

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 ~~p~~Public ~~r~~Regulation ~~c~~Commission.
[18.60.4.1 NMAC - N, ~~XX/XX/20267-17-06~~]

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 - N, ~~XX/XX/20267-17-06~~]

18.60.4.3 STATUTORY AUTHORITY: Sections ~~8-8-4~~, ~~62-14-9~~, 62-14-9.1, 62-14-10, ~~62-19-21~~, and 70-3-13 NMSA 1978.
[18.60.4.3 NMAC - N, ~~XX/XX/20267-17-06~~]

18.60.4.4 DURATION: Permanent.
[18.60.4.4 NMAC - N, ~~XX/XX/20267-17-06~~]

18.60.4.5 EFFECTIVE DATE: ~~July 17, 2006~~ [MONTH][DAY] 2026, unless a later date is cited at the end of a section.
[18.60.4.5 NMAC - N, ~~XX/XX/20267-17-06~~]

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 - N, ~~XX/XX/20267-17-06~~]

18.60.4.7 DEFINITIONS: ~~In addition to the definitions in 18.60.2.7 and 18.60.5.7 NMAC, as used in this rule, respondent means an owner or operator of gas and hazardous liquid pipelines or underground facilities, an excavator, or a one-call notification system.~~

- ~~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]~~

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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, XX/XX/20267-17-06]

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 ~~send a request for~~ specific information ~~from to~~ the owner or operator. The owner or operator shall answer the request within 30 thirty (30) days of its receipt, unless staff requires a sooner response time.

(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 ~~plan for performing the testing.~~

(5) When the information obtained from an inspection, investigation, or from other appropriate sources indicates that further corrective commission action is warranted, the bureau chief director 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, 18.60.2.9 NMAC, XX/XX/20267-17-06]

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, 18.60.2.10 NMAC, XX/XX/20267-17-06]

18.60.4.10 NOTICE OF PROBABLE VIOLATION:

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

B. The bureau chief director may instruct staff to also serve a notice of probable violation of applicable laws through staff on to the respondent or the respondent's agent at an excavation site. In such case, the bureau chief director 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.

DC. 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 fifteen (15) 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 fifteen (15) days of receipt of the notice of probable violation. The bureau chief director may, in his their discretion and in accordance with applicable laws, grant or deny a request for a settlement conference.

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ED. If, in ~~his~~their discretion, the ~~bureau chief~~ director 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.

FE. The ~~director~~ 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, 18.60.2.11 NMAC, XX/XX/20267-17-06]

18.60.4.11 ATTORNEY REPRESENTATION: In settlement conferences, dispositional hearings, 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 ~~ten~~(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 ~~ten~~(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 - N, XX/XX/20267-17-06]

18.60.4.12 SETTLEMENT CONFERENCES:

A. The ~~bureau chief, or their designee, director~~ 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 director~~ and the respondent. At the settlement conference, the ~~bureau chief or designee director~~ 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.

BA. Voluntary dismissal. If the ~~bureau chief director~~ 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.

CB. Voluntary settlement agreement. If the ~~director bureau chief~~ and respondent agree to settle, the ~~director 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.

DC. Failure to settle. If the respondent appears at the settlement conference but does not agree to terms and conditions that are satisfactory to the ~~director bureau chief~~, the ~~director bureau chief may shall~~ request a hearing before the commission pursuant to 18.60.4.16 NMAC ~~18.60.4.14 NMAC~~ or file a petition in district court for injunctive action subject to 70-3-19 NMSA 1978.

ED. Failure to appear. If the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation. Within ~~ten~~(10) days, the ~~bureau chief director~~ may serve on respondent a determination of violation. The determination shall include notice of the respondent's right to appeal pursuant to 18.60.4.164 NMAC ~~and may include notice of a dispositional hearing pursuant to 18.60.4.13 NMAC.~~

FE. Alternative procedures. The ~~director bureau chief may instruct staff to may give give~~ notice of a dispositional hearing, 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 required by commission. All settlement agreements shall be subject to approval of the commission.

[18.60.4.12 NMAC - Rp, 18.60.2.12 NMAC, XX/XX/20267-17-06]

18.60.4.13 ALTERNATIVE DISPUTE RESOLUTION:

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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 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.

