: **“mechanical vacuum excavation”** means an appropriate method of excavating safely around underground facilities provided that the equipment has been specifically designed and built for this purpose and is operated in accordance with practices that provide appropriate levels of worker and public safety and prevent damage to buried facilities.

N. Definitions

beginning with “N”:

(1) **“non-member underground facility operator”**

means a private underground facility owned by a homeowner and operated and located on a residential property or not subject to the jurisdiction of the commission; and

(2) **“near miss ticket”**

means a ticket called into the one-call notification system, by an excavator who, while excavating, uncovers an underground utility that was not marked, and requires affected underground facility owner(s) to respond, ideally within two hours, by either calling and clearing the excavator to proceed with excavation or deploy to the site.

O. Definitions

beginning with “O”: **“one-call notification system”** refers to the definition provided in Subsection K of Section 62-14-2 NMSA 1978.

P. Definitions

beginning with “P”:

(1) **“project engineer”**

means a professional engineer or engineering firm appointed by the project owner to oversee and manage the technical aspects of a project involving excavation, including the design thereof, and who is a licensed professional engineer; and

(2) **“project owner”**

means the owner of a project involving excavation.

Q. Definitions

beginning with “Q”:

[RESERVED]

R. Definitions

beginning with “R”: **“road maintenance”** means routine grading and resurfacing of the earth and gravel surface, but not the subbase, of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch but does not include road construction or reconstruction and shall entail moving no more than four inches of earth; road maintenance does not include street sweeping or road milling and resurfacing as long as the subsurface is not disturbed.

S. Definitions

beginning with “S”: **“staff”** means employees of the pipeline safety bureau of the New Mexico public regulation commission.

T. Definitions

beginning with “T”: [RESERVED]

U. Definitions

beginning with “U”:

(1)

“underground facility operator (UFO)” means a person who operates an underground facility; and

(2) **“update ticket”**

means a ticket called in to the one-call notification system, which is defined in Subsection K of Section 62-14-2 NMSA 1978, by the excavator for an existing excavation that will require additional time beyond the original 15 working days allotted but does not require UFOs to provide marks pursuant to Subsection B of 18.60.5.13 NMAC.

V. Definitions

beginning with “V”: [RESERVED]

W. Definitions

beginning with “W”: **“working day”** means a full 24 hour day beginning at 12:00 am excluding weekends and state holidays.

X. Definitions

beginning with “X”: [RESERVED]

Y. Definitions

beginning with “Y”: [RESERVED]

Z. Definitions

beginning with “Z”: [RESERVED] [18.60.5.7 NMAC - Rp, 18.60.5.7 NMAC, 4/7/2026]

18.60.5.8 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS: A one-call notification system shall:

A. provide toll-free access;

B. provide to staff access to the name, contact person, and access information for each member of the one-call notification system, upon request;

C. notify staff of the service area in which the one-call notification system operates;

D. have a written coordination agreement with other one-call notification systems operating in New Mexico, if applicable;

E. keep a record of all locate requests, tickets, and clears for five years and make such records available to the commission and staff upon request;

F. provide monthly reports to staff, no later than the tenth of each month, with the following information:

(1) average wait time for answered calls for the previous month;

(2) number of calls received for the previous month;

(3) number of tickets generated for the previous month;

(4) number of requests by type (regular, priority, emergency) for the previous month.

G. report any changes in access information to staff on or before the date the information will change;

H. establish a registry of non-member UFOs that voluntarily provide their contact or underground facility information for excavation purposes;

I. establish a positive response registry system; and

J. inform any person who calls with a complaint that they may file a complaint with the commission’s pipeline safety bureau, and provide the commission’s pipeline safety bureau access information, if the one-call system is unable to satisfactorily resolve the matter.

K. Processing locate requests:

(1) A one-call notification system may hold a locate request in suspension until it satisfies the requirements in Subsection C of 18.60.5.10 NMAC. The one-call notification system shall contact an excavator, project owner, or project engineer within three hours to request any missing information that prevents the one-call notification system or non-member UFO from processing the request.

(2) A one-call notification system shall process all complete locate requests within three hours of receipt. A one-call notification system shall deem locate requests received on a weekend or state holiday, to have been received at 7:00 a.m. on the next working day and shall deem locate requests received before 7:00 a.m. on a working day to have been received at 7:00 a.m. on that working day.

(3) Upon receipt of a complete conference, locate request, or notice, a one-call notification system shall issue a ticket with a unique number to the requesting person as confirmation and shall send a ticket to all members of the system that have underground facilities in the excavation area or notify the members by telephone. A ticket shall become effective at the date and time a one-call notification system issues a ticket number; if the ticket is for a conference, the ticket shall be marked “wide area conference,” “bid conference,” or “design conference,” as appropriate.

(4) Any person may contact the one-call notification system and request confirmation of damage reports, conference requests, or locate requests.

L. Processing damage, near miss, and update tickets: The one-call notification system shall process damage reports, near miss tickets, and update tickets in the following manner:

(1) Ticket intake: A one-call notification system shall accept damage reports, near miss, and update tickets from any

person. Such reports are not locate requests and shall not be subject to the requirements of Subsection K of this section.

(2) Verification and completion: A one-call notification system may hold a damage report, near miss or update ticket in suspension until all required information is obtained. The system shall contact the reporting party within three hours to request any missing information that prevents processing of the report.

(3) Ticket creation and distribution: Upon receipt of a complete damage, near miss, or update report, the one-call notification system shall:

(a) issue a ticket with a unique number to the reporting party as confirmation; and

(b) transmit the ticket to all members of the system that may have underground facilities affected by or relevant to the report.

[18.60.5.8 NMAC - Rp, 18.60.5.8 NMAC, 4/7/2026]

18.60.5.9 RESPONSIBILITIES OF UFOs:

A. A UFO shall report any changes to the information required by Subsection B of 18.60.5.8 NMAC to the one-call notification system(s) at least seven days prior to the effective date.

B. A UFO shall retain records of locate requests, excavation notices and underground facility damage information for a period of five years and make such records available to staff or the commission upon request.

C. A UFO that utilizes contractors to perform locates, excavation activities, or damage investigations on its behalf shall be responsible for ensuring compliance with Chapter 62, Article 14 NMSA 1978 and these rules.

[18.60.5.9 NMAC - Rp, 18.60.5.9 NMAC, 4/7/2026]

18.60.5.10 LOCATE REQUESTS: An excavator shall

make an excavation locate request for all projects involving excavation, including road maintenance, with the exception of subsurface potholing or mechanical vacuum excavation activities conducted exclusively for the purpose of physically exposing or locating underground facilities. However, this exception does not preclude compliance with 18.60.5.18 NMAC. Although not required under the Excavation Damage to Pipelines and Underground Utility Lines Law, Section 62-14-1, et seq. NMSA 1978, or this rule, locate requests are encouraged for excavation projects involving non-mechanical excavation.

A. Submittal:

(1) An excavator shall submit an excavation locate request to each one-call notification system:

(a) by telephone or in person during normal business hours Monday through Friday, excluding holidays; or

(b) electronically via an online web portal with appropriate one-call notification center 24 hours a day, seven days a week.

(2) An excavator shall also submit an excavation locate request to each non-member UFO that may be impacted by the proposed excavation.

