

Michelle Lujan Grisham
Governor

Stephanie Schardin Clarke
Cabinet Secretary

Office of the Secretary

December 13, 2022

DIVISIONS

Office of the Secretary
(505) 827-0341
Administrative Services
(505) 827-0369
Audit and Compliance
(505) 827-0900
Motor Vehicle
(505) 827-2296
Property Tax
(505) 827-0870
Revenue Processing
(505) 827-0800
Tax Fraud Investigation
(505) 841-5578

Enclosed is the following proposal:

The New Mexico Taxation and Revenue Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to repeal and replace the following rules as authorized by Section 6-5-19 NMSA 1978:

Purpose: The proposed rules are being repealed and replaced to change a requirement that an applicant with epilepsy or another episodic disorder must meet in order to be granted a restricted license waiver.

Summary of Proposed Changes: The New Mexico Taxation and Revenue Department proposes to repeal and replace the following rules:

Motor Vehicle Code

(Restricted License – Intrastate Commercial Driving)

18.19.5.33 NMAC

Section 66-5-19 NMSA 1978

(Shortening of Licensure Period)

18.19.5.34 NMAC

Section 66-5-19 NMSA 1978

Hearing Date: Notice of public rule hearing: A public hearing will be held on the proposed rule changes on January 19, 2023 at 9:00AM through the internet, email, and telephonic means.

Technical Information: No technical or scientific information was consulted in drafting these proposed rule changes.

Public Hearing Location: The Public Hearing will be accessible via Zoom

<https://us02web.zoom.us/j/88216117736?pwd=VjV1a1Naa0lHM1JqTk1WSkdvK1doQT09> or by telephone by dialing 1 346 248 7799 Meeting ID: 882 1611 7736 Passcode: 510542. Any oral comments made during this hearing will be recorded and any electronic written comments can be submitted during the hearing at policy.office@tax.nm.gov.

How to participate: Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact George Stephan at George.Stephan@tax.nm.gov. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

Complete Copies of the proposed rule changes can be found at www.tax.newmexico.gov/proposed-regulations-hearing-notice.aspx or are available upon request by contacting the Tax Policy Office at policy.office@tax.nm.gov.

The copies of the proposed repealed and replaced rules were placed on file in the Office of the Secretary on December 1, 2022. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final rules, if filed, will be filed as required by law on or about February 20, 2023.

When are comments due: Written comments on the proposals can be submitted by email to policy.office@tax.nm.gov or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before January 19, 2023. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than three business days following receipt to allow for public review.

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18.19.5.33 RESTRICTED LICENSE - INTRASTATE COMMERCIAL DRIVING:

A. A restricted license in Class A, B or C may be issued to an applicant who does not meet the medical requirements for a license issued under the New Mexico Commercial Driver's License Act if the applicant applies for and is granted a waiver pursuant to 18.19.5.33 NMAC.

B. A restricted license pursuant to 18.19.5.33 NMAC authorizes a driver to operate a commercial motor vehicle only within New Mexico. Any restricted license issued pursuant to 18.19.5.33 NMAC will be issued for a reduced period of time.

C. Waivers may be granted only for one or more of the following diseases or conditions:

(1) diabetes mellitus or other metabolic disorders provided that:

(a) in the case of diabetes mellitus, the disease is stabilized with no episodes of ketosis or altered consciousness for one year and the medication and dosage has not changed within that year; and

(b) in the case of other metabolic disorders, the condition has stabilized under treatment with minimal symptoms which do not affect driving;

(2) cardiovascular disorders:

(a) general heart disease, provided that the condition is AHA Class I with no symptoms;

(b) arrhythmia, provided that the arrhythmia is stabilized with a pace maker for at least six months and the pace maker is certified for a minimum of one year beyond the six month stability period;

(c) myocardial infarct or surgical treatment for myocardial infarct, provided that at least one year has elapsed since the incident and no symptoms have appeared; and

(d) hypertension, provided that the condition is controlled by medication;

(3) pulmonary disorders, provided that the applicant exhibits symptoms only with greater than ordinary activity and uses steroids no more than intermittently such that FVC and FEV₁ is greater than seventy percent of the predicted normal;