[18.60.5.19 NMAC - Rp. 18.60.5.19 NMAC, XX/XX/2026]

18.60.4.14 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 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. 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 required by commission.** All agreements resulting from mediation shall be subject to approval of the commission.

[18.60.5.20 NMAC - Rp. 18.60.5.20 NMAC, XX/XX/2026]

18.60.4.15 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

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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 ten 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. 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 required by commission. All agreements resulting from arbitration shall be subject to approval of the commission.

[18.60.5.21 NMAC - Rp, 18.60.5.21 NMAC, XX/XX/2026]

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18.60.4.163 ~~DISPOSITIONAL DISPOSITIONAL HEARINGS:~~

A. Notice. Not less than twenty (20) days prior to the date of the dispositional hearing, The commission's designee or the presiding officer, as defined in the commission rules of procedure 1.2.2 NMAC, the director shall shall provide reasonable notice to all relevant parties of the hearing, the violations alleged, and any other issues to be resolved at the hearing, serve on the respondent notice of the dispositional hearing and copies of the notice of probable violation, staff's inspection reports, and any third-party complaints or damage reports by mail as prescribed by 18.60.4.9 NMAC. The notice shall state in boldface type that failure to appear at the dispositional hearing may result in the issuance of a default disposition and administrative or civil penalties or other sanctions.

B. Procedures.

(1) The commission shall appoint a designee or presiding officer. director shall appoint a person or a panel to hear the case, or may hear the case himself or herself.

(2) The dispositional hearing shall be recorded by audio, video, mechanical or electronic means and the commission's designee or the presiding officer director, or person or panel conducting the hearing, shall determine if the record shall be transcribed.

(3) The commission's designee or the presiding officer If the director does not hear the case himself or herself, the person or panel conducting the dispositional hearing shall issue a recommended disposition decision to the commission director setting forth findings of fact, the amount of any administrative or civil penalties, and any other sanctions. **C. Disposition.** The director shall promptly act on the recommended disposition. The director's disposition shall include:

(1) findings of fact;

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~~(2) the amount of the penalty and the procedure for its payment, if an administrative or civil penalty is assessed;~~

~~(3) a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished; and~~

~~(4) a statement that the respondent may appeal the director's disposition by filing a request for a hearing before the commission pursuant to 18.60.4.14 NMAC.~~

~~C.D. Failure to appear. If the respondent fails to appear for the dispositional hearing, the commission's designee or the presiding officer-director may issue a default disposition, which may include administrative or civil penalties or other sanctions.
[18.60.4.13 NMAC - N, XX/XX/20267-17-06]~~

18.60.4.14 HEARINGS BEFORE THE COMMISSION:

A. Request for hearing.

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

~~(2) By the respondent.~~ A respondent may appeal a determination made by the ~~director bureau chief~~ pursuant to Subsection D of ~~Section~~ 18.60.4.12 NMAC or ~~a disposition made by the director pursuant to 18.60.4.13 NMAC~~ by filing a request for hearing before the commission. The respondent shall file the appeal with the docket filing unit of the commission within ~~thirty (30)~~ days of the date the ~~bureau chief's director's~~ determination ~~or disposition~~ 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 ~~or disposition~~ pending a decision of the commission.

B. Notice of hearing. The commission shall:

- ~~(1) fix a time and location for a public hearing on the alleged violations; and~~
- ~~(2) serve notice of the hearing upon the respondent by mail as prescribed by 18.60.4.9~~

NMAC not less than ~~ten (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. 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 ~~PRC~~ **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.

[18.60.4.14 NMAC - Rp, 18.60.2.13 and 18.60.2.14 NMAC, XX/XX/20267-17-06]

18.60.4.14 HEARINGS BEFORE THE COMMISSION:

A. Request for hearing.

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

~~(2) By the respondent.~~ A respondent may appeal a determination made by the ~~director~~ pursuant to Subsection D of 18.60.4.12 NMAC or a disposition made by the director pursuant to 18.60.4.13 NMAC by filing a request for hearing before the commission. The respondent shall file the appeal with the docket filing unit of the commission within thirty (30) days of the date the director's determination or disposition 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 or disposition pending a decision of the commission.