B. Size of locate requests:

(1) An excavator shall determine the maximum area that the excavator can reasonably expect to excavate within a 15 working day period and shall request an excavation locate for that area only. The excavator shall pre-mark the actual intended excavation route or site(s) for any standard 15 working day ticket requests in accordance with the American public works association marking guidelines.. For excavation activities planned on oil or gas well pads, excavators shall provide clear and accurate driving and marking instructions, and either GPS coordinates or pre-marks, as described above, which define the parameters

of the proposed excavation. The pre-marked excavation shall encompass locations(s) where excavation equipment that may penetrate the surface will be setup, such as directional boring equipment. If the location markings have been removed, or are no longer visible, and there are no marking offsets, the person engaging in the excavation activity shall suspend excavation activities and reinitiate a locate request set forth in this section. Such a relocate request shall be limited to the area yet to be excavated only.

(2) An excavator may request relocates for the same area only if justified by the circumstances and nature of the work; such justification shall be made part of the relocate request.

C. Minimum information required:

When requesting an excavation locate or a locate conference, an excavator shall comply with the requirements of the one-call notification system and shall provide accurate and truthful information. For a locate request to be deemed complete, it shall contain, including but not limited to, the following:

(1) the name and contact information of the excavator personnel directly involved with or conducting the excavation at the actual excavation site;

(2) if available, an alternate name and contact information of the excavator;

(3) a description and the purpose of the type of work to be done;

(4) the name of the person for whom the work is being done;

(5) whether or not the excavation site is pre-marked in white;

(6) an accurate physical description of the location and size of the excavation site; reference to a plat of a subdivision shall not by itself be sufficient description;

(7) driving instructions to a rural excavation site;

(8) spotting instructions;

(9) any appropriate remarks regarding access to or hazards at the site;

(10) if available, GPS coordinates which define the parameters or start and end points of the actual excavation. [18.60.5.10 NMAC - Rp, 18.60.5.10 NMAC, 4/7/2026]

18.60.5.11 WIDE AREA LOCATE REQUESTS:

An excavator who expects a project to take more than 30 working days to complete shall either request separate standard locates which meet the requirements of Subsection B of 18.60.5.10 NMAC or follow the conference and locate procedures set forth in this section.

A. Excavators shall contact the one-call notification system to request a wide area conference a minimum of two working days prior to the wide area conference and provide the proposed date, time, and location for the conference. The one-call notification system shall process the request as provided in Subsection K of 18.60.5.8 NMAC.

B. A UFOs notified of the wide area conference shall contact an excavator who requests a wide area conference within two working days of the issuance of the conference ticket and confirm proposed conference schedule. All UFOs notified shall be physically represented at a scheduled wide area conference. If a UFO cannot attend the scheduled wide area conference, it shall make arrangements to meet with the excavator who requested the wide area conference within five working days of the scheduled wide area conference.

C. At the conference, the excavator shall present a written work plan that, at minimum, includes the information required under Subsection C of 18.60.5.10 NMAC, summary of the scope of work, a line locating schedule, name and contact information of each UFO personnel directly involved with

or responsible for providing line locating in consensus with each UFO, which shall be signed by all parties. Updates or revisions to the work plan shall also be presented in writing. Any changes to the scope of work, line locating schedule, construction schedule, or locating instructions shall be approved in writing by all parties prior to proceeding with an updated work plan. The excavator shall distribute all original and amended work plan(s) to all UFOs notified and retain a copy.

D. After the work plan has been signed by all parties, an excavator shall contact the one-call notification system and request a wide area excavation locate. The one-call notification system shall process the request as provided in Subsection K of 18.60.5.8 NMAC. The excavation ticket shall reference the wide area conference ticket number and cite the work plan. The work plan is the description of the work and line locating to be performed by UFOs.

E. An excavator working pursuant to a wide area excavation locate ticket shall request reaffirmation of the wide area locate ticket every 30 working days. This reaffirmation period, begins on the date and time stamped on the ticket and ends 30 working days from such date and time. The excavator and UFO(s) shall continue to comply with the approved work plan established per Subsection C of 18.60.5.11 NMAC.

F. If a general contractor and their subcontractor(s) agree to a single wide area project, the general contractor shall request a wide area conference, prepare and manage the wide area work plan and utility coordination efforts, and maintain the locates for their projects. Any subcontractors working under a general contractor's wide area work plan shall be responsible for complying with 18.60.5.15 NMAC. [18.60.5.11 NMAC - Rp, 18.60.5.11 NMAC, 4/7/2026]

18.60.5.12 DESIGN AND BID LOCATE REQUESTS: A project owner or project engineer shall

request information regarding the location of underground facilities for design projects or bids in accordance with either Subsection A or B of this section, but may not switch methods once having made an election unless the existing utilities cannot be located by the UFO(s) in accordance with the requirements of applicable laws.

A. Physical locates:

(1) A project owner or project engineer may request a design or bid locate from one-call notification systems and non-member UFOs. Design or bid physical locate requests shall be restricted to the maximum area that an excavator can reasonably expect to excavate within a 15 working day period and shall request a physical locate for that area only, otherwise a project owner or project engineer shall request a conference in accordance with Subsection B of this section.

(2) The one-call notification system and non-member UFOs for the intended excavation area shall issue a ticket marked "bid locate" or "design locate" as appropriate.

(3) UFOs shall physically mark or clear the location of underground facilities on the site through a positive response system within five working days from the date of the ticket.

(4) If one or more underground facilities have not been marked and positive response has not been provided, a project owner or project engineer shall call the one-call notification system for verification that advance notice was transmitted to the UFO and to provide notice that the underground facilities have not been located or cleared via a warning locate request. UFOs shall promptly respond to warning locate requests, ideally within two hours.

(5) Designers or bidders, as appropriate, shall capture data from the site within 15 working days from the end of the five day marking period.

(6) A project owner or project engineer shall not request relocates or time extensions for a design or bid locate.

B. Conferences:

(1) A project owner or project engineer may request a design or bid conference a minimum of two working days prior to the proposed conference date from the one-call notification system and non-member UFOs for the intended excavation area and shall provide the proposed date, time, and location for the conference.

(2) A UFO shall contact the project owner or project engineer within two working days of the issuance of the conference ticket and confirm the proposed conference schedule, and if necessary, make arrangements to reschedule the conference at a date not to exceed five working days from the proposed conference schedule on the conference ticket. A UFO shall be physically represented at the scheduled design or bid conference.

(3) The one-call notification system for the intended excavation area shall process the request as provided in Subsection K of 18.60.5.8 NMAC.

(4) UFOs shall arrange to provide information to project owners or project engineers within a reasonable time following the conference, but not to exceed 10 working days.

(5) A project owner or project engineer and UFOs shall continue with utility coordination until the design is complete or bid for the project has been awarded and an excavator requests an excavation locate. [18.60.5.12 NMAC - Rp, 18.60.5.12 NMAC, 4/7/2026]

18.60.5.13 MARKING EXCAVATION SITES:

A. Excavators: As provided under Subsection B of 18.60.5.10 NMAC, excavators shall mark all proposed excavation sites in accordance with American public works association (APWA) standards to improve communication between the excavator and UFO. In assessing administrative penalties for violation of the Excavation Damage to Pipelines and Underground Utility

Lines Law, Section 62-14-1 et seq. NMSA 1978 and this rule, staff or the commission may consider whether and how well an excavator marked a proposed excavation site. Pre-marking a site in white indicates the actual excavation site (not limits of construction) and, therefore, will supersede marking instructions provided on locate requests and be used to determine alleged violations during staff investigations. When an excavator fails to pre-mark the actual excavation site, UFOs shall mark per the spotting instructions provided on the locate request and register a positive response indicating the site was not pre-marked.

