

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 14 RAILROADS
PART 2 RAILROAD SAFETY

18.14.2.1 ISSUING AGENCY: Public Regulation Commission.
[18.14.2.1 NMAC - N, 9/30/11]

18.14.2.2 SCOPE: Except as provided herein, this rule applies to all railroad companies and other common carriers, as provided in Paragraph (3) of Subsection A of Section 63-7-1.1 NMSA 1978 and to all rail safety activities as to which the commission has been delegated authority pursuant to federal railroad safety laws together with regulations promulgated and orders issued under those federal laws.
[18.14.2.2 NMAC - N, 9/30/11; A, 1/15/16]

18.14.2.3 STATUTORY AUTHORITY: Sections 8-8-4, 8-8-11, 63-3-36, and 63-7-1.1 NMSA.
[18.14.2.3 NMAC - N, 9/30/11]

18.14.2.4 DURATION: Permanent.
[18.14.2.4 NMAC - N, 9/30/11]

18.14.2.5 EFFECTIVE DATE: September 30, 2011, unless a later date is cited at the end of a section.
[18.14.2.5 NMAC - N, 9/30/11]

18.14.2.6 OBJECTIVE: The purpose of this rule is to establish safety requirements for railroad companies and other common carriers operating in New Mexico and to establish basic procedures for use when public grade crossings are sought to be opened or closed.
[18.14.2.6 NMAC - N, 9/30/11; A, 1/15/2016]

18.14.2.7 DEFINITIONS: In addition to the definitions set out in 49 CFR Parts 200 to 268 and in the American railway engineering and maintenance-of-way association (AREMA) clearances manual, as used in this rule:

- A. Commission** means the New Mexico public regulation commission.
- B. Private grade crossing** means any railroad crossing of a roadway which is not a public grade crossing, including any at-grade crossing where the highway, road or street is privately owned.
- C. Public grade crossing** means a location within the state, other than a location where one or more railroad tracks cross one or more railroad tracks at-grade, where a public highway, public road, or public street, including any associated public sidewalks and public pathways, crosses one or more railroad tracks at-grade. The term includes a crossing only if any public authorities maintain the roadway on all sides of the crossing.
[18.14.2.7 NMAC - N, 9/30/11; A, 6/14/13; A, 1/15/16]

18.14.2.8 REFERENCES TO OTHER DOCUMENTS: Whenever this rule refers to a federal or state statute, rule, or regulation, or to a technical or other document, the reference, unless specifically stated to the contrary, is continuous and is intended to refer to the most current version of the document.
[18.14.2.8 NMAC - N, 9/30/11]

18.14.2.9 ADOPTION OF MINIMUM SAFETY REQUIREMENTS BY REFERENCE: The commission adopts by reference as part of this rule, and a railroad company shall comply with the safety requirements set forth in:

- A. Code of federal regulations.** 49 CFR parts 200 to 268; and 23 CFR Part 655, Subpart F;
- B. AREMA clearances manual.** All new construction commenced on or after September 30, 2011 shall comply with Chapter 28, clearances, of the manual for railway engineering published by the American railway engineering and maintenance-of-way association (AREMA); copies may be obtained from AREMA, 10003 Derekwood Lane, Lanham, Maryland 20706.
[18.14.2.9 NMAC - N, 9/30/11; A, 6/14/13, A, 1/15/2016]

18.14.2.10 RENEWAL OF STATE PARTICIPATION AGREEMENT: The director of the transportation division, on behalf of the commission, may annually renew the agreement between New Mexico and the federal railroad administration for state participation in the national railroad safety program.
[18.14.2.10 NMAC - N, 9/30/11]

18.14.2.11 GOVERNMENTAL AGREEMENTS: The director of the transportation division, with the express approval of the commission, may enter into any agreement with another governmental entity, such as the New Mexico department of transportation, in order to cooperatively enhance railroad safety, promote compliance with the federal railroad safety laws, and implement the benefits of the national railroad safety program.
[18.14.2.11 NMAC - N, 1/15/2016]

18.14.2.12 OPENING AND CLOSING OF PUBLIC GRADE CROSSINGS:

A. Railroad companies are subject to the construction and maintenance requirements set forth in Section 63-3-36 NMSA 1978.