(4) neurologic disorders, provided that the degree of impairment does not prevent the applicant from controlling equipment, driving, walking, lifting or carrying light loads;

(5) epilepsy and other episodic disorders, provided that the applicant is free of any seizures or episodes for at least one year and either is not under medication or is taking medication without side effects;

(6) visual acuity limitations, provided that the condition is correctable to at least 20/40 in one eye with at least 70 degrees in the horizontal meridian; or

(7) loss of limb or appendage which occurred as a result of genetic disorder, birth defect, accident or surgical procedure, provided that a currently licensed medical doctor attests that the impairment does not prevent the applicant from controlling equipment, walking, driving, or lifting or carrying light loads; the doctor's statement must specify whether or not prosthetic or other adaptive devices are required to allow the applicant to control equipment, walk, drive or lift or carry light loads; if prosthetic devices are not required, the waiver may also permit the applicant to operate commercial vehicles of the type applied for without use of prostheses.

D. The waiver and restricted license provided by 18.19.5.33 NMAC may be applied for by having a licensed medical doctor complete the appropriate medical form and mailing or delivering it, together with the application for the waiver, to the director, motor vehicle division.

E. The application for waiver will be referred to the medical review board for its recommendation of approval or disapproval. The director, motor vehicle division, shall decide whether to grant or deny the waiver, taking cognizance of the board's recommendation and any other relevant evidence.

F. Any applicant not satisfied with the decision of the director may request an informal hearing. The request and the conduct of the hearing will be as set forth in 18.19.5.56 NMAC.

G. By accepting issuance of a restricted commercial driver's license pursuant to 18.19.5.33 NMAC, the licensee agrees to notify, in accordance with Section 66-5-15.1 NMSA 1978, the motor vehicle division of any change in the licensee's physical or mental condition which would impair the licensee's ability to operate a commercial motor vehicle. Failure to so notify the motor vehicle division cancels the restricted commercial driver's license.

H. A waiver and the restricted commercial driver's license issued based upon the waiver may be granted for a period of no more than one year. The holder of a restricted commercial driver's license who so wishes may apply for another waiver and restricted commercial driver's license, to be valid for a period not to exceed one

year following the expiration of the current waiver and restricted license, at any time within the three months immediately prior to the expiration of the current waiver and restricted license.

~~I. Any waiver granted pursuant to 18.19.5.33 NMAC and any restricted commercial driver's license issued on the basis of that waiver is canceled when any of the conditions under which the waiver was issued no longer exists. Upon occurrence of an event or condition which cancels the restricted commercial driver's license, the licensee must surrender the restricted commercial driver's license to the motor vehicle division and, if employed as a driver of commercial motor vehicles, notify the licensee's employer. A driver whose waiver has terminated may re-apply for a waiver when the conditions set forth in 18.19.5.33 NMAC are met.~~

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[3/16/92, 8/20/1993, 10/31/1996, 10/15/98; 18.19.5.33 NMAC - Rn & A, 18 NMAC 19.5.10.2, 9/14/2000; Rp, xx/xx/xxxx]

18.19.5.34 — SHORTENING OF LICENSURE PERIOD:

A. The division, whenever good cause appears, may issue a restricted license that has a shortened licensure period pursuant to Section 66-5-19 NMSA 1978. The licensure period for a restricted license may be shortened to a period of less than one year depending on the nature of the restriction.

B. Example: Y, who has been issued a New Mexico driver's license, has had a seizure and has informed the motor vehicle division. In order to remain validly licensed in New Mexico, Y must first submit to the division a statement from a licensed physician or licensed osteopathic physician, on the appropriate medical form supplied by the division, attesting that Y has been free of any seizures or episodes for at least one year and either is not under medication or is taking medication without side effects.

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[18.19.5.34 NMAC - N, 10/31/2005; Rp, xx/xx/xxxx]

Stephanie Schardin Clarke
Cabinet Secretary

Reviewed for legal sufficiency:


Mark Chaiken, Acting Chief Counsel
NM Taxation and Revenue Department