B. UFOs.

(1) A UFO shall mark underground facilities for excavation purposes in accordance with the APWA standards.

(2) A UFO shall locate and mark its underground facilities within two full working days from the effective date of the ticket in accordance with Subsection A of Section 62-14-5 NMSA 1978.

(3) If a UFO determines it does not have underground facilities within the proposed limits of the excavation site, a UFO shall provide the appropriate positive response to the one-call notification's positive response registry system and may write "clear" or "no underground facilities" and the UFO's name at the site in the appropriate color.

(4) The locate markings shall be valid for at least 15 working days from the end of the advance notice period. For the purpose of excavation, a working day begins on the work to begin date and time stamped on the ticket and ends 15 working days from such date and time.

(5) A UFO shall provide appropriate positive response to the one-call notification's positive response registry system for all advance notifications, including wide area, design, bid, standard, and road maintenance locate requests or conferences.

(6) If a UFO fails to mark its underground facility in accordance with the requirements of applicable laws, the UFO may be liable to the excavator, project owner, and project engineer in accordance with Subsection C of Section 62-14-5 NMSA 1978. [18.60.5.13 NMAC - Rp, 18.60.5.13 NMAC, 4/7/2026]

18.60.5.14 IDENTIFYING UNDERGROUND FACILITIES FOR ROAD MAINTENANCE:

In response to an excavation locate request for road maintenance, a UFO shall physically mark or locate by marker its underground facilities that parallel or cross the road, as provided in Subsection A.

A. Underground facilities that parallel or cross the road:

(1) **Physical locate:** A UFO may physically mark the location of all underground facilities that are parallel or cross the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may "clear" the ticket with the excavator using the procedure for positive response set forth in 18.60.5.13 NMAC.

(2) **Locate by permanent marker:** Alternatively, a UFO may use a system of permanent markers to indicate the location of underground facilities that parallel or cross the road to be maintained. Such markers shall:

- (a) only be used for the purposes of road maintenance;
- (b) be durable enough to withstand normal weathering;
- (c) be the same APWA color as is designated for marking the UFO's type of underground facility; and
- (d) have a decal on the marker specifying the depth of the underground facility at the marker.

B. A UFO shall be deemed to have failed to correctly locate by permanent marker its underground facility that is parallel or crosses a road to be maintained unless it:

- (1) maintains a minimum 18 inches of coverage over the underground facility;
- (2) ensures that the permanent markers are in place;
- (3) verifies the depth of its underground facilities at the permanent marker locations at least annually; and
- (4) ensures that the decal is visible and the information on it is readable. [18.60.5.14 NMAC - Rp, 18.60.5.14 NMAC, 4/7/2026]

18.60.5.15 EXCAVATION PROCEDURES:

A. Pre-excavation: Before excavating, an excavator shall determine whether all underground facilities have been marked and assess the excavation site for any above ground structures that indicate a utility has not been marked that will be in conflict of the actual excavation.

(1) If all underground facilities have been marked or cleared through a positive response system and the advance notice marking period has expired, the excavator may begin excavating.

(2) If one or more underground facilities have not been marked and positive response has not been provided, an excavator shall, prior to commencing excavation, call the one-call notification system for verification that advance notice was transmitted to the UFO and to provide notice that the underground facilities have not been located or cleared via a warning locate request. UFOs shall promptly respond to warning locate requests ideally within two hours.

B. Excavation:
(1) If, prior to or while excavating, an excavator observes evidence that an unmarked underground facility may exist, the excavator shall, before excavating in the immediate area of such evidence:

(a) make a reasonable effort to identify the facility by calling the one-call notification system and requesting a near miss ticket; the UFO shall mark or clear the area ideally within two hours of contact or as expeditiously as possible if the excavation site is in a rural area; if no UFO responds to the excavator's near miss ticket notification the excavator may proceed with excavation activities in a safe and prudent manner.

(b) expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(2) If excavation activity needs to encroach within 18 inches either side of a marking made by a UFO, an excavator shall, prior to excavating, expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(3) If the exact subsurface location of the underground facility or utility cannot be determined by non-mechanical means or mechanical vacuum excavation methods as required in Subparagraph (a) of Paragraph (1) and (2) of Subsection B of this section, the excavator shall contact the UFO directly and UFO shall work with the excavator to locate and expose the actual subsurface location of the underground facility or utility. If the UFO must resort to performing excavation to locate the facility, the UFO shall perform such excavation within five working days of notice from the excavator. If requested, the local one-call notification center shall provide the excavator with the contact telephone number of the UFO.

(4) If excavation activity cannot proceed without obliterating all or some of the markings made by a UFO, an excavator shall provide temporary offset marks or stakes to retain the information regarding the location of each UFO's underground facilities for the duration of the locate request or until excavation is completed, whichever ends sooner.

(5) If excavation and restoration cannot be completed within 15 working days allotted for standard locate requests and marks have been maintained, an excavator shall call the one-call notification system and request an update ticket prior to the original locate expiring.

(6) The requirement to provide positive response for a facility does not apply to the homeowner of a residential property.

(7) The commission encourages excavators to notify the UFO when excavation activity will be within 25 feet of the actual utility marking provided or as agreed upon by a right of way encroachment agreement or permit for infrastructure identified by the UFO as critical (i.e., transmission and trunk line pipelines, fiber optic, power, 911, etc.).

C. Temporary suspension of excavation activity.
If staff determines that an excavation activity is not in compliance with the requirements of this rule, and that continued noncompliance may result in injury to persons or damage to property, staff may suspend the excavation activity until the excavation activity is brought into compliance with the requirements of this rule and excavation conditions are safe.
[18.60.5.15 NMAC - Rp, 18.60.5.15 NMAC, 4/7/2026]

18.60.5.16 EMERGENCY EXCAVATION AND DAMAGE REPORTING PROCEDURE: This section applies whenever failure of or damage to underground facilities or public infrastructure requires emergency excavation and excavation shall be promptly commenced, ideally within 24 hours.

A. Excavators:
An excavator who damages an underground facility while excavating shall exercise prudence and shall:

- (1) stop excavating immediately;
- (2) call 911 if appropriate and the operator of the

damaged underground facility and 811 to report the damaged facility;

(3) secure the site and direct people and traffic a safe distance away from the site of the damage;

(4) not leave the scene until authorized by an emergency responder or the operator of the damaged underground facility; an excavator may leave the scene without such authorization only if the excavator has made reasonable, if unsuccessful, efforts to contact the affected UFOs and has safely secured the site;

(5) not resume work within an unsafe distance of the damage until authorized by the operator of the damaged underground facility.

(6) voluntarily submit a damage report as described in 18.60.5.18 NMAC.