B. Exclusion of property owned by New Mexico department of transportation: The New Mexico department of transportation, and not the New Mexico public regulation commission, shall determine whether to open or close a crossing on railroad property owned by the New Mexico department of transportation or on a state highway that crosses a railroad.

C. Subject to the exclusion set out in subsection B of 18.14.2 NMAC, any person who believes that an additional public grade crossing is necessary and in the public interest may petition the commission for a determination regarding the need for such a crossing. The transportation division director shall promptly notice the pending petition for public comment, and the commission shall, as soon as practicable consistent with due process, hold a hearing, whereupon it may issue an order prohibiting or permitting the additional public grade crossing.

D. Subject to the exclusion set out in subsection B of 18.14.2 NMAC, any person who believes that an existing public grade crossing is unnecessary or not in the public interest may petition the commission for a determination regarding the need for such a public grade crossing. The transportation division director shall promptly notice the pending petition for public comment, and the commission shall, as soon as practicable consistent with due process, hold a hearing, whereupon it may issue an order requiring that the existing public grade crossing be closed, kept open, or modified as needed to conform with current applicable safety standards.

E. Subject to the exclusion set out in subsection B of 18.14.2 NMAC, any railroad company contemplating the closure of an existing public grade crossing of a public highway, city, town or village street at grade, must notify the transportation division director at least sixty (60) days prior to any actual closure of such public grade crossing. The transportation division director shall promptly notice the pending closure for public comment, and the commission shall, as soon as practicable consistent with due process, hold a hearing, whereupon it may issue an order prohibiting or permitting the closure.

F. Railroad United States department of transportation (USDOT) identifiers shall be posted at each existing railroad crossing in New Mexico.

[18.14.2.12 NMAC - Rp, SCC-85-7, Rule 1, 9/30/11; A, 6/14/13; 18.14.2.12 NMAC - Rn & A, 18.14.2.11 NMAC, 1/15/2016]

18.14.2.13 REPORTS OF ACCIDENTS AND INCIDENTS:

A. Whenever a railroad company is required by 49 CFR 225.9 to report an accident/incident promptly by telephone to the federal railroad administration, the railroad shall promptly report the same accident/incident information by telephone to the transportation division of the public regulation commission at (505) 827-4310.

B. A railroad company must immediately report by telephone to the New Mexico state police at (505) 827-9126 and to the New Mexico environment department at (505) 827-9239 or (505) 827-1557 as well as to local law enforcement authorities and tribal police whenever it learns of the occurrence of an accident/incident involving a railroad car carrying hazardous material as provided in 49 CFR 172. Each report must state:

- (1) the name of the railroad;
- (2) the name, title, and telephone number of the person making the report;
- (3) the time, date, and location of the accident/incident;
- (4) the circumstances of the accident/incident;
- (5) the number of fatalities and injuries involved, if any; and
- (6) the specific hazardous commodity, if any, involved in the accident/incident.

C. A railroad company shall furnish to the transportation division of the public regulation commission a copy of each monthly accident/incident report it files with the federal railroad administration pursuant

to 49 CFR 225. The report shall be filed with the transportation division at the same time it is filed with the federal railroad administration.

D. Persons affected by railroad crossing safety issues may follow the commission's informal complaint procedures by contacting the commission's consumer relations division. In addition, they may follow the commission's formal complaint procedures as set forth at 1.2.2 NMAC.

E. The furnishing of any report required under Subsections A, B, and C of 18.14.2 NMAC is not intended to constitute a waiver of any evidentiary privilege as to such report provided for by federal or state law.

F. The Commission will not exercise any authority with respect to the opening or closing of a private grade crossing.

[18.14.2.13 NMAC - Rp, SCC-85-7, Rule 3, 9/30/11; A, 6/14/13; 18.14.2.13 NMAC - Rn & A, 18.14.2.12 NMAC, 1/15/2016]

18.14.2.14 MAPS AND PROFILES: A railroad company shall file with the commission the first January 15 after this rule takes effect a map showing all showing all lines and grade crossings and a list of all grade crossings the railroad has in New Mexico, and on or before January 15 of each year a map showing any changes to its lines and grade crossings in New Mexico since the previous filing and a list of changes to its grade crossings in New Mexico since the previous filing. The furnishing of this information may be accomplished electronically, through the provision of appropriate access to the national highway-rail crossing inventory, obtainable from the federal railroad administration.