B. Notice of hearing. The commission shall:

- ~~(1) fix a time and location for a public hearing on the alleged violations; and~~
- ~~(2) serve notice of the hearing upon the respondent by mail as prescribed by 18.60.4.9~~

NMAC not less than ten (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. 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 ~~PRC~~ rules of procedure. 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.

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[18.60.4.14 NMAC - Rp, 18.60.2.13 and 18.60.2.14 NMAC, 7-17-06]

18.60.4.15 STIPULATION:

A. ~~At any time before the issuance of a final order, the director and the respondent may agree to resolve a case by stipulation. The stipulation may include assessment or waiver of a civil or administrative penalty or other sanctions.~~

B. ~~A stipulation shall include:~~

- ~~(1) an admission by the respondent of all jurisdictional facts;~~
- ~~(2) an express waiver of the right to pursue further procedural remedies before the commission and of the right to seek judicial review or otherwise challenge or contest the validity of the stipulation;~~
- ~~(3) an acknowledgement that the notice of probable violation may be used to construe the terms of the stipulation;~~
- ~~(4) an acknowledgement that the stipulation will be considered a violation for purposes of penalties for subsequent violations; and~~
- ~~(5) a statement of the actions to be taken by the respondent and the time by which each action shall be accomplished.~~

C. ~~If a case is resolved by stipulation, staff shall file a motion requesting approval of the stipulation and closing of the case.~~

[18.60.4.15 NMAC - Rp, 18.60.2.15 NMAC, 7-17-06]

18.60.4.176 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 PRC~~ 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.

[18.60.4.16 NMAC - Rp, 18.60.2.16 NMAC, XX/XX/20267-17-06]

18.60.4.187 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, or~~ assessed in a bureau chief's director's final or default disposition pursuant to 18.60.4.13 NMAC, or by commission final order via by certified check or money order made payable to the New Mexico ~~pPublic rRegulation cCommission~~ 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 ~~twenty (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.

[18.60.4.17 NMAC - Rp, 18.60.2.17 NMAC, XX/XX/20267-17-06]

18.60.4.1918 REFERRAL FOR PROSECUTION: If an employee of the pipeline safety bureau of the transportation division of the New Mexico public regulation 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.

[18.60.4.18 NMAC - Rp, 18.60.2.26 NMAC, XX/XX/20267-17-06]

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 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, filed 3-04-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27-79.

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SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

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 5-1-96) repealed 7-1-03.

Other History:

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96.

18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7-1-03.

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 7-17-06.

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 ~~p~~Public ~~r~~Regulation ~~c~~Commission.
[18.60.5.1 NMAC - Rp, 18.60.5.1 NMAC, [XX/XX/2026/4/5/2019](#)]

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, [XX/XX/2026/4/5/2019](#)]

18.60.5.3 STATUTORY AUTHORITY: Sections ~~8-8-4~~, 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, [XX/XX/2026/4/5/2019](#)]

18.60.5.4 DURATION: Permanent.
[18.60.5.4 NMAC - Rp, 18.60.5.4 NMAC, [XX/XX/2026/4/5/2019](#)]

18.60.5.5 EFFECTIVE DATE: [\[MONTH\]\[DAY,\] 2026January 15, 2019](#), unless a later date is cited at the end of a section.
[18.60.5.5 NMAC - Rp, 18.60.5.5 NMAC, [XX/XX/2026/4/5/2019](#)]

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, [XX/XX/2026/4/5/2019](#)]

18.60.5.7 DEFINITIONS: ~~In addition to the definitions in Section 62-14-2 NMSA 1978, 18.60.2.7 NMAC and 18.60.4.7 NMAC, as used in this rule:~~

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” excludes the day that advance notice is provided as may be required in this rule, whereby the computed date shall begin at 12:01 a.m. after two working days;

(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” refers to the definition provided in Subsection F of Section 62-14-2 NMSA 1978;

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

(5) “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]**

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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 Day, Independence Day, Labor Day, Indigenous Peoples’ Day, Veteran’s Day, Thanksgiving Day, President’s Day, and Christmas Day.