B. Operators of failed or damaged underground facilities:
The operator of a failed or damaged underground facility shall exercise prudence and shall:

(1) immediately respond to a damaged reported or failure reported to its underground facilities and travel to the site;

(2) when deemed an emergency requiring excavation, call the one-call notification system to request an emergency locate for the excavation area;

(3) make the site safe and get the emergency situation under control;

(4) locate its own underground facilities as soon as practical, ideally within two hours;

(5) begin remedial action to restore service as soon as practical, ideally within 24 hours; and

(6) obtain a standard excavation locate ticket for repair work beyond resolution of the emergency situation.

C. Operators of failed or damaged public infrastructure:
The entity responsible for the failed or damaged public infrastructure shall:

(1) call the one-call notification system for the excavation area to request an emergency locate;

(2) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

D. One-call notification system: A one-call notification system shall upon request:

(1) issue an emergency excavation notice which shall be valid until the emergency is resolved, or for 48 hours, whichever is longer;

(2) issue a notice of a reported damage to each affected UFO.

[18.60.5.16 NMAC - Rp, 18.60.5.16 NMAC, 4/7/2026]

18.60.5.17 ABUSE OF THE

LAW: A person shall be deemed to have willfully failed to comply with this rule or Chapter 62, Article 14 NMSA 1978 and shall be subject to the penalties in Section 62-14-8 NMSA 1978 if the person:

A. requests a standard locate for an area that cannot reasonably be excavated in 15 working days;

B. provides misinformation or withholds information regarding the size of an excavation area;

C. requests locates that unduly burden a one-call notification system or UFO;

D. requests a locate for fraudulent reasons;

E. fails to process locate requests within the requisite timeframe;

F. fails to mark, or provide positive response for its underground facilities within the requisite timeframe;

G. fails to determine if all underground facilities have been marked or cleared after advance notice expires;

H. commences excavation prior to the expiration of the advance notice period;

I. obliterates markings at an excavation site without

providing temporary offset marks or stakes;

J. alters any record relating to excavation activity;

K. fails to pre-mark the actual intended excavation route or site(s) as required;

L. fails to report or submit a damage report within requisite time frame; or

M. commits any other act that the commission determines violates Chapter 62, Article 14 NMSA 1978 or this rule.

[18.60.5.17 NMAC - Rp, 18.60.5.17 NMAC, 4/7/2026]

18.60.5.18 THIRD PARTY DAMAGE REPORTS:

A. A UFO shall report to staff any event in which the owner or operator's underground facility is damaged by excavation activities. Such report, where practicable, shall be submitted using the commission's website at: <https://www.prc.nm.gov/pipeline-safety-bureau/pipeline-safety/>.

B. The report shall be filled out in its entirety and should include any and all information, such as pre-dig and post-damage photos, the UFO used to determine probable cause and support or justifies its position.

C. The report shall be submitted within 30-calendar days of the date the damage occurred or was noticed e. Any additional information provided after the 30-calendar day deadline may be considered on a case by case basis.

D. The UFO shall make available to staff, within a reasonable time, ideally within 24 hours, such other information or documentation as staff may require regarding any damage reportable under this section.

[18.60.5.18 NMAC - Rp, 18.60.5.18 NMAC, 4/7/2026]

18.60.5.19 WAIVER OR VARIANCE FROM RULE REQUIREMENTS:

A. The commission or the bureau chief may, in their discretion, waive or vary any

requirement of this rule whenever the commission or the bureau chief finds that such a waiver or variance would be in the public interest and not compromise safety, in accordance with commission rules of procedure, 1.2.2 NMAC.

B. An excavator, project owner, project engineer, one-call notification system, or UFO that cannot meet one or more of the requirements of this rule may petition the commission or the bureau chief for a waiver or variance pursuant to 1.2.2 NMAC. The petition shall be in writing and shall include:

(1) a list of those requirements which the excavator, project owner, project engineer, one-call notification system, or UFO wishes to have waived or varied;

(2) an explanation and description of the specific conditions which prevent the requirement from being met; and,

(3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.

C. The commission may order, or the bureau chief may request, a hearing on the merits of the petition in accordance with 1.2.2 NMAC.

D. An excavator, project owner, project engineer, one-call notification system, or UFO shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one of more of the requirements that are the subject of the petition.

[18.60.5.19 NMAC - N, 4/7/2026]

18.60.5.20 [RESERVED]

18.60.5.21 [RESERVED]

18.60.5.22 [RESERVED]

HISTORY OF 18.60.5 NMAC:

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

SCC 69-29, Order No. 2966, Cause No.516, filed 9/24/1969.
 SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3/18/1971.
 SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1/2/1972.
 SCC 77-2, Order No. 3096-C, Docket No.750, filed 3/4/1977.
 SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6/27/1979.
 SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11/26/1984.

History of Repealed Material:

18 NMAC 60.1, General Provisions;
 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage;
 18 NMAC 60.3, Requirement of Filing of Procedural Manual;
 18 NMAC 60.4, Classification and Repair of Leaks;
 18 NMAC 60.5, Pipeline Safety Program Procedures;
 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports;
 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards;
 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline;
 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing;
 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5/1/1996) repealed 7/1/2003.
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 6/27/2006 - Repealed effective 8/15/2012.
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 8/15/2012- Repealed effective 12/30/2014.
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 12/15/2014- Repealed effective 1/15/2019.
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 1/14/2019- Repealed effective 4/7/2026.

Other History:

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11/26/1984, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6/5/1996.
 18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5/1/1996), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7/1/2003.
 Those **applicable portions** of 18.60.2 NMAC, Pipeline Safety (filed 6/16/2003) replaced by 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, effective 7/17/2006.
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 12/15/2014 was replaced by 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention effective 1/15/2019.
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 1/14/2019 was replaced by 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention effective 4/7/2026.

**SECRETARY OF STATE,
 OFFICE OF THE**

**TITLE 1 GENERAL GOVERNMENT
 ADMINISTRATION CHAPTER
 CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
 PART 39 CANVASSING PROCEDURES**

1.10.39.1 ISSUING AGENCY: Office of the New Mexico Secretary of State.
 [1.10.39.1 NMAC – N, 4/7/2026]

1.10.39.2 SCOPE: This rule applies to the secretary of state, county clerks, and election board members appointed by the county clerk for all statewide elections and special elections to fill a vacancy in the office of United States representative conducted pursuant to the Election Code.
 [1.10.39.2 NMAC – N, 4/7/2026]

1.10.39.3 STATUTORY AUTHORITY: Section 1-2-1 NMSA 1978.
 [1.10.39.3 NMAC – N, 4/7/2026]

1.10.39.4 DURATION: Permanent.
 [1.10.39.4 NMAC – N, 4/7/2026]

1.10.39.5 EFFECTIVE DATE: April 7, 2026, unless a later date is cited at the end of a section.
 [1.10.39.5 NMAC – N, 4/7/2026]

1.10.39.6 OBJECTIVE: To establish uniform procedures for the election board, county clerks, and secretary of state to conduct post-election canvassing procedures.
 [1.10.39.6 NMAC – N, 4/7/2026]

1.10.39.7 DEFINITIONS:
A. “Canvass” means the post-election verification process conducted by the county clerk and the secretary of state that confirms that ballots were accurately counted, accurately aggregated, and accurately included in the final election results.