[18.14.2.14 NMAC - Rp, SCC 85-7, Rule 7, 9/30/11; A, 6/14/13; 18.14.2.14 NMAC - Rn & A, 18.14.2.13 NMAC, 1/15/2016]

18.14.2.15 NON-APPLICABILITY: This rule shall not apply to government owned railroad operations or government owned railroad property. Notwithstanding this provision, railroad companies and other common carriers operating on government owned railroad property or government owned railroad right of way are subject to the provisions of this rule.

[18.14.2.15 NMAC - N, 1/15/2016]

18.14.2.16 WAIVER OF OR VARIANCE FROM RULE REQUIREMENTS:

A. The commission may, in its discretion, waive or vary any state-imposed requirement of these rules whenever the commission finds that such waiver or variance would be in the public interest.

B. A railroad company that cannot meet one or more of the state-imposed requirements of these rules may petition the commission for a waiver or variance. The petition shall be in writing and shall include:

(1) a list of those state-imposed requirements which the railroad company 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 a hearing on the merits of the petition.

D. A railroad company 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.

E. No waiver or variance of any state-imposed requirement of these rules granted by the commission is transferable.

[18.14.2.16 NMAC - N, 9/30/11; 18.14.2.16 NMAC - Rn & A, 18.14.2.14 NMAC, 1/15/2016]

18.14.2.17 RULES OF PROCEDURE: In all hearings before the commission involving railroad companies, the commission shall follow the public regulation commission rules of procedure as codified at 1.2.2.7 NMAC, et seq., except that a specific provision in this rule shall control over a conflicting general provision in the rules of procedure.

[18.14.2.17 NMAC - N, 7/30/11; 18.14.2.17 NMAC - Rn, 18.14.2.15 NMAC, 1/15/2016]

18.14.2.18 FILING OF DOCUMENTS:

A. Address for filing pleadings.

(1) **By mail.** Pleadings to be filed by mail must be sent to public regulation commission, records management bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) **In person.** Pleadings to be filed in person must be delivered to public regulation commission, records management bureau, 1120 Paseo de Peralta, at the corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

(3) **By facsimile.** Pleadings filed by facsimile must be sent to (505) 476-0324.

(4) **By electronic mail.** Call the records management bureau at 505-827-4526 for the correct email address for filing pleadings by electronic mail.

B. Address for filing all other documents.

(1) **By mail.** Documents other than pleadings to be filed by mail must be sent to public regulation commission, transportation division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) **In person.** Documents to be filed in person must be delivered to the public regulation commission, transportation division, 1120 Paseo de Peralta, at the corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

(3) **By facsimile.** Documents filed by facsimile must be sent to (505) 827-4417.

(4) **By electronic mail.** Call the chief of the transportation division investigations bureau at 505-827-4393 for the correct email address for filing documents by electronic mail.

C. Photocopies of forms permitted. The commission will accept filings made on photocopies of commission forms, provided the copies are legible.

D. Filing by facsimile. Persons filing documents by facsimile should also file the original with the commission either by mail or in person. The document will be deemed filed on the date of receipt of either the facsimile or the original, whichever occurs first. The commission will accept filing by facsimile of the following documents:

(1) change of address reports;

(2) reports of fatal accidents;

(3) complaints; and

(4) other documents the commission, in its discretion, or its designee permits.

[18.14.2.18 NMAC - N, 9/30/11; Rn, 18.14.2.16 NMAC 1/15/16]

HISTORY OF 18.14.2 NMAC:

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

SCC 72-4, Order No. 2202, Docket 335, Regulations Governing Clearances on Railroads with Reference to Side and Overhead Structures and Parallel Tracks, filed 10/2/72

SCC-85-7, In Re Adoption of Railroad Rules and Regulations, filed 9/18/85

History of Repealed Material.

SCC 72-4, Order No. 2202, Docket 335, Regulations Governing Clearances on Railroads with Reference to Side and Overhead Structures and Parallel Tracks, filed 10/2/72 - Repealed effective 9/30/2011

SCC-85-7, In Re Adoption of Railroad Rules and Regulations, filed 9/18/85 - Repealed effective 9/30/2011