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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, and wide area locates. [RESERVED]

M. Definitions beginning with “M”: **“mechanical vacuum excavation”** is deemed an appropriate non-mechanical 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.

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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

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(2) “near miss ticket” means a ticket called into the one-call notification system, by an excavator when, while excavating, uncovers an undercover 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.

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O. Definitions beginning with “O”: [RESERVED] **“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 the person designated by the owner to be in responsible charge of the project involving excavation, including the design thereof, and who is licensed in accordance with Section 61-23 NMSA; and

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(2) “project owner means” the owner of a project involving excavation.

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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.

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S. Definitions beginning with “S”: [RESERVED] **“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

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(2) “update ticket” means a ticket called to the one-call notification system, which is defined in Subsection K of Section 62-14-2 NMSA 1978, in 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 Section 18.60.5.13 NMAC.

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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.

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

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

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

A. Definitions beginning with “A”: **access information** means a telephone number, a facsimile number, an email address, and, if available, a web site 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 excludes the day that advance notice is provided as may be required in this rule, whereby the computed date shall begin at 12:01 a.m. after two full working days;

____ (2) _____ 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 2 hours for the purpose of an emergency excavation;

____ (3) _____ 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.'s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, President's 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”: [RESERVED]

____ M. _____ Definitions beginning with “M”: mechanical vacuum excavation is deemed an appropriate non-mechanical 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”: non-member UFO 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;

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

____ P. _____ Definitions beginning with “P”:

____ (1) _____ project engineer means the person designated by the owner to be in responsible charge of the project involving excavation, including the design thereof, and who is licensed in accordance with Section 61-23 NMSA;

____ (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”: [RESERVED]

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

____ U. _____ Definitions beginning with “U”: underground facility operator (UFO) means a person who operates an underground facility;

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

____ W. _____ Definitions beginning with “W”: working day means a full business day excluding weekends and 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, [XX/XX/2026](#)1/15/2019; A 8/9/2022]

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 the commission~~ access to ~~quarterly~~ the name, contact person, and access information for each member of the one-call notification system ~~upon request~~;
- C. notify ~~staff the commission~~ 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~~ ~~five~~ years and make such records available to the commission ~~and staff~~ upon request;
- F. provide monthly reports to ~~staff the commission~~, 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 the commission~~ on or before the date the information will change;
- H. establish a registry of non-member UFOs that voluntarily provide their contact and ~~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 is complete. 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, ~~or after 4:00 p.m. on a working day~~, 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, ~~or~~ locate request, ~~or notice from~~ 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, conferences requests, or ~~and~~ 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 reports of damages, near misses, and ticket updates 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, near miss, or update report in suspension until all required information is obtained. The system shall contact the reporting party within 3 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, XX/XX/2026/4/5/2019; A-, 8/9/2022]

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, and excavation activities, or damage investigations on its behalf shall be responsible for compliance with Chapter 62, Article 14 NMSA 1978 and these rules.

[18.60.5.9 NMAC - Rp, 18.60.5.9 NMAC, XX/XX/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 vacuum excavation activities conducted solely 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, Sections 62-14-1, et seq. NMSA 1978, or this rule, locate requests are encouraged for excavation projects involving purely non-mechanical excavation means.

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) by facsimile or electronically via online web portal with appropriate one-call notification center twenty-four hours a day, seven days a week.

(2) An excavator shall also submit an excavation locate request to each non-member UFO.

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 incorporated city, town, or village including extra-territorial zone(s) in accordance with American public works association (APWA) marking guidelines to communicate to facility owners where the actual excavation will take place for standard 15 working day ticket requests in accordance with the American public works association marking guidelines only. Outside these incorporated areas, 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

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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 [or non-member UFO operating in the intended excavation area](#) and shall provide accurate and truthful information. A locate request shall be deemed incomplete if it does not contain, at a minimum:

- (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, [XX/XX/2026/45/2019](#)]

18.60.5.11 WIDE AREA LOCATE REQUESTS: An excavator who expects a project to take more than [30](#) ~~45~~ working days to complete shall either request separate 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. If an excavator expects that an excavation will take more than 15 working days to complete, the excavator 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 [Section](#) 18.60.5.8 NMAC.