B. “Canvass election board” means the election board appointed by the county clerk pursuant to Subsection A of Section 1-13-4 NMSA 1978 that complies with the requirements of Section 1-2-7 NMSA 1978 to assist the county clerk with duties during the conduct of the canvass. The duties conducted by the canvass election board may be completed by the absent voter election board or a separate board appointed by the county clerk for this purpose.

C. “County canvassing board” means the board established pursuant to Section 1-13-1 NMSA 1978 that is required to:

(1) consider and approve the county canvassing report prepared by the county clerk by signing the certificate of canvass of the results of the election pursuant to Subsection B of Section 1-13-13 NMSA 1978; and

(2) certify the election, or nomination in the case of a primary election, of each person

running for office located wholly within one county and declare the results of all ballot questions affecting only precincts within one county.

D. “County canvass report” means the report prepared by the county clerk pursuant to Subsection C of Section 1-13-1 NMSA 1978 which consists of:

(1) the certificate of canvass to be signed by the county clerk and the county canvassing board members;

(2) the county summary report generated from the official results reporting system containing the verified final vote counts for each candidate contest and ballot question voted on by voters of the county separated by counting group;

(3) a final copy of the certified absentee by mail roster cover prescribed by the secretary of state that includes the total ballots requested, returned, accepted and rejected from uniformed-service & overseas voters; and

(4) the final signed provisional ballot reconciliation form prescribed by the secretary of state that indicates the total provisional ballots accepted and rejected within the county separated by counting group.

E. “Official results reporting system” means the system prescribed by the secretary of state to be used for aggregating, canvassing, and reporting the official results of all statewide elections and special elections to fill a vacancy in the office of United States representative.

F. “Roster cover” means the certificate form prescribed by the secretary of state that is signed by an election board pursuant to Section 1-12-28 NMSA 1978 to certify that the number of voters checked-in and ballots issued at a voting location reconciles to the number of ballots cast with the number of people who voted at that location, or, in the case of an absent voter precinct, that the number of voters who have returned an accepted ballot reconciles with the number

of ballots counted in the prescribed counting groups.

G. “State canvass report” means the report prepared by the secretary of state pursuant to Subsection F of Section 1-2-32 NMSA 1978, that is presented to and approved by the state canvassing board consisting of:

(1) the results in the official results reporting system that have been verified by the county clerk, examined by the secretary of state pursuant to Subsection F of Section 1-2-32 NMSA 1978, and approved by the county canvassing board,

(2) a copy of the signed certificates of canvass provided by the county canvassing boards, and

(3) the information required pursuant to Section 1-6C-8 NMSA 1978.

H. “State canvassing board” means the board consisting of the secretary of state, the governor, and the chief justice of the supreme court constitutionally created in Article 5, Section 2 and who are required to meet pursuant to Section 1-13-15 NMSA 1978 to approve the state canvass report, declare the result of the election for candidates and questions voted on by the voters of the entire state or voters of more than one county.

[1.10.39.7 NMAC – N, 4/7/2026]

1.10.39.8 ELECTION BOARD RECONCILIATION PROCEDURES:

A. Early voting. For each day of voting at a mobile or alternate voting location the staff or election board appointed by the county clerk to operate the site shall:

(1) complete a start-of-day reconciliation procedure to validate that the public counter number on each tabulator is zero if it is the first day of in person absentee voting or else that the public counter number matches the ending public counter number from the previous day and complete and sign the start-of-day reconciliation form, or electronic equivalent, prescribed by the secretary of state.

(2) complete an end-of-day reconciliation procedure to account for all ballots issued and to reconcile the sum of the public counter number on each tabulator to the total number of checked-in voters and complete and sign the end-of-day reconciliation form, or electronic equivalent, prescribed by the secretary of state.

(3) the start-of-day and end-of-day reconciliation forms, or the electronic equivalent, shall be submitted to the county clerk and the secretary of state each day during in-person absentee voting.

(4) in the event of a discrepancy found during the daily reconciliation procedures, the staff or election board shall document the discrepancy and immediately notify the county clerk for further direction.

B. Close of polls. Upon the close of polls on election day and upon close out proceedings conducted related to in person absentee voting, the election board appointed by the county clerk and under supervision of the presiding judge shall:

(1) complete reconciliation procedures and complete and sign the roster cover, and if the reconciliation between the number of checked-in voters does not match the number of ballots voted, the presiding judge and election judges must investigate and document the discrepancy on the signed roster cover.

(2) follow tabulator shutdown procedures and print at least three copies of the results tapes. The election board shall verify that:

(a) the results tape(s) contain results,
 (b) have printed in their entirety,
 (c) the ballot cast number on the result tape matches the ending public counter from the respective tabulator, and
 (d) each copy of the results tape(s) is signed by the election board.

(3) review the results tape(s) for write-in votes cast and check the diverter bin on each tabulator ensuring that the number of votes cast for write-in matches the number of ballots pulled from the diverter bin and complete and sign the write-in accounting form prescribed by the secretary of state.

(4) In accordance with Subsection A of Section 1-12-30 NMSA, immediately mail signed copies of the roster cover, the write-in accounting form, and the signed results tape(s) to the secretary of state in the provided stamped and addressed envelope.

(5) Deliver the following election returns directly to the county clerk on election night following procedures prescribed by the county clerk:

- (a) signed copy of the roster cover;
- (b) signed copy of results tape(s);
- (c) removable media storage device removed from each of the tabulators;
- (d) locked & sealed container(s) containing the machine counted ballots;
- (e) ballot box key(s) sealed into envelope addressed to the county clerk,
- (f) locked or sealed container containing provisional paper ballots;
- (g) locked or sealed container containing absentee ballots delivered to the polling place;
- (h) locked or sealed container containing voted ballots not cast on a voting machine (ballots to be hand counted);
- (i) locked or sealed container containing machine tabulated ballots with write-in votes (pulled from the diverter bin) along with a signed copy of the write-in accounting form;
- (j) envelope containing spoiled ballots; and
- (k) all unused election supplies not

destroyed pursuant to the election code.

(6) Immediately mail a separate ballot box key, defined pursuant to Section 1-1-2.1 NMSA 1978, for the machine counted ballot boxes to the district court in the provided stamped and addressed envelope in accordance with Subsection C of Section 1-12-31 NMSA 1978.

(7) Post a copy of the results tape to the outside entrance door of the voting location.

C. Absentee voting.

The absent voter precinct board is responsible for completing and signing the absentee by mail roster cover and ensuring it reconciles.

- (1) The absentee by mail roster cover shall include an accurate accounting of voters who applied for and who returned a ballot to include the number of absentee by mail ballots (1) issued to the voter, (2) received back from the voter, (3) accepted by the absent voter precinct board, and (4) rejected by the absent voter precinct board separated into the following categories:
- (a) Regular by mail ballots,
 - (b) Uniformed-service & overseas ballots,
 - (c) Federal Write-in Ballots (FWAB), and
 - (d) Provisional absentee ballots.
- (2) The absentee by mail roster cover shall include an accurate accounting of ballots accepted and counted by the absent voter precinct board separated by the following categories:
- (a) Regular by mail machine counted ballots,
 - (b) Regular by mail hand tallied ballots,
 - (c) Uniformed-service & overseas ballots, and
 - (d) Federal Write-in Ballots (FWAB).
- (3) The absent voter election board shall ensure

that the accepted ballot count in the accounting of voters described in Paragraph (1) of Subsection C of 1.10.39.8 NMAC matches the corresponding category of counted ballots under ballot accounting described in Paragraph (2) of Subsection C of 1.10.39.8 NMAC. In the case of regular absentee by mail ballots the machine ballots cast plus the regular by mail hand tallied ballots is expected to match the accepted regular by mail ballots.

