



New Mexico DEPARTMENT OF
TRANSPORTATION

Michelle Lujan Grisham, Governor
Michael R. Sandoval, Cabinet Secretary

FOR IMMEDIATE RELEASE

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NMDOT proposes an amendment to Utility Rule 17.4.2
Public comment is encouraged

SANTA FE – The New Mexico Department of Transportation is proposing an amendment to Utility Rule 17.4.2 New Mexico Administrative Code (NMAC.) The rule defines requirements for occupying state and interstate systems Right of Way (ROW) by public utilities and is now being expanded to include the use of public ROW by private for-profit telecommunication and broadband businesses. The current rule has been in place since the 1960's and was last amended in 2001. State ROW is primarily intended for transportation uses but is also available for public utilities and if safe, for private uses including parking spaces or private broadband businesses.

The proposed amendment would charge annual fees or fair market trade to internet and broadband service providers. It would also update the public utility section of the Rule and add a new section delineating the fair, neutral and non-discriminatory terms for private use of the ROW. The Rule will apply to all facilities to be accommodated, adjusted, or relocated within the ROWs of highways, roads, streets or other property under the jurisdiction of the NMDOT.

The purpose is to protect the taxpayers of New Mexico by managing the fair and equitable use of state land by private broadband businesses. The ROW's are an asset to the taxpayers. DOT is protecting taxpayers' best interest by collecting fees from private businesses benefitting (profiting) from the public ROW. Other states have or are implementing similar rule changes with similar or higher fees.

Federal law requires 100 percent of fees collected for use of the ROW are put directly into the State Road Fund, which covers DOT operations, salaries, state match for federal aid projects and maintenance operations. Federal law requires the private use of NMDOT ROW, paid for or improved with federal funds, may only be permitted at fair market value. Fair market value or equivalent in-kind exchange is negotiable. In addition, The State Constitution's Anti-Donation Clause prohibits the DOT from donating the use of public ROW to private businesses for anything less than fair market value of the use.

“This proposed amending has not been set in stone,” said Transportation Secretary Mike Sandoval. “The DOT strongly encourages public comment. All comments will be considered when determining what is fair and equitable.”

Public Hearing

- Comments are due by 5:00 p.m. on 3/26/2021.
- The statewide, virtual public hearing will take place from 1:00 p.m.-5:00 p.m. on 4/23/2021.
- Instructions on how to connect to the Zoom meeting will be posted on the department’s website <http://DOT.state.nm.us>
- Contact DOT Utility Manager Dean Serna at dean.serna@state.nm.us or (505) 795-1608.
- Submit comments to the department by mail or email. P.O. Box 1149, Santa Fe, New Mexico 87504, www.utility.rule.state.nm.us or by voicemail (505) 216-8117

Constitutional and statutory authority

Section 62-1-3, NMSA 1978, which authorizes the use of highways and streets by public utilities and public telecommunications service under the Public Utility Act, Section 62-3-1 et seq., NMSA 1978 and the New Mexico Telecommunications Act, Section 63-9A-1 et seq., NMSA 1978; the New Mexico Highway Department Organization Act, Sections 67-3-7, 67-3-12, 67-8-15, 67-8-1, 67-8-17, 67-8-18, 67-8-19, 67-8-20, 67-8-21, 67-8-22, NMSA 1978.

To view the proposed new rule 17.4.2 NMAC visit the NMDOT website and look under the Public Notices tab <https://dot.state.nm.us/content/nmdot/en/public-notice.html>

NMDOT

Mobility for everyone

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