B. A UFO 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. A UFO 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 not to exceed five working days of the scheduled wide area conference.

C. At the conference, the excavator shall [present develop](#) a written work plan that, [at the minimum,](#) includes the ~~minimum~~ information required under Subsection C of [Section](#) 18.60.5.10 NMAC, [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 and signed by all parties. [The excavator shall distribute the agreed upon and signed work plan to all UFOs and retain a record a copy was provided.](#)

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 [Section](#) 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 as](#) 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 15 working days. For the purpose of reaffirmation, a working day begins on the date and time stamped on the ticket and ends 15 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 [Section](#) 18.60.5.11 NMAC.

[18.60.5.11 NMAC - Rp, 18.60.5.11 NMAC, [XX/XX/2026/45/2019](#)]

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.

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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 ~~two-five full~~ 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 ~~15-40~~ working days from the end of the ~~five-two~~ 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 conference from the one-call notification system and non-member UFOs for the intended excavation area and 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 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 Section 18.60.5.8 NMAC.

(4) UFOs shall arrange to provide information to ~~designers or bidders~~ 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, XX/XX/2026+15/2019; A, 8/9/2022]

18.60.5.13 MARKING EXCAVATION SITES:

A. Excavators. As provided under Subsection B of Section 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.

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(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, [XX/XX/2026/4/5/2049](#); A, 8/9/2022]

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 are 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 or mark 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, [XX/XX/2026/4/5/2049](#)]

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 by calling the one-call notification system and requesting a near miss ticket; and contact the UFO and wait until the UFO marks or clears the immediate area of the evidence; 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 excavators 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 18.60.5.15 NMAC, 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 twenty-five 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, XX/XX/2026/4/5/2019; A, 8/9/2022]

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 as defined in Subsection E of Section 62-14-2 NMSA 1978 and excavation shall be promptly commenced, ideally within 24 hours.

A. **Excavators.** An excavator who damages an underground facility while excavating with mechanical or non-mechanical equipment 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 similar to 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 report of damage or failure to its underground facilities and travel to the site;

(2) prior to traveling to the site or upon arrival, call the one-call notification system for the excavation area to request an emergency locate;

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- (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, [XX/XX/2026/4/5/2019; A, 8/9/2022](#)]

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;
- 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 file a report of damage](#) 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, [XX/XX/2026/4/5/2019; A, 8/9/2022](#)]

18.60.5.18 THIRD PARTY DAMAGE REPORTS REPORTS OF THIRD PARTY DAMAGE:

A. A UFO shall report to ~~the director or pipeline safety bureau staff~~ any ~~incident 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/http://nmprc.state.nm.us/transportation/pipeline-safety.ht> For purposes of this subsection, incident is to be taken in its general sense and is not to be restricted to the definition given in 49 CFR 191.3.

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 occurrence. 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 ~~the director or staff~~, within a reasonable time, [ideally within 24 hours](#), such other information or documentation as ~~the director or staff~~ may require regarding any damage reportable under this section.

[18.60.5.18 NMAC - Rp, 18.60.5.18 NMAC, [XX/XX/2026/4/5/2019](#)]

18.60.5.19 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.~~

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~~_____ 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 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.~~

~~[18.60.5.19 NMAC – Rp, 18.60.5.19 NMAC, 1/15/2019; A, 8/9/2022]~~

18.60.5.20 — 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. 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 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. 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.~~

~~[18.60.5.20 NMAC – Rp, 18.60.5.20 NMAC, 1/15/2019]~~

18.60.5.21 — 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 ten 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. 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.

[18.60.5.21 NMAC - Rp, 18.60.5.21 NMAC, 1/15/2019]

18.60.5.1922 WAIVER OR VARIANCE FROM RULE REQUIREMENTS:

A. The commission ~~or the bureau chief~~ may, in ~~their~~ its 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 or more of the requirements that are the subject of the petition.

[18.60.5.22 NMAC - Rp, 18.60.5.22 NMAC, ~~XX/XX/2026~~4/5/2019; A, 8/9/2022]

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.

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.