(4) The absent voter election board shall investigate and resolve or document any discrepancy documented on the absentee by mail roster cover. [1.10.39.8 NMAC – N, 4/7/2026]

1.10.39.9 COUNTY CLERK RECONCILIATION PROCEDURES:

A. For each voting location, and absent voter precinct, the county clerk shall review the election returns and ascertain whether the election board delivered all returns and properly executed the roster cover. Specifically, the county clerk shall verify:

- (1) that the roster cover is completely filled out and signed and, by comparison, contains an accurate account of the number of:
 - (a) regular machine counted ballots issued (this number matches the ballots cast number on the sum total of machine results tapes used at the voting location);
 - (b) ballots spoiled (this number matches the number of spoiled ballots returned in the spoiled ballot envelope);
 - (c) provisional ballots issued (this number matches the number of provisional ballots returned in the secured provisional ballot envelope or box);
 - (d) hand tally ballots issued (this number will be verified by the canvass election board later, but the county clerk shall verify the presence of a secured hand tally ballot envelope or

box if the roster cover indicates the hand tally ballot number is greater than zero)

(e)

voters checked-in (this number matches the number of permits (or early voter applications) issued and the number of checked-in voters reported by the final poll book summary report or roster of voters).

(2) that the

roster cover accurately reconciles the number of voters checked-in matches the ballots cast from the sum total of the results tapes plus the number of hand tally ballots or, if the numbers do not reconcile, that the election board has adequately documented the discrepancy on the roster cover.

(3) that all

ballots, results tapes, removable media, and roster covers have been received from every voting location.

(4) If a county

has a qualified write-in candidate, the county clerk shall review every result tape for the presence of unqualified write-in votes. If the county clerk observes uncounted write-in votes on the result tape, then the county clerk shall verify that the election board properly completed and signed a write-in accounting form and turned in an envelope or box containing write-in ballots.

B. If the county clerk identifies an error, omission, or discrepancy on the roster cover, the county clerk shall recall the delinquent election board to resolve or document the identified issue.

C. If during canvassing procedures, the county clerk identifies that election returns are missing, a search for missing returns shall be conducted pursuant to Section 1-13-8 NMSA 1978.

D. After the county clerk has completed an accurate inventory of election returns and verified the accuracy and completeness of every roster cover, the county clerk shall qualify provisional ballots and complete the provisional ballot reconciliation form prescribed by the secretary of state.

E. After the county clerk has completed all duties

pursuant to 1.10.39.9 NMAC, the county clerk shall deliver the qualified provisional ballots to be counted and sealed containers containing ballots to be hand counted (regular hand tally ballots and ballots containing write-in votes) to the canvass election board along with the verified roster covers and the completed provisional ballot reconciliation form.

[1.10.39.9 NMAC – N, 4/7/2026]

1.10.39.10 CANVASS ELECTION BOARD DUTIES:

A. The canvass election board shall count the number of qualified provisional ballots received from the county clerk and verify that the number reconciles with the provisional ballot reconciliation form. If the number matches, the canvass election board shall proceed with tallying the qualified provisional ballots by precinct and by counting group on the hand tally sheet prescribed by the secretary of state or on tabulators specifically programmed to count qualified provisional ballots as provided by the county clerk. However, if a discrepancy with the provisional ballot reconciliation form is identified, the canvass election board shall notify the county clerk to investigate further.

B. The canvass election board shall open each hand tally ballot envelope or box and compare that the number of hand tally ballots listed on the corresponding roster cover matches the number of ballots contained in the hand tally envelope or box from each voting location. If the number matches, the canvass election board shall proceed with the hand tally of the ballots by precinct and by counting group on the hand tally sheets prescribed by the secretary of state. However, if a discrepancy is identified, the canvass election board shall notify the county clerk to investigate further.

C. The canvass election board shall open each envelope or box containing write-in ballots and compare that the number of write-in ballots matches the number listed on the write-in accounting form. If the number

matches, the canvass election board shall proceed with the hand tally of the write-in votes by precinct and by counting group on the write-in tally sheets prescribed by the secretary of state. However, if a discrepancy is identified, the canvass election board shall notify the county clerk to investigate further.

D. All hand tally sheets must be properly filled out with the vote category clearly marked at the top of the sheet and signed by the canvass election board. Completed hand tally sheets shall be turned over to the county clerk for entry into the official results reporting system. [1.10.39.10 NMAC – N, 4/7/2026]

1.10.39.11 COUNTY CLERK OFFICIAL RESULTS VALIDATION:

A. The county clerk shall enter the votes from all hand tally sheets into the official results reporting system, including qualified write-in votes if applicable, by counting group and by precinct. After entry, the county clerk shall review and verify the county precinct report generated from the official results reporting system to ensure that the hand entered votes have been entered correctly and in the correct counting group and in the correct precinct.

B. The county clerk shall validate the summary ballots cast for every counting group in the official results reporting system. Specifically, the county clerk shall:

(1) for machine counted ballots, ensure the ballots cast total from every result tape in each counting group adds up to match the ballots cast total of the same counting group in the official results reporting system.

(2) for hand counted ballots, ensure the number of ballots hand counted in each counting group adds up to match the ballots cast total of the same counting group in the official results reporting system.

(3) for any discrepancy identified, investigate and recall the delinquent election board to assist, if necessary, until the discrepancy is adequately resolved.

C. Upon completing results validation and, prior to the deadline prescribed in Section 1-13-13 NMSA 1978, the county clerk shall prepare the county canvass report and lock the election in the official results reporting system.

D. The county clerk shall email a copy of the certified county canvass report, all hand tally sheets and any other updated election returns not already provided to the secretary of state.

E. The county clerk shall remain available to provide missing returns or to resolve discrepancies until after the completion of the meeting of the state canvassing board.
[1.10.39.11 NMAC – N, 4/7/2026]

1.10.39.12 STATE CANVASSING PROCEDURES:

A. Secretary of state responsibilities.

(1) The secretary of state shall conduct an inventory to ensure all election returns were received from every voting location and absent voter precinct in the state.

(2) The secretary of state shall review each roster cover to ensure it is completely filled out, signed, and the roster cover accurately reconciles the number of voters checked-in matches the ballots cast from the sum total of the results tapes plus number of hand tally ballots or, if the numbers do not reconcile, that the election board has adequately documented the discrepancy on the roster cover.

(3) Upon receipt of the certificate of canvass from a county, the secretary of state shall review the county summary report from the official results reporting system and verify:

(a) for machine counted ballots, ensure the ballots cast total from every result tape in each counting group adds up to match the ballots cast total of the same counting group in the official results reporting system.

(b) for hand counted ballots, ensure the

number of ballots hand counted in each counting group adds up to match the ballots cast total of the same counting group in the official results reporting system.

(4) For all contests voted on by the voters of the entire state or voters of more than one county, including qualified write-in votes if applicable, the secretary of state shall verify that the hand tally sheets match the hand entered votes on the county precinct report generated from the official results reporting system.

(5) That a report of all provisional ballots accepted and rejected separated by counting group has been completed and signed and that it reconciles with the total number of provisional ballots issued in the county (according to the roster cover(s)) and that the hand entered votes on the county precinct report generated from the official results reporting system match the provisional hand tally sheets.

(6) For any discrepancy identified, the secretary of state shall contact the county clerk to investigate who will, if necessary, recall the delinquent election board to assist in correcting the discrepancy.

B. Independent auditor procedures.

(1) At least 90 days prior to each statewide election or as soon as practicable prior to an election to fill a vacancy in the office of United States representative, the secretary of state shall contract with an independent auditor qualified by the state auditor to audit state agencies to review the accuracy of the canvassing of the election returns by the county clerk and the secretary of state.

(2) The secretary of state shall provide copies of election returns and reports from the official results reporting system to the independent auditors from each county during the state canvassing procedures.

(3) The independent auditor shall follow procedures outlined in Subsection A of Section 1.10.39.12 NMAC to

verify the accuracy of the results in the official results reporting system.

(4) Upon completion of the review by the independent auditor, but no later than the deadline set for the meeting of the state canvassing board, the secretary of state shall prepare the state canvass report to be presented to the state canvassing board.
[1.10.39.12 NMAC – N, 4/7/2026]

1.10.39.13 COUNTY CLERK - AMENDED CANVASS PROCEDURE:

If a discrepancy is found and corrected in the election results after the county canvassing board has met, the county clerk shall be responsible for preparing an amended county canvassing report and the county canvassing board shall convene to certify the corrected results and file an amended certificate of canvass pursuant to Subsection B of Section 1-13-13 NMSA 1978.
[1.10.39.13 NMAC – N, 4/7/2026]

History of 1.10.39 NMAC:
[RESERVED]

WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.4 NMAC, Section 15, effective 4/7/2026.

11.4.4.15 APPROVAL OF ATTORNEY FEES AND LIENS:

A. Parties may request the award of attorney fees by application to a judge. The application must contain sufficient information to determine if the fee requested is appropriate. ~~[The] All~~ contested ~~[application should indicate the date and terms of any offers of settlement made; the present value of the benefits awarded the worker, including, but not limited to medical expenses and past and future weekly benefits; the total number of hours reasonably expended by counsel to secure benefits for the worker; the hourly billing rate of counsel; and~~

any other relevant information for the determination of fees;] and any other applications which seek an attorney fee equal to or greater than the attorney fee cap prescribed by Section 52-1-54 NMSA 1978 or 52-3-47 NMSA 1978, or as the judge may order, shall include a supporting discussion of statutory requirements, and the following factors as applicable to the application:

- (1) the chilling effect of miserly fees upon the ability of an injured worker to obtain adequate representation;
- (2) the time and effort expended by the attorney in the particular case;
- (3) the extent to which the issues were contested;
- (4) the novelty and complexity of the issues involved;
- (5) the fees normally charged in the locality for similar legal services;
- (6) the ability, experience, skill and reputation of the attorney;
- (7) the relative success of the workman in the court proceeding;
- (8) the amount involved;
- (9) the rise in the cost of living;
- (10) whether the worker suffered a subsequent injury or injuries that flowed from the primary workplace injury thereby justifying a fee cap multiple award;
- (11) the date and terms of any offers of settlement made, as well as the present value of the benefits awarded the worker, including but not limited to medical expenses and past and future weekly benefits; and
- (12) any other relevant information for the determination of the attorney fee award in question.

B. No attorney fees shall be paid until the case has been settled or adjudged. For purposes of the act, settled or adjudged includes:

- (1) the entry of a compensation order; or

(2) the acceptance by both parties of a recommended resolution; or

(3) an order granting or denying any petition or application when no other cases are pending before the administration; or

(4) the WCA has administratively closed the file; or

(5) when there is a good faith belief that all pending issues or questions have been resolved, whether or not the jurisdiction of the administration has been invoked.

C. An attorney withdrawing from representation during the pendency of a case and before the case has been settled or adjudged shall assert a request for attorney fees, if any, within the motion to judge or application to director seeking to withdraw as counsel. The request for attorney fees shall not be decided until the case is settled or adjudged.

D. When a subsequent attorney requests attorney fees, the attorney shall give notice to the withdrawn attorney by serving on the withdrawn attorney a copy of all relevant pleadings at the time of filing.

E. No attorney fee lien shall be filed in a case until a judge has awarded fees pursuant to Section 52-1-54 NMSA 1978.

[11.4.4.15 NMAC - Rp, 11.4.4.15 NMAC, 1/1/2023; A, 4/7/2026]

WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.7 NMAC, Section 12, effective 4/7/2026.

11.4.7.12 INPATIENT ADMISSIONS, CASE MANAGEMENT AND UTILIZATION REVIEW:

A. Basic provisions:

- (1) All workers and their legal representatives are required to cooperate with the WCA or its contractor, if any, with

respect to all reasonable requests for information necessary for any provision of service.

(2) For the purpose of facilitating the provision of services, all employers, insurers, and third party administrators are required to communicate, cooperate and provide information, without charge, to the WCA or its contractor, if any.

(3) The WCA or its contractor, if any, shall report any refusal to cooperate to the director. Failure to provide requested information shall be presumed to be a refusal to cooperate. Any dispute concerning the reasonableness of any request for information may be submitted, in writing, to the director. The determinations of the director concerning the reasonableness of such requests are final.

(4) In any hearing before the WCA, the worker's refusal to cooperate in any services may be considered by a workers' compensation judge on the issues of reasonableness and necessity of medical charges or reasonableness, necessity, or appropriateness of medical treatment.

(5) The contractor shall avoid conflicts of interest or the appearance of impropriety when performing case management services and utilization review.

(6) Nothing in these rules prohibits an employer from establishing their own system of case management or utilization review at the employer's expense as provided in Section 52-4-3 NMSA 1978.

B. Inpatient admission review:

(1) For every inpatient admission the following information shall be provided to the WCA or its contractor at least 48 hours prior to the admission or before the close of the next business day after any emergency admission:

- (a) worker's/patient's name;
- (b) worker's/patient's social security number;

(c) worker's/patient's employer;

(d) employer's insurance carrier or third party administrator and a statement of whether they have authorized the admission;

(e) date of injury/onset of symptoms;

(f) admitting diagnosis, including primary, secondary, and tertiary, if any;

(g) planned treatment(s) and procedures;

(h) planned date of admission; and

(i) proposed length of stay.

(2) For planned or elective hospital admissions any practitioner ordering the admission of a worker for evaluation or treatment of their injury or occupational disease disablement shall report the admission to the WCA.

(3) For emergency hospital admissions, the hospital shall report the admission to the WCA.

C. Case management

(1) Referral process:

(a) Any party may refer a claim to the WCA for case management by the WCA or its contractor, if any, by submitting the appropriate form to the WCA medical cost containment bureau. The form is located on the agency website.

(b) A WCA judge may refer a claim for case management by submitting a written referral to the medical cost containment bureau and with a copy placed in the court file.

(c) Within 20 days of receiving a referral and all supporting documentation, the medical cost containment bureau shall notify the parties and the judge, if any, of its decision either accepting or denying the referral. The medical cost containment bureau may assign approved cases to the WCA's contractor.

(d) Any party who objects to the decision of the medical cost containment bureau shall notify the WCA of its objection by filing an application to the director not later than 15 days from service of the decision.

(2) Procedures

(a) The WCA will consider the following factors when determining eligibility of a case referred for case management:

(i) severe or complex injury including total loss of limb/amputation, severe injury to multiple body parts or limbs, severe burns over a large part of body, traumatic brain injury, spinal cord injury, reflex sympathetic dystrophy/complex region pain syndrome;

(ii) language barrier, including hearing impairment;

(iii) a record or pattern of non-compliance with prescribed treatment, care plan or medical appointments;

(iv) multiple health care providers, including providers of different disciplines, requiring coordination between them;

(v) inpatient admission lasting longer than five days or multiple admissions or emergency room visits;

(vi) failure to reach maximum medical improvement after one year from the date of injury;

(vii) psychological issues that complicate provision of services; and

(viii) any other reasonable criteria as approved by the director.

(b) The WCA will monitor case management services to ensure progress pursuant to Section 52-4-3 NMSA 1978. The WCA may terminate or reassign services as it deems appropriate with notice to the parties.

(c) The contractor shall have the right to contact the worker, insurer, third party administrator, legal representatives,

and all HCPs involved in the case. [~~The contractor shall give reasonable notice and an opportunity to the worker or his or her representative to be present during, or to participate in, any and all contacts by the case manager.~~]

(d) The contractor providing case management services may help coordinate services by bringing treatment options or return to work opportunities to the attention of the health care provider.

(e) The contractor shall provide status reports to the WCA as directed, with copies to the parties identified in the initial assignment.

D. Utilization review

(1) Referral process:

(a) Any party may refer a claim to the WCA for utilization review by the WCA or its contractor, if any, by submitting the appropriate form to the WCA medical cost containment bureau. The form is located on the agency website.

(b) A utilization review request for pre-admission review of hospital admissions, except for emergency services, shall also follow this same referral and procedural process.

(c) Within 20 days of receiving a referral and all supporting documentation, the medical cost containment bureau shall notify the parties of its decision either accepting or denying the referral. The medical cost containment bureau may assign approved cases to the WCA's contractor.

(d) Any party who objects to the decision of the medical cost containment bureau shall notify the WCA of its objection by filing an application to the director not later than 15 days from service of the decision.

(2) Procedures

(a) Utilization review shall consider only the medical reasonableness, clinical necessity, efficiency and quality of the treatment under review.

(b) Only one treatment is appropriate for utilization review.

(c) Utilization review shall not include issues of compensability, including:

(i) the causal relationship between the treatment under review and the worker’s work-related injury;

(ii) whether the worker is disabled; and

(iii) whether the worker is at maximum medical improvement.

(d) If the medical cost containment bureau or its contractor requests additional information, the parties shall provide the requested information within 15 days. The WCA shall issue its utilization review decision within 60 days of receiving all necessary documentation.

(e) The WCA in its sole discretion may assign a claim to its contractor for peer review. Peer review shall only be conducted by a licensed healthcare provider who is in a similar field or equivalent discipline as the provider whose service is being reviewed. Peer review shall be independent and the physician or health care provider should not have prior involvement in the worker’s care or treatment.

(f) The medical cost containment bureau shall communicate the utilization review findings in writing with a copy to all parties. The WCA may adopt the findings of its contractor after utilization review.

(g) Any party who objects to the utilization review findings shall file an application to director within 15 days from service of the utilization review findings. If an application is not filed within 15 days, the utilization review findings shall become binding on the parties.

(h) The director may set a utilization review matter for hearing. An order issued by the director after hearing or receipt of an application to director is final and binding on the parties.

[11.4.7.12 NMAC - Rp, 11.4.7.12 NMAC, 1/1/2023; A, 4/7/2026]

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.1.2 NMAC, Section 7, effective 4/7/2026.

11.1.2.7 DEFINITIONS:

A. “Alteration” means any change made to any part of or any system within an existing public building, public work, or public road other than a “repair” as hereinafter defined.

B. “Base wage rate” means the straight time hours and hourly rate paid each laborer or mechanic.

C. “Contract” means any written agreement made by the state or any political subdivision of the state for or including provisions for the alteration, construction, demolition, maintenance, or repair of any public building, public work, or public road that makes use of any public funds.

D. “Craft” means a particular construction trade.

E. “Director” means the director of the division.

F. “Division” means the labor relations division of the workforce solutions department.

G. “Fringe benefit” means payments made by a contractor, subcontractor, employer or person acting as a contractor, if the payment has been authorized through a negotiated process or by a collective bargaining agreement, for: holidays; time off for sickness, injury, personal reasons or vacation; bonuses; authorized expenses incurred during the course of employment; health, life and accident or disability insurance; profit-sharing plans; contributions made on behalf of an employee to a retirement or other pension plan; zone, incentive, and subsistence pay and any other compensation paid to an employee, or for the direct benefit of an employee. Payments made to

an approved apprentice program are not fringe benefits.

H. “Labor organization” means an organization of any kind, or an agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

I. “Locality” means one or more counties in the state of New Mexico.

J. “Prevailing wage and benefits” means the hourly wage rate and other benefits as determined by the director to be paid to, or for the benefit of, employees for work performed by the employee on public works projects, including any apprentice training contributions.

K. “Project” means any coordinated activity involving the alteration, construction, demolition, installation, maintenance, or repair of any public building, public work, or public road, and shall include all contracts related to, and employers involved in, the work to be done as a result of the coordination.

L. “Public funds” means every contract or project in excess of \$60,000 that the state or any political subdivision thereof if a party to for construction, alteration, demolition, or repair, or any combination thereof.

M. “Public works” means any facility for the use, enjoyment, or benefit of the public that is altered, constructed, demolished, installed, maintained, or repaired and is funded in whole or in part with public funds or public financing, public grant, and including any form of tax bond financing. “Public works” does not include privately owned residential projects.

N. “Repair” means to correct any damage or defects within, or to replace any obsolete system, part or portion, of a public building, public work or public road.

O. “Secretary” means the secretary of the department of workforce solutions.

P. “Similar nature”
means contract work performed on projects as defined in 11.1.2.18 NMAC.

Q. “Site of the project” means the physical location of a public works project as well as any off-site fabrication locations that engage in the fabrication of heating, cooling, ventilation, or exhaust duct systems that are part of the public works project.

R. “State” means the state of New Mexico.

S. “Wage” means the basic hourly rate of pay.

T. “Willfully” means an intentional or deliberate violation of a known duty, and shall include the failure to rectify a violation within a reasonable time after notice of the violation, or repeated violations after receiving notice of a violation.
[11.1.2.7 NMAC - Rp, 11.1.2.7 NMAC, 12/30/2016; A, 11/10/2020; A, 10/21/2025; A, 4/7/2026]

End of Adopted Rules

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Issue 6	March 12	March 24
Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
Issue 11	May 21	June 10
Issue 12	June 11	June 23
Issue 13	June 25	July 14
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Issue 20	October 8	October 20
Issue 21	October 22	November 3
Issue 22	November 5	November 17
Issue 23	November 19	December 8
Issue 24	December 10	December 22

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